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Attorneys for Plaintiff ROSE SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ROSE SMITH, Individually and on behalf
of all other current and former all
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00024461-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

CLASS ACTION [CCP § 382]

IMAGED FILE

**DECLARATION OF BRIAN R. SHORT IN
SUPPORT OF PLAINTIFF ROSE SMITH'S
UNOPPOSED MOTION FOR AN ORDER
1) PROVISIONALLY CERTIFYING
SETTLEMENT CLASS; 2)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; 3) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; 4)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVE; AND 5)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Judge: Hon. James A. Mangione

Dept.: C-75

Date Complaint Filed: July 15, 2020

1 I, Brian R. Short, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am the managing shareholder of ShortLegal, APC in San Diego, California. I am thoroughly familiar with
4 and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would
5 competently testify thereto.

6 2. My law firm, ShortLegal, APC and my Associate Dorota A. James are the attorneys of
7 record for Plaintiff Rose Smith ("Plaintiff") in the case *Smith v. Tradition One*, San Diego County Superior
8 Court, Case No.: 37-2020-00024461-CU-OE-CTL, filed July 15, 2020. I submit this declaration in
9 support of Plaintiff Rose Smith's Unopposed Motion for Preliminary Approval of Class Action Settlement
10 which seeks primarily: (1) the granting of preliminarily approval of the proposed Settlement; (2) the
11 approval of the distribution of the Class Notice to the Class; (3) the appointment of Brian Short and Dorota
12 A. James of ShortLegal, APC as Class Counsel, the appointment of Plaintiff Rose Smith as a Class
13 Representative, and Phoenix Claims Administration as Claims Administrator; (4) and the setting of a
14 hearing for final approval and class counsel's requested fees and costs and Class Representative's' service
15 award request. The Stipulated Settlement Agreement and Release of Claims ("Stipulation" or
16 "Agreement") and the Proposed Notice to the class are attached hereto as Exhibits 1 and 2, respectively.

17 CLASS COUNSEL'S CLASS ACTION EXPERIENCE

18 3. I have been a member of the State Bar of California since 2005. I am also admitted to
19 practice in various Districts of United States District Court. I have been practicing almost exclusively in
20 complex class action matters in state and federal courts since I began my legal practice in 2005. Since
21 February 2009, I have spent almost my entire practice representing employees in class and representative
22 action wage and hour litigation. My primary practice in complex class action litigation spans more than
23 16 years.

24 4. During just the last 12 years, I have served as plaintiff's counsel of record in the following
25 wage/hour employment class action and PAGA action cases, where I was responsible for the prosecution
26 of said cases: Weaver v. Hallmark Marketing Corporation, United States District Court for the Central
27 District of California (3,846 class members); Mahoney v. AT&T Corp, Superior Court for the County of
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1 Los Angeles; Thomson v. LawInfo.com, Superior Court for the County of San Diego; Vest v. Scher Tire,
2 Inc., Superior Court for the County of Riverside; Duarte v. Rainbow Disposal Co., Inc., Superior Court
3 for the County of Orange; Julio v L&M Tire Co., Inc., Superior Court for the County of San Diego;
4 Lucarini v. Dresser, Inc., Superior Court for the County of Los Angeles; Stevenson v. Falcon Critical Care
5 Transport, Superior Court for the County of Contra Costa; Iskandaryan v. Casual Male Retail Group, Inc.,
6 Superior Court for the County of Los Angeles; Williams v. OneLegacy, Superior Court for the County of
7 Los Angeles; Corral v. Lifecare Solutions, Inc., et al., Superior Court for the County of Los Angeles;
8 Huerta v. Venture Petroleum Company, Inc., Superior Court for the County of San Diego; Frugard v.
9 Unified Protective Services, et al., Superior Court for the County of Los Angeles; Turnage v. Park
10 Management Corp. dba. Six Flags Discovery Kingdom, Superior Court for the County of Solano; Clancy,
11 et al. v. Scripps Health, Superior Court for the County of San Diego; Solaberrieta v. Baker Hughes Oilfield
12 Operations, Inc., et al., Superior Court for the County of Los Angeles; Gutierrez v. L & M Tire Company,
13 Inc., Superior Court for the County of San Diego; Stafford v. Dollar Tree Stores, Inc., Eastern District of
14 California; Stafford v. Dollar Tree Stores, Inc., Superior Court for the County of Solano; Turnage v. Old
15 Dominion Freightlines, Inc., Central District of California; Green v. Lawrence Service Company, United
16 States District Court for the Central District of California; Radford v. ACD Direct, Superior Court for the
17 County of San Diego; De La Rosa v. Quten Research Institute, LLC, Superior Court for the County of
18 San Diego; Frayre v. UPS, Superior Court for the County of San Diego; Leonard et al. v. ABTTC, Inc.,
19 Superior Court for the County of Riverside; Loveless v. ASM Affiliates, Superior Court for the County
20 of San Diego; Alfaro v. KSC Studios dba OneKreate, LLC, Superior Court for the County of San Diego;
21 Madriz v. North County Ford, Inc., Superior Court for the County of San Diego; Troxel v. LA Leasing,
22 Inc., Superior Court for the County of San Diego, and Garcia v. WSI, et al, Superior Court for the County
23 of San Diego; and Enriquez v. Colt Services, Superior Court for the County of San Diego; Virissimo v.
24 L'Oreal USA Products, Inc. et al, Superior Court for the County of San Diego; Horton v. Socket Payment
25 Services, United States District Court for the Southern District of California; Alfaro v. Ten Stories, Inc.,
26 Superior Court for the County of San Diego; Lemar v. Earthlite, LLC, et al., Superior Court for the County
27 of San Diego; and Rodriguez v. Chimney Sweeps, Superior Court for the County of San Diego; Burgueno
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1 v. Tayman Industries, Inc., Superior Court for the County of San Diego; and Garcia v. J.C. Penney
2 Corporation, Inc., Superior Court for the County of San Diego; Rivera v. Octavian FM, LLC, Superior
3 Court for the County of San Diego; Virissimo v. L’Oreal USA Products, Inc. et al., Superior Court for the
4 County of San Diego; Ruess v. Fun Bike Center, Superior Court for the County of San Diego; Hitchko et
5 al v. NPTI of Southern California, et al., Superior Court for the County of San Diego, Dortch v. Southern
6 California Addiction Center, Superior Court for County of Orange; Fox v. Capital Growth Properties, Inc.;
7 Superior Court for the County of San Diego; Davis v. SoCal Interiors, Inc., Superior Court for the County
8 of San Diego, Hubbard v. L’Oreal USA Inc., Superior Court for the County of San Francisco; Fox v.
9 Capital Growth Properties, Inc.; Superior Court for the County of San Diego; Burns v. Driveline Retail
10 Merchandising Inc., Superior Court for the County of Sacramento; Guiher v. Punch Bowl of San Diego,
11 et al., Superior Court for the County of Sacramento; Flores v. New Age Distribution, Inc., Superior Court
12 for the County of Orange; Lara v. The Pep Boys Manny Moe & Jack of California, Superior Court for the
13 County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego; Brewer v. Pyramid
14 Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest Beverage, LLC, Superior
15 Court for the County of San Diego.

16 5. My Associate Dorota A. James has a long history of experience litigating complex wage
17 and hour class actions. Ms. James is a fifth-year attorney who has extensive experience dealing with
18 complex wage and hour litigation. She received her Paralegal Certificate from the USD Paralegal
19 Program in 2007. Prior to that, she was trained at the Law School at the University of Wroclaw, Poland
20 where she graduated in 1994. Thereafter, Ms. James moved to Germany where she first received her
21 LL.M. degree and then earned her title of Doctor of the Science of Law (S.J.D) at the University of
22 Saarland (Germany). While completing her LL.M. degree, Ms. James worked as a law assistant in a
23 German attorney's office with the focus on a civil and business litigation, including labor disputes. Ms.
24 James completed the L.L.M. Program in Comparative Law at the University of San Diego and became a
25 licensed member of the California State Bar in June 2016. Ms. James has significant experience and
26 knowledge of complex class actions against employers in wage and hour disputes. Before she joined my
27 law firm, Ms. James worked with myself as a senior litigation paralegal at another San Diego law firm
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1 which specialized in representing plaintiffs in wage and hour employment litigation. During her time
2 spent at my current firm and the time she spent at our previous firm she provided all aspects of litigation
3 support pertaining to complex class action litigation from pre-filing research, discovery, pre-mediation
4 analysis through to post-settlement claims. She is actively assisting in the litigation of each of the cases
5 listed in paragraph 4, above. During her career as employment law paralegal she assisted with and
6 worked on more than 50 employment class action cases.

7 6. During just the last 3 years, my Associate Dorota A. James has served as plaintiffs' counsel
8 of record in the following wage/hour employment class action and PAGA action cases, where I was
9 responsible for the prosecution of said cases: Garcia v. J.C. Penney Corporation, Inc., Superior Court for
10 the County of San Diego; Fox v. Capital Growth Properties, Inc.; Superior Court for the County of San
11 Diego; Burns v. Driveline Retail Merchandising Inc., Superior Court of the County of Sacramento; Guhier
12 v. Punch Bowl of San Diego, et al., Superior Court of the County of Sacramento; Ruess v. Fun Bike
13 Center, San Diego Superior Court of San Diego; Hitchko et al v. NPTI of Southern California, et al.,
14 Superior Court for the County of San Diego; Dortch v. Southern California Addiction Center, Superior
15 Court for County of Orange; Davis v. SoCal Interiors, Inc., Superior Court for the County of San Diego;
16 Flores v. New Age Distribution, Inc., Superior Court for County of Orange; Rivera v. Octavian FM, LLC,
17 Superior Court for the County of San Diego; Lara v. The Pep Boys Manny Moe & Jack of California,
18 Superior Court for the County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego;
19 Brewer v. Pyramid Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest
20 Beverage, LLC, Superior Court for the County of San Diego; Guzman-Lopez v. The American Bottling
21 Company, et al., United State District Court, Central District.

22 7. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of record
23 in the following wage/hour and employment class action and/or PAGA representative action cases:
24 Enriquez v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Taalib-
25 Din v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Garcia v.
26 Respironics California, LLC, Superior Court for the County of San Diego; Smith v. Tradition One,
27 Superior Court for the County of San Diego; Smith v. McAlister Institute, Inc. for Treatment and
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1 Education, Inc., Superior Court for the County of San Diego; Martin v. Herc Rentals, Inc.; Superior Court
2 for the County of San Diego, Superior Court for the County of San Diego; Salcedo v. Jackson and Blanc;
3 Superior Court for the County of San Diego; Nichols, Jr. v. Vuori, Inc., Superior Court for the County of
4 San Diego; Norton v. Care Medical Transportation, Inc; Superior Court of for the County of San Diego;
5 Patel v. Apex Recovery, Superior Court for the County of San Diego; Fox v. Prime Asset Management,
6 Inc., Superior Court of for the County of San Diego.

7 8. Ms. James and I have extensive experience litigating class actions, other complex litigation
8 and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage
9 and hour laws is evidenced by our representation of employees in numerous disputes in state and federal
10 courts in California.

11 9. Ms. James and I are the attorneys of record for Plaintiff Rose Smith, who is a current
12 employee of Defendant Tradition One (“Defendant” or “TRADITION ONE”). Plaintiff has been
13 employed Defendant as a Substance Use Disorder (“SUD”) counselor from September 21, 2019 until
14 January 27, 2020 when her employment was abruptly terminated.

15 10. In or around February 2020, Plaintiff contacted our law firm with concerns arising out of
16 her employment with Defendant. We immediately sent out a request for a copy of Plaintiff’s pay records,
17 time records, and personnel file. Accordingly, based on the information known at that time, on March 18,
18 2020 Plaintiff submitted the requisite notice letter to the Labor Workforce and Development Agency.
19 Subsequently, on July 15, 2020 my firm filed a putative class action lawsuit on behalf of the Plaintiff and
20 similarly-situated and current and former aggrieved employees of Defendant in the California Superior
21 Court, County of San Diego, Case No.: 37-2020-00024461-CU-OE-CTL. alleging eleven causes of action:
22 1) Failure to Pay Minimum and Regular Wages; 2) Failure to Pay Overtime Wages; 3) Failure to
23 Authorize and Permit Rest Periods; 4) Failure to Authorize and Permit Meal Periods; 5) Failure to Provide
24 Itemized Wage Statement; 6) Failure to Pay Wages Upon Separation; 7) Violations of the Unfair
25 Competition Law; 8) PAGA Claims for Civil Penalties. In addition, Plaintiff alleged three (3) individual
26 causes of action for unlawful discrimination based on race and sexual orientation, and retaliation.

11. Prior to filing the complaint, my firm conducted a lengthy investigation into the merits of Plaintiff's claims, Defendant's potential affirmative defenses, and the legal issues pertaining to the misclassification of SUD counselors as exempt employees. We identified the primary claim that Plaintiff and other similarly-situated employees were not properly classified as exempt employees as under the professional and administrative exemptions. Plaintiff alleged that as result of the misclassification, Defendant failed to pay Plaintiff and other similarly-situated employees minimum, regular, and overtime wages for all hours worked. Plaintiff also alleged that Defendant failed to (1) provide and authorize complaint meal and rest periods; (2) pay timely wages; (3) furnish accurate itemized wage statements, and (4) maintain employment records. Additionally, Plaintiff sought to recover damages, penalties, interest, disgorgement of profits, injunctive relief and attorney's fees and costs.

12. As part of the formal investigation, on October 22, 2020 my firm drafted and served upon Defendant comprehensive formal written discovery, set one including Special Interrogatories, Form Interrogatories-General, Form Interrogatories-Employment, and Requests for Production of Documents in order to evaluate the merits of the underlying claims and to support Plaintiff's motion for class certification. On December 18, 2020, Defendant's provided its responses comprising mostly of boilerplate objections. After extensive meet and confer communication, Defendant served complained supplemental and second supplemental responses with few exceptions to few discovery requests.

13. Soon thereafter, Defendant approached Plaintiff's counsel with a proposal of early mediation in order to proceed in an efficient manner and reduce the expenditure of unnecessary litigation costs. Plaintiff agreed and the parties began to engage in discussions regarding selection of a potential mediator and the exchange of informal documents to evaluate the potential damages on behalf of the Class in lieu of formal discovery responses that were served on Defendant.

14. Prior to mediation, the parties engaged in several pre-mediation discussions in order to understand and evaluate the merits and potential defenses which would be asserted at the mediation. These additional pre-mediation discussions are not often utilized in class action cases, but I believe that it significantly narrowed the scope and arguments which were presented at mediation. Moreover, it

1 permitted the parties to better analyze the claims asserted, defenses raised and was a significant factor in
2 the parties' ability to reach eventual resolution after mediation.

3 15. My firm meticulously scrutinized and analyzed the documents and records produced by
4 Defendant, specifically the policies pertaining to Defendant's meal and rest break and overtime practices
5 and procedures, for accuracy and compliance with the California Labor Code. We also performed
6 comprehensive legal research pertaining to the application of administrative and professional exemptions
7 to SDU counselors. In addition, our firm performed a comprehensive class-wide damage study under each
8 theory of recovery to evaluate the extent of the class wage loss after receiving employee payroll records.
9 The damages included calculations of the estimated value for wage and hour violations, as well as the
10 penalties and wage premiums for failure to provide meal and rest periods and the amount of waiting time
11 penalties and other penalties that would result from the above violations.

12 16. The total calculated potential damages if Plaintiff was successful on *all claims at trial* are
13 as follows:

14 i. **Failure to Pay all Waiting Time Penalties: \$95,349.60**

15 Plaintiff contends that Defendant failed timely to pay all wages upon separation,
16 thereby owing their employees waiting time penalties. The estimated amount of
17 waiting time penalties owed to Plaintiff was calculated by determining the average
18 daily hours worked (8 hours), the average hourly rate of pay (\$23.37) and
19 multiplying this amount by 30 days to determine the waiting time penalty owed to
20 one employee. This was then multiplied by the total number of former employees
21 within the Class Period (17).

22 ii. **Unpaid Rest Period Premium Wages: \$216,221.05**

23 Plaintiff alleged that as a result of Defendant's misclassification of the putative
24 Class Members and its policies and practice requiring the Class Members to stay
25 on the premises during their breaks, Defendant never authorized and provided
26 Plaintiff and other similarly-situated employees complaint and off-duty rest breaks
27 and never paid them rest break premiums as required under the applicable
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provisions of the Labor Code. Plaintiff calculated the amount of wages owed by Defendant for its failure to provide and authorize rest breaks by first determining the total number of shifts worked greater than 3.5 hours in duration during the Class Period (9252). This number was then multiplied by the average rate of pay (\$23.37) to reflect the missed premium wages for rest periods for all eligible shifts.

iii. **Unpaid Meal Period Premium Wages: \$216,221.05**

Plaintiff alleged that as a result of Defendant's misclassification of the putative Class Members and its policies and practice requiring the Class Members to stay on the premises during their breaks they were not authorized and permitted to take complaint 30-minute, off-duty, uninterrupted meal periods and, consequently, were entitled to meal period premium wages which Defendant failed to pay as required under the California Labor Code. Plaintiff calculated the amount of damages resulting from Defendant's failure to pay the meal break premiums by first determining the total number of shifts longer than 5 hours (9252) within the Class Period and then multiplying this number by the average rate of pay to reflect the total amount owed for meal premium wages.

iv. **Failure to Pay Overtime wages: \$81,082**

Plaintiff alleged that Defendant failed to compensate the putative Class Members for all the overtime hours worked. The damages resulting from Defendant's failure to pay for the overtime, were calculated by multiplying the average amount of unpaid OT wages per employee per pay period by the total number of pay periods within the Class Period (925). In addition, a statutory interest at a rate of 10% was added.

v. **Failure to Provide Wage Statements: \$36,000**

Plaintiff contended that the Class was owed penalties and damages due to Defendant's failure to include total hours worked, proper regular and overtime hourly pay rates, total number of regular and overtime hours worked during the pay

period on the putative Class Members' wage statements. The relevant Labor Code provisions allow for recovery of the greater of all actual damages recovered, or a penalty of \$50-100 per pay period (up to a maximum of \$4,000 per affected employee). The total amount of damages resulting from Defendant's failure to provide accurate wage statements was calculated by multiplying the number of the putative class members by the maximum amount of the penalties allowed under the Labor Code.

17. On November 9, 2021, the Parties engaged in a full-day mediation session with Hon. Joan M. Lewis Esq.¹, who is a well-respected, neutral third-party mediator, well-versed and experienced in wage and hour class actions. During the mediation, Defendant was represented by Cheannie Kha and Brendan T. Sapien of LEWIS BRISBOIS BISGAARD & SMITH LLP and Plaintiff Rose Smith by Brian R. Short and Dorota A. James of SHORTLEGAL, APC respectively. During the mediation session, the Parties engage in a good-faith negotiations, exchange additional information regarding the realistic damages exposure to Defendant, discussed the strength and weaknesses of Plaintiff's claims, the risks, costs, and delays of further litigation, the competing valuations of Plaintiff's potential class-wide damages, and the difficulty in maintaining class certification of each claims. Justice Lewis' role in mediating the case was very helpful with respect to managing the parties' expectations and provided a useful and neutral analysis of the issues and risks of all parties.

18. After a full day of negotiations, information exchanges conducted through the mediator and directly through the parties' representatives, the parties were able to reach a settlement to resolve Plaintiff's class and PAGA claims. The parties also resolved Plaintiff's individual claims for unlawful discrimination based on race and sexual orientation, and retaliation that she pled against Tradition One. The terms of the individual settlement were summarized in a Confidential Settlement Agreement and Release of Claims. The parties will present a copy of the Confidential Settlement Agreement in camera upon the Court's request.

¹ More information about Hon. Joan M. Lewis, Esq. and her background may be found at <https://www.judicategwest/adr/joan-lewis>

1 19. The settlement negotiations were rigorous and conducted at arms' length. Based on
2 Plaintiff's Counsel's analysis of the documents and data and their evaluation of this case in general,
3 Plaintiff's Counsel is of the opinion that the substantial class and PAGA settlement is fair, reasonable, and
4 adequate in light of all known facts and circumstances, including the defenses asserted by Defendant,
5 potential adverse findings regarding liability, and various potential appellate issues.

6 20. Defendant vehemently denied all of the Class Action allegations. Defendant maintained
7 several arguments to Plaintiff's theories of liability. With respect to Plaintiff's key claim Defendant
8 misclassified its employees as exempt, Defendant argued that Plaintiff and other putative Class Members
9 were properly classified as exempt employees as they satisfied the requirements of the professional and
10 administrative exemption set forth in the relevant provisions of the applicable IWC-Wage Order.
11 Defendant claimed that Plaintiff's primary duties were to conduct one-on-one interviews with the residents
12 and design and develop their treatment plans with a multidisciplinary team of specialists which required
13 Plaintiff to exercise discretion and independent judgment. Defendant also argued that Plaintiff and other
14 similarly situated employees meet the "advanced learning prong" of the Learned Professional Exemption
15 because they performed work that required sufficient advanced knowledge acquired through a prolong
16 course of specialized instruction and study. Consequently, Defendant claimed that the company was not
17 required to pay the putative Class Members for all hours worked, including the overtime work, and provide
18 them with complaint meal and rest breaks as they were properly classified as exempt employees.

19 21. With respect to Plaintiff's claim regarding Defendant's failure to pay overtime, Defendant
20 provided examples of work schedules that demonstrated that the violation effected a very small percentage
21 of employees who worked more than 8 hours a day. Therefore, Defendant did not give a lot of monetary
22 value to this claim.

23 22. With respect to the imposition of waiting time penalties, Defendant contended that the
24 underpayment of wages affected a very small percentage of the therapists who worked more than the eight
25 hours a day, and therefore the waiting time penalties effected only a small fraction of former employees
26 who worked for Defendant. Therefore, Defendant did not give a lot of monetary value to this claim.

23. In addition to the defenses on the merits, Plaintiff considered the Defendant's position that PAGA penalties are discretionary in nature and that even if Plaintiff were successful at trial, the Court has discretion to significantly decrease the amount of damages awarded in this action. In support of its argument, Defendant pointed to some recent California Superior Court's Orders and the California Court of Appeal decisions confirming that it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Defendant also argued that the heightened penalties for "subsequent violations" under California's Private Attorney General Act (PAGA) cannot be imposed since neither the Labor Commissioner nor a court notified TRADITION ONE of the alleged Labor Code violation(s) at issue.

24. Accordingly, Plaintiff considered the risks of receiving no recovery whatsoever, and/or very lengthy litigation and appeals process, balanced by the exhaustive analysis and investigation. Plaintiff has also taken into account the uncertain outcome and the risk of loss in any litigation, especially in complex actions such as this, involving fact-driven misclassification issues. These factors create additional complexity and therefor trial could potentially be complicated and arduous, and require the input of multiple experts who are well-versed in industry-specific issues. Even though Plaintiff believes that her case possesses substantial merit, the litigation cannot legitimately be characterized as being without risk or that Plaintiff would inevitably prevail at trial or at the appeals process. Defendant is represented by able counsel who have mounted a vigorous and knowledgeable defense on its behalf.

25. The parties would have to undergo further extensive discovery including discovery related to class certification and the merits if the case did not settle. Even if class certification was achieved, there could be potential motions for decertification of the class. The parties would file cross-motions for summary judgment. If Defendant's financial condition could withstand litigation, the putative class action would potentially continue several additional years. There is also a risk that well-funded Defendants will "out-spend" its adversary, both from a time and money value.

26. It was after months of preparation for mediation, an extended full-day of negotiations and months-long post-mediation settlement discussions, reviews of calculations, comparison of data and exchange of information that Plaintiff agreed to accept \$175,000 in settlement of all of the claims

1 presented. Based on all of the circumstances, including the uncertain outcome and the risk of the litigation,
2 I believe that this is a fair and reasonable settlement value considering the highly disputed nature of
3 Plaintiff's claims. Our determination of a fair value of the settlement was based on number of factors,
4 including our investigation of the applicable law as it applied to the facts, the suitability of the case for
5 class treatment, Plaintiff's claims and the associated damages, as well as Defendant's potential defenses.

6 27. All of the Net Fund Value Amount, approximately \$94,166,67 before any residuals are
7 added in (the amount remaining from the Gross Fund Value Amount after deducting the requested
8 reasonable attorney's fees and litigation costs, reasonable Claims Administration Costs, reasonable
9 Service Award, and PAGA penalties) will be allocated among the participating Class Members. This
10 equates to an average payment of \$3,363.09 per class member.

11 28. In order to participate in the settlement, putative Class Members are not required to
12 affirmatively perform any duties. They are not required to submit a claim form and a check will
13 automatically be sent to their best available address in a timely manner after the address-verification
14 procedures are performed. The participating Class Members shall be paid their Individual Settlement
15 Amounts from the Net Settlement calculated based on the number of workweeks worked by the
16 Participating Class Member employed by Defendant in California during the Class Period. In other words,
17 the settlement of each Class Member's claims for wage and hour violations will accurately reflect the
18 amount of time and effort each Class Member put into his or her job.

19 29. Defendant has agreed to pay the Labor and Workforce Development Agency (LWDA) a
20 penalty payment of \$10,000 from the settlement proceeds. This equates \$7,500 (75% of the total PAGA
21 penalties) being made payable to the LWDA, and the remaining 25% distributed amount the participating
22 Class Members. We believe this is a fair and reasonable apportionment in light of the fact that the
23 assessment of civil penalties at trial has not been well-tested the actual probability of recovery remains
24 relatively speculative. This amount provides a reasonable percentage in comparison to the fund available
25 to the Class and allows for more wages to be distributed to the affected employees.

26 30. Plaintiff's firm will request attorney's fees of no more than one-third of the gross
27 settlement amount (\$58,333.33, and for reimbursement of the law firms' actual litigation costs up to
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1 \$7,000. The amount requested is reasonable if evaluated pursuant to the percentage of common fund or
2 lodestar methodology and further details of these analysis will be provided to the court in conjunction
3 with the filing of Plaintiff's fee application.

4 31. I believe that the attorney's fees requested are fair and reasonable because of the
5 exceptional results achieved for the class members in the face of the formidable defense mounted by
6 Defendant's experienced attorney, the difficulties presented in these highly-technical and novel issues
7 resulting out Plaintiff's wage and hour claims brought; the wide-ranging experience necessary to negotiate
8 a settlement which contemplates claims where much of the damages are dependent on demonstrating
9 willfulness and are subject to discretionary reduction. The attorneys and paralegal staff at my firm record
10 time worked and billed contemporaneously in increments of tenths of an hour. Upon the submission of
11 my firm's fee request, which will be submitted to be heard in conjunction with the Motion for Final
12 Approval, the request will be supported by a detailed explanation of the qualifications of each timekeeper
13 along with an explanation of the tasks performed by my office during the litigation. The costs requests
14 will also be supported at the time of final approval with an explanation of the amount and nature of the
15 costs incurred.

16 32. Plaintiff Rose Smith spent a great deal of time and made personal sacrifices to act as Class
17 Representative in furtherance of the litigation. Plaintiff contributed extensively during the case, including
18 reviewing complaint, correspondence to LWDA, frequently communicating with counsel, providing
19 valuable factual resources, searching for and providing numerous documents, and rearranging personal
20 obligations in order to make herself available to answer questions from the mediator or my office during
21 the full-day mediation and settlement negotiations. At all times, she acted to protect the best interests of
22 the Class to achieve the proposed settlement. Plaintiff was always available to respond to her Counsel's
23 inquiries and made significant time available as the date of mediation approached. She also assisted with
24 evaluating the proposed settlement. This work was undertaken in order to achieve the proposed settlement.
25 A declaration detailing the extent of the named Plaintiff's work and hours worked for the benefit of the
26 class will be submitted in conjunction with the Motion for Final Approval.

27 33. Plaintiff undertook the action as a current employee and therefore accepted a great deal of
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1 risk by challenging the business model of TRADITION ONE that is based on classifying its workers as
2 exempt employees v. non-exempt employees to increase its profits. While deciding to pursue a lawsuit
3 against her former employer, Plaintiff understood that her legal action may preclude or negatively affect
4 her ability to find an employment with another company in the future due to the public nature of this
5 lawsuit against her employer. During the age of social media and Google searching where a future
6 potential employer can readily search Plaintiff's name and may very easily forgo hiring Plaintiff upon
7 learning about this lawsuit against her employer for violation of the wage and hour California Labor Code.
8 For this precise reason, employees are very often intimidated and discouraged from bringing actions
9 against their current and former employers and are even more deterred from acting as a Class
10 Representative. Indeed, on several previous cases in my office, a simple Google search of class
11 representative names along with the term "class action" has yielded search results that place their lawsuit
12 at the top page of results and were therefore readily available to any potential future employer. Plaintiff
13 nevertheless had the courage to bring this action and placed the class interests before her own to benefit
14 all current and former employees of Defendant. Plaintiff's participation as the Class Representative was
15 an essential element that allowed my firm to settle the class claims. I believe other Class Members would
16 not have taken any action individually, and they would not have received the compensation afforded by
17 this Settlement but for Plaintiff's contribution.

18 34. In addition, Plaintiff is agreeing to a much broader general release and §1542 waiver which
19 leaves her without recourse for known and unknown potential claims she may have against Defendant
20 now or in the future. This concession is significant and real. Considering these risks, Plaintiff's selfless
21 desire to see that all similarly situated employees are included in this recovery is to be commended and
22 should be recognized. I believe that the requested service award in the total amount of \$5,000 for Plaintiff
23 is fair and reasonable.

24 35. Granting approval of the class action settlement would create a settlement fund that would
25 streamline this process and Class Members who participate in the settlement will receive payments for
26 their claims and other damages and penalties in the immediate future.

36. My Associate Dorota A. James and I are qualified to evaluate the class claims and viability of defenses in this unpaid wage class action based on our combined experience in other wage and hour cases. The recovery for each class member is reasonable, fair and adequate, and a settlement at this time is in the best interests of the class. The settlement gives each class member a fair amount of payment for waiting time penalties, overtime compensation, rest and meal periods, and penalties.

37. I believe that the settlement of \$175,000 is an excellent result. It is fair, reasonable, and in the parties' best interests, especially after balancing the proposed settlement terms against the probable outcome of liability, the untested issues, the range of recovery at trial, and the likelihood of collection of any recovery at trial, the financial strain of the litigation on Defendant, the prospect of an adverse ruling on summary judgement and/or class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages; individual issues, and possible delays and appeals. This provides a fair recovery to the class, the amount of which easily falls within the range of reasonableness. As such, the evidence utilized to assess the magnitude of the class's potential damages, as well as the sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

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

Executed January 17, 2022 at San Diego, California.



Brian R. Short

Exhibit 1

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
SHORTLEGAL, APC
Email: Dorota@ShortLegal.com
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
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Attorneys for Plaintiff ROSE SMITH

LEWIS BRISBOIS BISGAARD & SMITH LLP
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633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant Tradition One

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ROSE SMITH, Individually and on behalf
of all other current and former all
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00024461

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

**STIPULATION OF CLASS AND PAGA
ACTION SETTLEMENT AND
RELEASE**

Date Complaint Filed: July 15, 2020
Judge: Hon. James Mangione
Dept.: C-75

ARTICLE I

INTRODUCTION

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in the "Definitions" section or as defined elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

Plaintiff Rose Smith ("Representative Plaintiff") and the putative Class Members, make this agreement with Defendant Tradition One ("Tradition One" or "Defendant"). Representative Plaintiff and Defendant collectively are referred to in this Agreement as "the Parties."

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total maximum amount of One Hundred and Seventy Five Thousand Dollars (\$175,000.00), as provided in Section 5.06 below ("Gross Fund Value Amount"), upon the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to a release of all claims by Representative Plaintiff and the Class Members as set forth herein.

ARTICLE II

RECITALS

This Agreement is made in consideration of the following facts:

WHEREAS on July 15, 2020 Representative Plaintiff filed her complaint in San Diego County Superior Court asserting the following causes of action on a class action and/or representative basis:

- (1) Failure to Pay Minimum and Regular Wages;
- (2) Failure to Pay All Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Periods;
- (5) Failure to Provide Accurate Itemized Wage Statements;

(6) Failure to Timely Pay Wages Upon Separation of Employment;

(7) Failure to Provide Sick Leave

(8) Violation of Business & Professions Code §§17200, et seq.; and

(9) Violations of the Private Attorneys General Act (“PAGA”);

WHEREAS, the Parties engaged in extensive informal discovery, exchanging information, documents and reviewing and analyzing extensive data made available by Defendant which enabled the parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative class, Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

WHEREAS, the Parties attended an in-person mediation session with professional mediator Hon. Joan Lewis, Ret. and reached terms resulting in this arm’s-length Settlement;

WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties are due from Defendant to any Class Member and/or to the California Labor and Workforce Development Agency (“LWDA”) and/or to any allegedly aggrieved employees;

WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought, based on the facts and allegations in the operative Complaint, against Defendant or related persons in the Action, including all claims brought on a putative class, collective and representative basis in the Action;

WHEREAS, based on the discovery exchanged as well as their own independent investigation and evaluation, the Parties have considered the claims asserted by Plaintiff, the defenses asserted by Defendant, the risks associated with the continued prosecution of the Action, the cost of continued litigation through trial and appeals, and after considering all the circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by Released

Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, or (iv) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiff for herself and on behalf of the Participating Class Members and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the released Class Claims, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

ARTICLE III

DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

- a. "Action" means the civil action commenced by Plaintiff on July 15, 2020 in the California Superior Court, County of San Diego entitled *Rose Smith v. Tradition One*, Case No.: 37-2020-00024461.
- b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including the Class Notice, as defined below, attached as Exhibit A.
- c. "Claims Administrator" means the third-party administrator approved by the court who will administer the settlement as set forth below.
- d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in administration of the Settlement, including, but not limited to address verification measures, mailing of notice to the Class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks, administration of uncashed checks, generation of checks to Class Counsel for attorneys' fees and costs, generation of the check to the Representative Plaintiff for her Service Award,

1 generation of a check to the LWDA for its share of PAGA penalties, and generation and submission of
2 all tax-related documents, all pursuant to the terms of this Agreement.

3 e. "Class Claims" means all claims for wages, benefits and related penalties actually alleged or that
4 could have been alleged in the Action by Plaintiff, on behalf of herself and the California Class
5 Members, based on the facts asserted in the Complaint, including but not limited to: (1) Failure to Pay
6 Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods;
7 (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Provide and Maintain Accurate Itemized
8 Wage Statements; (6) Failure to Pay Wages Due Upon Separation of Employment; (7) Failure to
9 Provide Sick Leave; (8) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et*
10 *seq.*); and (9) PAGA Claim for Civil Penalties (the "Litigation").

11 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:
12 Brian R. Short
13 Brian@shortlegal.com
14 Dorota A. James
15 Dorota@shortlegal.com
16 ShortLegal, APC
350 10th Avenue, Suite 1000
San Diego, California 92101
Telephone: (619) 272-0720
Facsimile: (619) 839-3129

17 g. "Class Member(s)" means all current and former non-exempt employees and exempt Substance
18 Use Disorder Counselors who worked for Defendant within the State of California at any time between
19 July 15, 2016 through November 9, 2021 (the "Class Period") (which is estimated to consist of
20 approximately 28 current and former employees from the beginning of the Class Period though the date
21 of the mediation).

22 h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as Exhibit
23 "A" or in substantially the same form as ultimately approved by the Court.

24 i. "Class Period" means the period from July 15, 2016 through November 9, 2021.

25 j. "Complete and General Release" means an irrevocable and unconditional release given only by
26 Representative Plaintiff, releasing Defendant and the Released Parties from any and all charges,
27 complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises,
28

1 damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown,
2 suspected or unsuspected, arising from conduct occurring on or before the date Representative Plaintiff
3 signs this Settlement Agreement, including but not limited to a release of any and all rights Plaintiff has
4 to sue or bring any type of claim under California state law; Title VII of the Civil Rights Act of 1964, as
5 amended, 42 U.S.C. § 2000e et seq., the Employment Act of 1967, the Civil Rights Act of 1991, the
6 Civil Rights Act of 1866 and 1870, 42 U.S.C. § 1981, as amended, the Americans with Disabilities Act
7 42 U.S.C. § 12101, et. seq, as amended, the Employment Retirement Income Security Act of 1974, as
8 amended (except vested benefits), any federal, state or common law claim or cause of action based on
9 any alleged failure to pay wages, breach of contract, defamation, slander, liable, intentional or negligent
10 infliction of emotional distress, misrepresentation, fraud, promissory estoppel, any other tort or
11 negligence claim or obligations arising out of any of Defendant's employment policies or practices,
12 employee handbooks, and/or any statements by any employee or agent of Defendant whether oral or
13 written; and for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay,
14 any form of equitable or declaratory relief, liquidated damages, punitive damages, emotional or
15 economic injury or damage of any kind. This provision is intended by the Parties to be all-encompassing
16 and to act as a full and total release of any claim, whether specifically enumerated herein or not, that
17 Representative Plaintiff might have or have had, that exists or ever has existed on or prior to the date this
18 Settlement Agreement is signed. However, this release shall not release any claims alleged for wrongful
19 termination which are the subject of a concurrently-negotiated Settlement Agreement and Release.
20 Collectively, these two Agreements are intended to resolve all past or present known or unknown
21 claims. This release includes a 1542 Waiver. The Parties understand and agree that the word "claims"
22 includes all actions, group actions (including any pending or future collective, class, private attorney
23 general or representative actions for which Representative Plaintiff may otherwise qualify as a putative
24 class member or represented party), complaints and grievances that could potentially be brought by
25 Representative Plaintiff against the Released Parties.

26 k. "Defendant" shall mean Tradition One.
27
28

1. "Defense Counsel" means counsel for Defendant, who are:
LEWIS BRISBOIS BISGAARD & SMITH LLP
Jeffrey S. Ranen (SBN 224285)
Email: Jeffrey.Ranen@lewisbrisbois.com
Brendan T. Sapien (SBN 274247)
Email: Brendan.Sapien@lewisbrisbois.com
Cheannie Kha (SBN 328631)
Email: Cheannie.Kha@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900
- m. "Final Effective Date" means the date on which the Settlement is approved and the Court's Final Order and Judgment becomes Final. The Court's Final Order and Judgment becomes final upon the later of: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-five (65) calendar days following the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.
- n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the Representative Plaintiff's Service Award should be approved; and whether the applications of Class Counsel for attorneys' fees and costs should be approved.
- o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to the Final Settlement Class (defined below) and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent written agreement of the Parties.

- p. "Final Settlement Class" refers to the Representative Plaintiff and all Class Members who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in Section 5.04.a of this Agreement.
- q. "Gross Fund Value Amount" means the One Hundred and Seventy-Five Thousand Dollars (\$175,000) to be paid by Defendant as provided by this Agreement to settle this Action exclusive of employer-side taxes. This is an "all in" and non-reversionary number that includes, without limitation, all monetary benefits and payments for the Final Settlement Class Members, the Service Awards, the Class Counsel Award, the Settlement Administrator expenses and the PAGA Payment, and all other claims for interest, fees, and costs. Other than the employer's share of payroll taxes, in no event will Defendant pay more than the Gross Fund Value Amount.
- r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value Amount that shall be paid to the Participating Class Members less employee's portion of payroll taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of the Net Fund Value Amount (which share shall be determined by the calculations provided in this Agreement at Section 5.06.c.).
- s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.
- t. "LWDA" means the California Labor and Workforce Development Agency.
- u. "Net Fund Value Amount" means the Gross Fund Value Amount of One Hundred and Seven Five Thousand Dollars (\$175,000.00) less all of the following amounts approved by the Court: (1) Class Counsel's court-approved attorneys' fees to Plaintiff's counsel (not to exceed 1/3 of the Gross Fund Value and currently Fifty Eight Thousand and Three Hundred and Thirty Three Dollars and Thirty Three Cents (\$58,333.33)); (2) Class Counsel's court-approved collective litigation costs (not to exceed Seven Thousand Dollars (\$7,000.00)); (3) the court-approved Service Award to be paid to the Representative Plaintiff (not to exceed Five Thousand (\$5,000.00)); (4) the amount of court-approved PAGA penalties to be paid to the LWDA of Seven Thousand and Five Hundred Dollars (\$7,500.00), which equates to 75% of the total amount allocated for PAGA Penalties of Ten Thousand Dollars (\$10,000.00); and (5) the Claims

1 Administrator's court-approved fees in the anticipated amount of not more than Three Thousand
2 Dollars (\$3,000.00). The Net Fund Value Amount is estimated to be Ninety-Four Thousand and
3 One Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$94,166.67) plus any residuals from
4 amounts requested in this paragraph which are not ultimately distributed to the respective Parties
5 due to invoicing of a lesser amount by the Claims Administrator or court approval of a lesser
6 amount than requested.

7 v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims
8 Administrator a valid and timely written request to be excluded from the Class pursuant to
9 Section 5.04.a below.

10 w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections
11 2698, *et seq.*

12 x. "Participating Class Member(s)" means those Class Members who do not submit valid requests
13 for exclusion.

14 y. "Parties" means Representative Plaintiff and Defendant as defined herein.

15 z. "Released Parties" means Defendant Tradition One's shareholders, officers, directors,
16 employees, administrators, fiduciaries, trustees, and agents.

17 aa. "Representative Plaintiff" and/or "Smith" means named Plaintiff Rose Smith.

18 bb. "Service Award" means a monetary amount not to exceed Five Thousand Dollars (\$5,000) for
19 the Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section
20 5.06.b.3 of the Agreement, as provided below.

21 cc. "Settlement" means the disposition of this Action and all related claims effectuated by this
22 Agreement.

23 ARTICLE IV

24 CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

25 4.1. Certification Of Class And Claims. Solely for the purposes of this Settlement, the Parties
26 stipulate and agree that the Court may certify a class consisting of "all current and former non-exempt
27 employees and exempt Substance Use Disorder Counselors who worked for Defendant within the State
28

1 of California at any time between July 15, 2016 through November 9, 2021.” (the “Class Period”) (which
2 is estimated to consist of approximately 28 current and former employees from the beginning of the Class
3 Period though the date of the mediation).

4 4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the
5 Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final
6 Settlement Class.

7 4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties
8 stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

9 4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the
10 Parties stipulate and agree that Phoenix Settlement Administrators shall be appointed to serve as
11 Settlement Administrator.

12 4.5. Conditional Nature Of Stipulation For Certification. Solely for the purposes of this
13 Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should, for
14 whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate
15 to certification as part of the Settlement shall have no bearing on, and shall not be admissible in
16 connection with, the issue of whether the Class Members and/or the Class Claims should be certified in
17 a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to
18 oppose claim or class certification in this or any other action should this Settlement not become
19 effective.

20 4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except such
21 proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to
22 be conducted by the Court.

23 ARTICLE V

24 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

25 Because the Parties have stipulated to the certification of the Class for settlement purposes only,
26 this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth in
27 Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent
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1 upon the approval and certification by the Court. If the Court does not grant either the Preliminary or
2 Final Approval of the settlement, the fact that the Parties were willing to stipulate to class certification
3 for the purposes of this Agreement shall have no bearing on, or be admissible in connection with, the
4 issue of whether any class should be certified in a non-settlement context. If the Final Effective Date
5 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever,
6 and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right
7 to challenge the propriety of class certification for any purpose if the settlement does not become final.

8 The Parties and their respective counsel shall take all steps that may be requested by the Court
9 relating to the approval and implementation of this Agreement and shall otherwise use their respective
10 best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court
11 approval of and implementing this Agreement shall be as follows.

12 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

13 Representative Plaintiff shall bring a motion before the Court for an order conditionally
14 certifying the Class based on the preliminary approval of this Agreement, including the Class Notice
15 attached hereto as Exhibit "A." The date that the Court grants preliminary approval of this Agreement
16 shall be the "Preliminary Approval Date."

17 **Section 5.02: The Claims Administrator**

18 A court-appointed third-party Claims Administrator will serve to administer this Settlement
19 pursuant to the terms herein. The Claims Administrator will administer the settlement by performing
20 address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if
21 necessary, performing skip traces, receiving and recording completed Settlement Opt-Outs, adjudicating
22 Class Members' disputes over wages earned during the Class Period in the relevant positions as an
23 hourly and/or non-exempt employees and exempt Substance Use Disorder Counselors, providing Class
24 Counsel and counsel for Defendant with weekly updates on the status of Opt-Outs, and handling any
25 potential inquiries about the calculation of the Individual Settlement Amounts. The Claims
26 Administrator shall provide the Parties with the names of individuals who submitted timely Opt-Outs
27 after the expiration of the claims period for inclusion in
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1
2 the proposed final approval Order. The actions of the Claims Administrator shall be governed by the
3 terms of this Stipulation. The Parties, through their counsel, may provide written information needed by
4 the Claims Administrator pursuant to the Stipulation.

5 All costs of administering the Settlement, including but not limited to all costs and fees
6 associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and fees
7 associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all
8 costs and fees associated with preparing any tax returns and any other filings required by any
9 governmental taxing authority or agency, all costs and fees associated with preparing any other notices,
10 reports, or filings to be prepared in the course of administering disbursements from the Net Fund Value
11 Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in
12 connection with the execution of its duties under this Agreement ("Claims Administration Costs"),
13 anticipated to be not more than Three Thousand Dollars (\$3,000), shall be paid out of the Gross Fund
14 Value Amount.

15 **Section 5.03: Notice to Class Members**

16 **a. Initial Identification of Class Members:** Within ten (10) calendar days following entry
17 of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a confidential
18 list in an Excel spreadsheet format containing the name and last known address, telephone number, and
19 social security number of each Class Member. This list shall also contain the number of workweeks
20 worked by each individual Class Member as an hourly or non-exempt employee or exempt Substance
21 Use Disorder Counselors for Defendant during the Class Period or the commencement dates and
22 termination dates (if applicable) relating to each individual Class Member during the Class Period. This
23 information shall be treated as confidential.

24 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information from
25 Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class Members from
26 the U.S. Postal Service and Accurint. Within Twenty (20) calendar days after receipt of the Class Member
27 information from Defendant, or receipt of any updated addresses from the U.S. Postal Service, whichever
28

1 is later, the Claims Administrator shall mail the Class Notice to all Class Members via first-class mail
2 using the updated address information. With respect to each Class Notice that is returned as undeliverable,
3 the Claims Administrator shall promptly attempt to determine a correct address using an additional skip
4 trace service such as Experian and shall re-send the Class Notice via first-class mail to any new address
5 thereby determined within 10 days of receiving the notice that the Class Notice was undeliverable.

6 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
7 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with a
8 declaration attesting to completion of the notice process, including any attempts to obtain valid mailing
9 addresses for and re-sending of any returned Class Notices, as well as the number of valid opt-outs that
10 the Claims Administrator received. Upon approval by the court, compliance with the procedures
11 described in this Section 5.03.b shall constitute due and sufficient notice to Class Members of this
12 proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy the requirement of due
13 process. Nothing else shall be required of the Parties, Class Counsel, Defense Counsel, or the Claims
14 Administrator to satisfy the requirements of providing notice of the proposed Settlement and the Final
15 Fairness and Approval Hearing.

16 **Section 5.04: Responses to Notice**

17 **a. Requests for Exclusion from Class**

18 For any other Class Member to validly exclude himself or herself from the Class and this
19 Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class Member
20 or his or her authorized representative, and must be sent to the Claims Administrator, postmarked by no
21 later than thirty (30) days after the date the Claims Administrator initially mails the Class Notice to the
22 Class Members. For Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, the
23 written request for exclusion must be postmarked by no later than forty-five (45) days of the initial
24 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The Class Notice
25 shall contain individualized estimated payments, set forth instructions on how to opt-out and include the
26 language to be used in a request for exclusion. The date of the initial mailing (or re-mailing for Class
27 Notices re-mailed) of the Class Notice and the date the signed request for exclusion was postmarked,
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1 shall be conclusively determined according to the records of the Claims Administrator. Any Class
2 Member who timely and validly requests exclusion from the Class and this Settlement shall become a
3 Non-Participating Class Member and shall not be entitled to any Individual Settlement Payment, shall
4 not be bound by the terms and conditions of this Agreement, and shall not have any right to object,
5 appeal, or comment thereon.

6 **b. Objections to Settlement**

7 For any Class Member to object to this Agreement, or any term of it, the person making the
8 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
9 forty five (45) days after the Class Notice was initially mailed to the Class Members, file with the Court
10 and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection,
11 signed by the objecting Class Member or his or her attorney, along with all supporting papers. For Class
12 Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements of the
13 grounds for objection must be filed and served no later than forty-five (45) days after the initial mailing
14 of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of mailing or re-
15 mailing of the Class Notice to the objecting Class Member shall be conclusively determined according
16 to the records of the Claims Administrator. The Court retains final authority with respect to the
17 consideration and admissibility of any Class Member objections.

18 Counsel for the Parties shall file any response to the objections submitted by objecting Class
19 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or ten
20 (10) days after the receipt of the notice of objection, whichever is later.

21 **c. Failure to Object**

22 Any Class Member who fails to timely file and serve such a written statement of his or her
23 intention to object shall be foreclosed from making any objection to this settlement, unless otherwise
24 ordered by the Court.

25 **d. Failure to Timely Opt-Out**

26 Any Class Member who fails to submit a timely request for exclusion from the Class
27 automatically shall be deemed a member of the Final Settlement Class whose rights and claims with
28

1 respect to the issues raised in the Action are determined by the Court's Final Order, and by the other
2 rulings in the Action.

3 **e. Right of Parties to Void Agreement**

4 If fifteen percent (15%) or more of Class Members make a valid request to be excluded from the
5 Class as described in Section 5.04.a above and thus become Non-Participating Class Members,
6 Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises
7 that right to void the Agreement, then the Parties shall have no further obligations under the Agreement,
8 including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that
9 otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims
10 Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their right
11 to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are exercising
12 the right to void the Agreement no later than ten (10) calendar days after the Claims Administrator
13 notifies the Parties of the final total number of valid requests to be excluded.

14 **Section 5.05: Final Fairness and Approval Hearing**

15 **a. Final Approval Hearings**

16 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
17 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed Class
18 Action Settlement, or on such other reasonable date as set by the Court, a Final Fairness and Approval
19 Hearing shall be held before the Court in order (1) to review this Agreement and determine whether the
20 Court should give it final approval; and (2) to consider any timely objections made pursuant to Section
21 5.04.b above and all responses by the Parties to such objections. At the Final Fairness and Approval
22 Hearing, the Parties shall ask the Court to give final approval to this Agreement and shall submit to the
23 Court a proposed Final Order approving the Settlement and which shall be entered in the Action.

24 **b. Vacating, Reversal, or Material Modification of Final Order and Judgment on**
25 **Appeal or Review**

26 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or
27 application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that
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1 there is a material modification to the Settlement and that court's decision is not completely reversed,
2 and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative
3 Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement, which
4 the Party must do by giving written notice to the other Parties, the final reviewing court, and the Court
5 not later than ten (10) business days after the final reviewing court's decision vacating, reversing, or
6 materially modifying the Final Order becomes final and non-appealable. If either Party exercises its
7 right to void the Agreement under this section, then the Parties shall have no further obligations under
8 the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any
9 amounts that otherwise would have been owed under this Agreement. The Party exercising its right to
10 void the Agreement shall pay the Claims Administrator's reasonable fees and expenses incurred as of the
11 date the Party exercises its right to void the Agreement. If the Parties mutually agree to void the
12 Agreement, then the Claims Administrator's reasonable fees and expenses incurred as of the date the
13 Parties exercise their right to void the Agreement shall be split equally. A vacation, reversal, or
14 modification of the Court's award of the Service Award or Class Counsel's fees or costs shall not
15 constitute a vacation, reversal, or material modification of the Final Order and Judgment within the
16 meaning of this paragraph.

17 **Section 5.06: Settlement Payment Procedures**

18 **a. Settlement Sum**

19 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross Fund
20 Value Amount of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00), which is the total
21 and all-inclusive maximum amount Defendant shall be obligated to pay under the Settlement embodied
22 by this Agreement, exclusive of employer-side payroll taxes. The Settlement Sum includes Class
23 Counsel's attorneys' fees of not more than Fifty Eight Thousand and Three Hundred and Thirty Three
24 Dollars and Thirty Three Cents (\$58,333.33) and litigation costs not to exceed Seven Thousand Dollars
25 (\$7,000.00), a Service Award for Representative Plaintiff of not more than Five Thousand Dollars
26 (\$5,000.00), the PAGA penalty payment of Ten Thousand Dollars (\$10,000.00), which includes the
27 payment of Seven Thousand and Five Hundred Dollars (\$7,500.00) to the LWDA, the Claims
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Administration Costs anticipated to be not more than Three Thousand Dollars (\$3,000.00).

The Net Fund Value Amount is estimated to be Ninety-Four Thousand and One Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$94,166.67) plus any residuals from amounts requested in this paragraph which are not ultimately distributed to the respective Parties due to invoicing of a lesser.

1. Escalation Clause: The Gross Fund Value Amount of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) was calculated with, and is premised on, the understanding that there are approximately twenty-eight (28) Class Members eligible to participate in the Settlement. If the actual number of Class Members eligible to participate in the Settlement is greater than 15% of this estimate, then the Class Settlement Amount will be increased by the same proportion above 15% and the attorney's fees calculation shall be adjusted accordingly in the same percentage as otherwise requested at preliminary approval as well as any necessary increase in claims administration costs will be borne from the Gross Fund Value Amount.

b. Allocation of Settlement Amount: In full and complete settlement of the Action and subject to this Settlement being approved by the Court, Defendant shall pay an aggregate sum not to exceed One Hundred and Seventy-Five Thousand Dollars (\$175,000.00), (the "Gross Fund Value Amount"). The Gross Fund Value Amount of \$175,000.00 shall be paid to the Claims Administrator no later than ten (10) calendar days after the Final Effective Date. If the Court does not grant final approval upon the material terms of the settlement (other than modification of the requested attorneys' fees, costs or class representative service award) or if fifteen (15%) or more to the putative class members opt-out as set forth in Section 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further obligation under this Agreement. If the Court grants final approval of the settlement, the settlement funds shall be disbursed as follows:

1. Reasonable attorneys' fees and litigation expenses: Class Counsel have stated they shall request that the Court award them reasonable attorneys' fees in an amount up to 1/3 of the Gross Fund Value Amount or Fifty-Eight Thousand and Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33) and litigation costs in an amount up to Seven Thousand Dollars (\$7,000.00). Defendant has agreed neither to oppose nor adversely comment on the fees and litigation

costs request. The award of reasonable attorneys' fees and litigation costs granted by the Court shall be paid out of the Gross Fund Value Amount within ten (10) calendar days of the Final Effective Date in accordance with Section 5.06.d.2-3, below. Class Counsel may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of its attorneys' fees paid to Class Counsel in periodic payments, through a structured settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such attorneys' fees and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including, without limitation, any such issues, claims and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold Defendant harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments.

2. Reasonable expenses of the Claims Administrator: The Claims Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not constitute payment to any Participating Class Member(s). The Claims Administration Costs, expected not to exceed Three Thousand Dollars (\$3,000.00), shall be paid out of the settlement funds within thirty calendar days after the Final Effective Date in accordance with Section 5.06.d.1, below.

3. Reasonable Service Award to the Representative Plaintiff:

Subject to Court approval, the Representative Plaintiff shall make a separate application for up to Five Thousand Dollars (\$5,000.00) as a Service Award. The Service Award shall be paid by check made payable to the Representative Plaintiff, which shall be delivered by the Claims Administrator to Class Counsel within ten (10) calendar days after the Final Effective Date. The Service Award shall be paid out of the Gross Fund Value Amount and shall not constitute payment(s) to any Participating Class Member(s).

It is the intent of the Parties that the Service Award represent payment to Representative Plaintiff for the additional risks undertaken in prosecuting this action and her service to the Class Members, and

not wages, thus, the Claims Administrator shall not withhold any taxes from the Service Award. The Service Award shall be reported on an IRS Form 1099, which shall be provided by the Claims Administrator to the Representative Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Service Award does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Service Award constitutes wages for income tax and withholding purposes. The Representative Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Service Award paid under this Agreement.

4. PAGA Payment: A payment of Ten Thousand Dollars (\$10,000.00) shall be allocated to PAGA penalties, Seven Thousand and Five Hundred Dollars (\$7,500.00) of which shall be payable to the California LWDA within ten (10) calendar days of the Final Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The remaining portion of the PAGA payment shall be distributed pro-rata to the Final Settlement Class as set forth below in Section 5.06.c.1.

5. Allocation to Participating Class Members: The amount remaining from the Gross Fund Value Amount after deducting the court-awarded reasonable attorneys' fees and litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed to members of the Class in accordance with the formula set forth below in Section 5.06.c. Final Settlement Class members are not eligible to receive any compensation other than the Individual Settlement Payments discussed below.

c. Individual Settlement Payments: The Individual Settlement Payments shall be calculated as follows:

1. Calculation: Each Class Member of the Final Settlement Class who does not Opt-Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on information contained in Defendant's pertinent payroll records, and calculated as follows:

i) Each Class Member of the Final Settlement Class shall be allocated a payment equal to the pro rata portion of the number of weeks during which the individual Class Member worked for Defendant within the State of California during the Class Period in proportion to the total aggregated number of workweeks worked by all Settlement Class Members during the class period.

ii) The employee's share of the payroll taxes shall be deducted and paid from the Individual Settlement Payment. The Claims Administrator shall calculate the Individual Settlement Payments and the amount of the employee's share of payroll taxes to be deducted therefrom in order to determine the net Individual Settlement Payment.

2. Dispute Resolution: The Claims Administrator shall have the initial responsibility of resolving all disputes that arise during the claims administration process, including, without limitation, disputes, if any, regarding the calculation of the total number of workweeks worked by each Class Member where the information submitted by Defendant based on their employment records differs from the information submitted by Class Members. In resolving such disputes, Defendant's employment records shall be presumed to be accurate and correct, and shall be final and binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator shall request a conference call between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall be final and binding on the Class Member. In advance of the conference call, the Claims Administrator shall fax or email copies of all available information to all counsel.

3. Fair Formula: The Parties hereby agree that the formula for allocating payments to Participating Class Members as provided herein is reasonable and designed to provide a fair settlement to the Participating Class Members.

4. Allocation of Net Fund Value Amount Payments and Taxes: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated as

1 follows: twenty percent (20%) to wages and the remaining eighty percent (80%) to penalties and
2 interest. The Claims Administrator shall deduct from each Individual Settlement Payment all employee
3 portions of payroll taxes from the amount allocated to wages. The amounts allocated to penalties and
4 interest shall not be subject to tax withholding, but Participating Class Members will receive an IRS
5 Form 1099, if necessary, for those payments. Defendant shall not make as part of this Agreement, nor
6 be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement,
7 bonuses, 403(b), or profit-sharing plans related to monies paid as a result of this Agreement.

8 The Parties understand and agree that Defendant is not providing tax or legal advice, or making
9 representations regarding tax obligations or consequences, if any, related to this Agreement, and that the
10 members of the Final Settlement Class will assume any such tax obligations or consequences that may
11 arise from this Agreement, and that Final Settlement Class Members shall not seek any indemnification
12 from Defendant in this regard. The Parties agree that, in the event that any taxing body determines that
13 additional taxes are due from any Final Settlement Class Member, such Class Member assumes all
14 responsibility for the payment of any such taxes.

15 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than Ten
16 (10) calendar days following the Final Effective Date, Defendant shall remit the full Gross Fund Value
17 Amount to the Claims Administrator via wire transfer (or other method reasonably calculated to be
18 received by the Claims Administrator within five (5) calendar days after the Final Effective Date) for the
19 purposes of making the payments described herein. Payments from the Gross Settlement Fund shall fund
20 the settlement and meet the obligations of Section 5.06.b and be paid by the Claims Administrator
21 within the time frames set forth below in sections 5.06.d.1-5.

22 Payments of the following from the Gross Fund Value Amount shall be made in accordance with
23 the following subparagraphs:

24 **1. Claims Administrator:** The Claims Administrator shall be paid the Claims
25 Administration costs from the Gross Fund Value, expected to be not more than Three Thousand Dollars
26 (\$3,000.00), ten (10) calendar days after the Final Effective Date.

1 **2. Class Counsel's Fees:** The amounts approved by the Court for Class Counsel's
2 fees shall be paid by the Claims Administrator within ten (10) calendar days after the Final Effective
3 Date and the Claims Administrator shall pay the total attorneys' fee award to Class Counsel.

4 **3. Class Counsel's Costs:** The amount approved by the Court for Class Counsel's
5 costs shall be paid by the Claims Administrator within ten (10) calendar days after the Final Effective
6 Date.

7 **4. Class Representative's Service Award:** The amount approved by the Court for
8 the Class Representative's Service Award shall be paid by the Claims Administrator to Class Counsel
9 within ten (10) calendar days after the Final Effective Date.

10 **5. Individual Settlement Payments:** Within fifteen (15) days of the last date for
11 Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b, above, the
12 Claims Administrator shall provide to the Parties a written statement of all Individual Settlement Payments
13 to be paid to all Participating Class Members and all required payroll taxes. The Claims Administrator
14 will distribute the Individual Settlement Payments to all Participating Class Members within ten (10)
15 calendar days of the Final Effective Date. The Claims Administrator shall issue to each Participating Class
16 Member a check in the amount of his or her Individual Settlement Payment, as described in Section
17 5.06.c.1 (less applicable taxes and withholdings) via first-class mail. Uncashed checks not negotiated
18 within one hundred twenty (120) days of their issuance are void. All Final Settlement Class Members
19 shall be bound by this Agreement and the release herein even if the Class Member does not cash the
20 settlement check issued to him or her comprising his or her Individual Settlement Payment. If any
21 Settlement Class Member has not cashed his or her Settlement Payment check within ninety (90) days of
22 issuance, the Settlement Administrator shall mail that Class Member a postcard reminding him/her of the
23 deadline to cash such check and providing information as to how to obtain a reissued check in the event
24 the check was lost, stolen or misplaced. Any checks issued to Class Members shall remain valid and
25 negotiable for one hundred twenty (120) days from the date of issuance. After all settlement funds have
26 been distributed and all checks issued to Settlement Class Members have either been cashed or have
27 remained uncashed and gone stale, the Settlement Administrator shall handle in accordance with Code of
28

Civil Procedure § 384(b). The unpaid residue, plus any interest that accrued thereon, shall be paid by the Settlement Administrator to a mutually agreed upon neutral *cy pres* recipient, which will be a nonprofit organization or foundation that supports projects that will benefit the class or similarly situated persons, subject to Court approval.

e. Residuals

If any amount of the Gross Fund Value Amount remains unallocated as a result of modification to the requested attorneys' fees, costs, Class Representative Service Award or Claims Administration Costs, this amount shall become part of the Net Fund Value Amount and be distributed pursuant to Section 5.06.c.

f. Circular 230 Disclaimer

Each party to this agreement (for purposes of this section, the "acknowledging party" and each party to this agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular No. 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into this agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorneys' or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this agreement.

ARTICLE VI

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 6.01: No Admission

Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed to comply with the law in any respect, that Defendant has any liability to anyone based upon the claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be certified in this Action. This Agreement is entered into solely for the purpose of compromising highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and resources of Defendant has been spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

As to the claims and allegations in this Action, including but not limited to wage claims, meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated work time, wage statement claims, claims for waiting time penalties, unfair business practices claims, and claims for PAGA penalties, Defendant denies and continues to deny each of those claims and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

Section 6.02: Non-Evidentiary Use

Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to,

1 or offered in evidence against any of the Released Parties in any further proceeding in the Action, or any
2 other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the
3 Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved
4 any of his/her claims released through this Agreement.

5 **Section 6.03: Nullification**

6 The Parties have agreed to the certification of the Class for the sole purpose of effectuating this
7 Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the Court
8 should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the
9 amount of attorneys' fees, costs, and Service Awards awarded), or (c) the Court should for any reason
10 fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered void,
11 then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the
12 related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall
13 stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed
14 with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification as part of
15 the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of
16 whether a class should be certified in a non-settlement context in this Action or any other action, and in
17 any of those events, Defendant expressly reserves the right to oppose any motion for class certification.

18 Invalidity of any material portion of this Agreement, except for the amount of attorneys' fees,
19 costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
20 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

21 **ARTICLE VII**

22 **RELEASES**

23 **Section 7.01: Releases by Class Members**

24 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

25 **Section 7.02: Release of All Claims Relating To The Action**

26 Upon the court's final approval of the class settlement and entry of Final Order and Judgment,
27 each member of the Final Settlement Class shall be deemed to have released and discharged each
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Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) unfair business practices, and (g) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698, *et seq.* based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

Section 7.03: 1542 Release By Plaintiff Rose Smith

In addition to the Settlement Class Members' Released Class Claims described above, in exchange for the consideration recited in this Agreement, including but not limited to the court-approved Class Representative Service Award, Smith enters into a Complete and General Release which releases, acquits, and discharges any covenants not to sue any of the Releasees for any claim, whether known or unknown, which Smith has ever had, or hereafter may claim to have, arising on or before the date that she signs this Agreement, including without limitation to, any claims relating to or arising out of any aspect of her employment, or the termination of her employment, with Defendant, any claims for unpaid compensation, wages, reimbursement for business expenses, penalties, or waiting time penalties under the California Labor Code, the California Business and Professions Code, or any federal, state, county or city law or ordinance regarding wages or compensation; any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other federal, state, county or city law or ordinance regarding employment discrimination. Smith acknowledges and agrees that the foregoing general release is given in exchange for the consideration provided to her under this Agreement by Defendant. However, this

1 release shall not release any claims alleged for wrongful termination which are the subject of a
2 concurrently-negotiated Settlement Agreement and Release. Collectively, these two Agreements are
3 intended to resolve all past or present known or unknown claims. The release shall also not apply to claims
4 for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits, or
5 any other claim or right that as a matter of law cannot be waived or released.

6 Smith expressly waives any rights or benefits available to her under the provisions of Section 1542
7 of the California Civil Code, which provides as follows:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR**
9 **DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**
10 **OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE**
11 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

12 Smith understands fully the statutory language of Civil Code section 1542 and, with this
13 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
14 known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date of
15 her signature to this Agreement, and specifically waives all rights she may have under California Civil
16 Code section 1542. This general release shall not operate to release any of Plaintiff's previously asserted
17 individual claims alleged in the Complaint and which are the subject of a separate and concurrently-
18 negotiated Settlement Agreement.

19 ARTICLE VIII

20 MISCELLANEOUS PROVISIONS

21 Section 8.01: Amendments or Modification

22 The terms and provisions of this Agreement may be amended or modified only by an express
23 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

24 Section 8.02: Representations and Warranties of Defendant's Records

25 Defendant represent and warrant that the documents provided to Class Counsel during and after
26 mediation that constituted a material condition to this Settlement are substantially accurate to the best of
27 their knowledge.

Section 8.03: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 8.04: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

Section 8.05: Entire Agreement

This Agreement, including the Exhibit referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect of the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action including correspondence between Class Counsel and Defense Counsel and the Memorandum of Understanding signed by the Parties on August 13, 2019. No rights hereunder may be waived except in writing.

Section 8.06: Counterparts and Fax Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. A fax or electronic

signature on this Agreement shall be as valid as an original signature.

Section 8.07: Meet and Confer Regarding Disputes

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such disputes prior to submitting such disputes to the Court.

Section 8.08: Agreement Binding on Successors

This Agreement shall be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

Section 8.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

Section 8.10: Fair Settlement

Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this Agreement through arm's-length negotiation and believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action considering all relevant factors, current and potential, and believe the Agreement is consistent with public policy and fully complies with applicable provisions of law.

Section 8.11: Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

Section 8.12: Notice

All notices, demands, or other communications given under this Agreement shall be in writing and deemed to have been duly given as of the third business day after mailing by first-class United States mail, addressed as follows:

To Plaintiff and the Class:
Brian R. Short

Brian@shortlegal.com
Dorota A. James
Dorota@shortlegal.com
ShortLegal, APC
350 10th Avenue, Suite 1000
San Diego, California 92101
Telephone: (619) 272-0720
Facsimile: (619) 839-3129

To Defendant:

LEWIS BRISBOIS BISGAARD & SMITH LLP
Jeffrey S. Ranen
Email: Jeffrey.Ranen@lewisbrisbois.com
Brendan T. Sapien
Email: Brendan.Sapien@lewisbrisbois.com
Cheannie Kha
Email: Cheannie.Kha@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: (213) 250-1800
Facsimile: (213) 250-7900

Section 8.13: Enforcement and Continuing Jurisdiction of the Court

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

Section 8.14: Mutual Full Cooperation

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 8.15: Authorization to Act

Class Counsel warrant and represent that they are authorized by the Representative Plaintiff, and

1 Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action required to
2 effectuate the terms of this Agreement, except for signing the documents, including but not limited to
3 this Agreement, that are required to be signed by the Parties.

4 **Section 8.16: No Reliance on Representations**

5 The Parties have made such investigation of the facts and the law pertaining to the matters
6 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on
7 any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their
8 agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or
9 with regard to the advisability of making and executing this Agreement, or with respect to any such
10 matters. No representations, warranties, or inducements have been made to any Party concerning this
11 Agreement other than those expressly set forth or referred to herein.

12 **Section 8.17: No Collateral Attack**

13 This Agreement shall not be subject to collateral attack by any Class Member or any recipient of
14 the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be
15 limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for
16 disputing the calculation of his or her Individual Settlement Payment.

17 **Section 8.18: No Public Comment/Non-Disparagement Clause**

18 Representative Plaintiff and Class Counsel will not make any public disclosure of the settlement
19 terms until after the settlement is preliminarily approved by the Court. Class Counsel will take all steps
20 necessary to ensure Representative Plaintiff is aware of, and will encourage her to adhere to, the restriction
21 against any public disclosure of the settlement terms until after the settlement is preliminarily approved
22 by the Court. None of these prohibitions on public comment shall prohibit Class Counsel's
23 communications with the Court as necessary to finalize the settlement.

24 Representative Plaintiff and Defendant represent and agree that they have not and will not directly
25 or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For the purposes
26 of this Agreement, "disparage" shall include making or publishing any statement or other content, whether
27 in written, oral, electronic, digital or other form, truthful or otherwise, which may reasonably be expected
28

1 to adversely affect the business, public image, reputation or goodwill of the other Party, including, without
2 limitation, their operations, employees, directors or related persons, and their past, present or future
3 products or services and the facts relating to Representative Plaintiff's past employment.

4 **Section 8.19: Interim Stay of Proceedings**

5 The Parties agree to the Court staying and holding all proceedings in the Action, except such
6 proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement
7 Hearing to be conducted by the Court.

8
9 **EXECUTION BY PARTIES AND COUNSEL**

10 Dated: January __, 2022

11 _____
Rose Smith, Representative Plaintiff

12
13 Dated: January __, 2022

14 _____
By:
For Defendant Tradition One

15 **APPROVED AS TO FORM AND CONTENT:**

16 **SHORTLEGAL, APC**

17 

18 Dated: January 17, 2022

19 _____
Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

22
23 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

24
25
26 Dated: January __, 2022

27 _____
Jeffrey S. Ranen, Esq.
Brendan T. Sapien
Cheannie Kha
Attorneys for Defendant

SHORTLEGAL, APC
350 10th AVE., SUITE 1000
SAN DIEGO, CA 92101

to adversely affect the business, public image, reputation or goodwill of the other Party, including, without limitation, their operations, employees, directors or related persons, and their past, present or future products or services and the facts relating to Representative Plaintiff's past employment.

Section 8.19: Interim Stay of Proceedings

The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

EXECUTION BY PARTIES AND COUNSEL

Dated: January __, 2022

Rose Smith, Representative Plaintiff

Dated: January 18 2022
Robert Chung
By: _____
For Defendant Tradition One

APPROVED AS TO FORM AND CONTENT:

SHORTLEGAL, APC

Dated: January __, 2022

Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: January 18, 2022

Jeffrey S. Ranen, Esq.
Brendan T. Sapien
Cheannie Kha
Attorneys for Defendant

1 to adversely affect the business, public image, reputation or goodwill of the other Party, including, without
2 limitation, their operations, employees, directors or related persons, and their past, present or future
3 products or services and the facts relating to Representative Plaintiff's past employment.

4 **Section 8.19: Interim Stay of Proceedings**

5 The Parties agree to the Court staying and holding all proceedings in the Action, except such
6 proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement
7 Hearing to be conducted by the Court.

8
9 **EXECUTION BY PARTIES AND COUNSEL**

10 Dated: January¹¹__, 2022

Rose Smith

11 _____
Rose Smith, Representative Plaintiff

12
13 Dated: January__, 2022

14 By:
For Defendant Tradition One

15 **APPROVED AS TO FORM AND CONTENT:**

16 **SHORTLEGAL, APC**

17
18 Dated: January__, 2022

19 Brian R. Short, Esq.
Dorota A. James, Esq.

20 ShortLegal, APC

Attorneys for Representative Plaintiff

21
22 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

23
24
25 Dated: January__, 2022

26 Jeffrey S. Ranen, Esq.
Brendan T. Sapien

27 Cheannie Kha

Attorneys for Defendant

Smith v. Tradition - Class Action Settlement Agreement Final 20220110

Final Audit Report

2022-01-12

Created:	2022-01-10
By:	Dorota James (Dorota@shortlegal.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6Oiva0Svmx-IB9SEu0PU14h4sU_CbI5r

"Smith v. Tradition - Class Action Settlement Agreement Final 20220110" History

-  Document created by Dorota James (Dorota@shortlegal.com)
2022-01-10 - 8:44:52 PM GMT- IP address: 70.95.136.17
-  Document emailed to Rose Smith (r[REDACTED]) for signature
2022-01-10 - 8:45:33 PM GMT
-  Email viewed by Rose Smith (r[REDACTED])
2022-01-12 - 6:11:22 AM GMT- IP address: 66.249.84.95
-  Document e-signed by Rose Smith (r[REDACTED])
Signature Date: 2022-01-12 - 7:00:05 AM GMT - Time Source: server- IP address: 68.111.213.14
-  Agreement completed.
2022-01-12 - 7:00:05 AM GMT

Exhibit A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

ROSE SMITH, Individually and on behalf of
all other current and former all similarly-
situated and aggrieved employees of
Defendants in the State of California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through 50,
inclusive,
Defendants.

CASE NO.: 37-2020-00024461

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED SETTLEMENT
AND HEARING DATE FOR COURT
APPROVAL

Judge:	Hon. James A. Mangione
Dept.:	C-75
Action Filed:	July 15, 2020
Trial Date:	Not set

TO: "All current and former non-exempt employees who worked for Defendant within the State of California at any time between July 15, 2016 through the date the Court issues a Preliminary Approval Order or 90 days from November 9, 2021 – whichever is earlier. (the "Class Period")

**If You Qualify For Inclusion in The Settlement Class And You Wish To Participate
In The Settlement And Receive A Settlement Payment, You Are Not Required To
Take Any Action.**

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before <<45 days after notice mailed>>, 2022. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On July 15, 2020, Rose Smith filed a class and representative action Complaint ("Complaint") in the San Diego County Superior Court entitled *Rose Smith v. Tradition One*, Case No. 37-2020-00024461, on behalf of herself and a proposed class consisting of allegedly similarly-situated individuals currently or formerly employed by *Tradition One* in which she asserted claims for: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay

Wages Due Upon Separation of Employment; (8) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Rose Smith has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Tradition One’s class action and representative claims and Defendant’s defenses to those claims. Ms. Smith’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Tradition One and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$175,000 to settle the Litigation. The \$175,000 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. **Class Counsel’s Attorney’s Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$58,333.33), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$7,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Rose Smith anticipates requesting a service award of no more than \$5000.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$10,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$7,500.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$2,500.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, <<Settlement Administrator>> to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to <<Settlement Administrator>> to cover its fees

and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to <<Settlement Administrator>> will be approximately \$ _____, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** "Class" shall mean "All current and former non-exempt employees who worked for Defendant within the State of California at any time between July 15, 2016 through the date the Court issues a Preliminary Approval Order or 90 days from November 9, 2021 – whichever is earlier. (the "Class Period")

I. **Settlement Class Defined:** "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. **Settlement Period Defined:** "Settlement Period" shall mean July 15, 2016 through [the date the court enters an order granting preliminary approval or 90 days from November 9, 2021 – whichever is earlier.

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of workweeks worked by each Settlement Class Member during the Settlement Period in proportion to the total number of workweeks worked by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 33% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 67% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Rose Smith and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based

on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection, you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101, by <<45 days after notice mailing>>, 2022, and serve copies to the following:

CLASS COUNSEL:

SHORTLEGAL, APC

Brian R. Short

Dorota A. James

350 10th Avenue, Ste. 1000

San Diego, CA 92101

Tel: (619) 272-0720 / Fax: (619) 839-3129

COUNSEL FOR DEFENDANT:

LEWIS BRISBOIS BISGAARD & SMITH LLP

Jeffrey S. Ranen

Brendan T. Sapien

Cheannie Kha

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Tel: (213) 250-1800 / Fax: (213) 250-7900

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<45 days after notice mailed>>, 2022. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<45 days after notice mailed>>, 2022. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on _____, 2022 at _____ a.m. in Department C-75 of the San Diego Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<45 days after notice mailed>>, 2022, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no

payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court's final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) Unfair Business Practices, and (g) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 10 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-75 of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 on << >>, 2022, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the pleadings and other records in this litigation including the Class Action Settlement Agreement that may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT

Exhibit 2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

ROSE SMITH, Individually and on behalf of
all other current and former all similarly-
situated and aggrieved employees of
Defendants in the State of California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through 50,
inclusive,
Defendants.

CASE NO.: 37-2020-00024461

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED SETTLEMENT
AND HEARING DATE FOR COURT
APPROVAL

Judge:	Hon. James A. Mangione
Dept.:	C-75
Action Filed:	July 15, 2020
Trial Date:	Not set

TO: "All current and former non-exempt employees who worked for Defendant within the State of California at any time between July 15, 2016 through the date the Court issues a Preliminary Approval Order or 90 days from November 9, 2021 – whichever is earlier. (the "Class Period")

**If You Qualify For Inclusion in The Settlement Class And You Wish To Participate
In The Settlement And Receive A Settlement Payment, You Are Not Required To
Take Any Action.**

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before <<45 days after notice mailed>>, 2022. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On July 15, 2020, Rose Smith filed a class and representative action Complaint ("Complaint") in the San Diego County Superior Court entitled *Rose Smith v. Tradition One*, Case No. 37-2020-00024461, on behalf of herself and a proposed class consisting of allegedly similarly-situated individuals currently or formerly employed by *Tradition One* in which she asserted claims for: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay

Wages Due Upon Separation of Employment; (8) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Rose Smith has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Tradition One’s class action and representative claims and Defendant’s defenses to those claims. Ms. Smith’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Tradition One and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$175,000 to settle the Litigation. The \$175,000 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. **Class Counsel’s Attorney’s Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$58,333.33), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$7,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Rose Smith anticipates requesting a service award of no more than \$5000.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$10,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$7,500.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$2,500.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, <<Settlement Administrator>> to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to <<Settlement Administrator>> to cover its fees

and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to <<Settlement Administrator>> will be approximately \$, which shall be paid from the Gross Fund Value Amount.

G. Net Fund Value Amount: Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. Class Defined: "Class" shall mean "All current and former non-exempt employees who worked for Defendant within the State of California at any time between July 15, 2016 through the date the Court issues a Preliminary Approval Order or 90 days from November 9, 2021 – whichever is earlier. (the "Class Period")

I. Settlement Class Defined: "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. Settlement Period Defined: "Settlement Period" shall mean July 15, 2016 through [the date the court enters an order granting preliminary approval or 90 days from November 9, 2021 – whichever is earlier.

K. Allocation of Net Fund Value Amount Among Settlement Class Members: Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of workweeks worked by each Settlement Class Member during the Settlement Period in proportion to the total number of workweeks worked by all the Settlement Class Members during the Settlement Period.

L. Tax Treatment of Payments to Settlement Class Members: The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 33% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 67% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Rose Smith and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based

on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection, you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101, by <<45 days after notice mailing>>, 2022, and serve copies to the following:

CLASS COUNSEL:

SHORTLEGAL, APC

Brian R. Short

Dorota A. James

350 10th Avenue, Ste. 1000

San Diego, CA 92101

Tel: (619) 272-0720 / Fax: (619) 839-3129

COUNSEL FOR DEFENDANT:

LEWIS BRISBOIS BISGAARD & SMITH LLP

Jeffrey S. Ranen

Brendan T. Sapien

Cheannie Kha

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Tel: (213) 250-1800 / Fax: (213) 250-7900

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<45 days after notice mailed>>, 2022. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<45 days after notice mailed>>, 2022. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on _____, 2022 at _____ a.m. in Department C-75 of the San Diego Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<45 days after notice mailed>>, 2022, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no

payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court's final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) Unfair Business Practices, and (g) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 10 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-75 of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 on << >>, 2022, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the pleadings and other records in this litigation including the Class Action Settlement Agreement that may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT