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

ALVIN N. WILLIAMS III, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

NO ORDINARY MOMENTS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01140925-CU-OE-CXC

CLASS ACTION

*[Case assigned for all purposes to the Hon.
William Claster; Dept. CX104]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 10, 2022

Time: 9:00 a.m.

Dept.: CX104

Reservation No.: 73757374

Complaint Filed: May 26, 2020

Trial Date: None

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Alvin N. Williams III (“Plaintiff”) and the proposed Settlement Class in the
4 above-captioned matter. I am a member in good standing of the bar of the State of California
5 and am admitted to practice in this Court. I have personal knowledge of the facts stated in this
6 declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to
15 its website is the “largest U.S.-based law firm exclusively devoted to representing management
16 in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily
17 staffed on wage and hour class actions venued in both state and federal courts, and I also worked
18 on a number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification;
27 drafting motions for decertification following class certification; conducting exposure analyses
28 to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class

1 certification and potential damages resulting from such claims; drafting mediation briefs; serving
2 as the primary contact to in-house counsel; deposing named plaintiffs and putative class
3 members; deposing retained expert witnesses; and defending the depositions of corporate
4 witnesses. In short, I played an integral role in all aspects of litigation from the inception of a
5 matter through and beyond class certification. I also supervised the work of several junior
6 attorneys who were staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and
12 I performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of
16 Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over thirty (30) wage and hour class actions filed
22 in both State and Federal courts throughout California. Below are some of the matters in which
23 I have been appointed as Class Counsel, all of which have been granted final approval: *Hilberger*
24 *v. Eisenhower Medical Center*, Case No. INC1204915, California Superior Court, County of
25 Riverside, Honorable Judge John G. Evans, presiding, (in which I was approved for an hourly
26 rate of \$500 for work performed in 2012 and 2013); *Lopez v. Cornucopia Tools and Plastics,*
27 *Inc.*, Case No. CV138049, California Superior Court, County of San Luis Obispo, Honorable
28 Judge Martin J. Tangeman, presiding, (in which I was approved for an hourly rate of \$425 for

work performed in 2013 and 2014); *Tacker v. Compass Health, Inc.*, Case No. CV13-02261 BRO (JCG), United States District Court, Central District of California, Honorable Judge Beverly Reid O’Connell, presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Noell v. American Professional Ambulance Corporation, Inc.*, Case No. BC499345, California Superior Court, County of Los Angeles, Honorable Judge Kenneth R. Freeman, presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Bautista v. Harvest Management Sub LLC*, Case No. CV12-10004 FMO (CWx), United States District Court, Central District of California, Honorable Judge Fernando M. Olguin, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2012, 2013 and 2014); *Davila v. OCB Restaurant Co.*, Case No. CV13-5403 PA (JCG), United States District Court, Central District of California, Honorable Judge Percy Anderson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Abad v. Waste Connections, Inc.*, Case No. CV12-06708 DDP (PJWx), United States District Court, Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Plantillas v. Snap-On Incorporated*, Case No. CV13-05153 DDP (VBKx), United States District Court, Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Theodore v. Keyes European, LLC*, Case No. BC521395, California Superior Court, County of Los Angeles, Honorable Judge Elihu Berle, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Morales v. Sunset Tower Hotel LLC*, Case No. BC511924, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Gonzalez v. Universal Alloy Corp.*, Case No. SACV13-00807 JVS (MRWx), United States District Court, Central District of California, Honorable Judge James V. Selna, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Morawski v. Milt Guggia Enterprises, Inc.*, Case No. CV13-2349 ABC (RZx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr., presiding (in which I was approved

1 for an hourly rate of \$500 for work performed in 2013 and 2014); *Thorp v. Alcal Industries, Inc.*,
2 *et al.*, Case No. CV13-02289 YGR, United States District Court, Northern District of California,
3 Honorable Judge Yvonne Gonzalez Rogers, presiding (in which I was approved for an hourly
4 rate of \$500 for work performed in 2013 and 2014); *Myles v. College Hospital*, Case No.
5 BC487206, California Superior Court, County of Los Angeles, Honorable Judge John Shepard
6 Wiley, Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in
7 2013, 2014 and 2015); *Sarinana v. DS Waters of America, Inc.*, Case No. C13-0905 EMC, United
8 States District Court, Northern District of California, Honorable Edward M. Chen, presiding (in
9 which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Julio v.*
10 *Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of
11 California, Honorable Judge Andre Birotte Jr., presiding (in which I was approved for an hourly
12 rate of \$550 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case
13 No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable
14 Judge Phyllis J. Hamilton, presiding (in which I was approved for an hourly rate of \$550 for work
15 performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case
16 No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth
17 Freeman, presiding (in which I was approved for an hourly rate of \$550 for work performed in
18 2013, 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior
19 Court, County of Los Angeles, Honorable John S. Wiley, presiding (in which I was approved for
20 an hourly rate of \$550 for work performed in 2013, 2014 and 2015); *Prado v. Warehouse Demo*
21 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
22 California, Honorable Judge John F. Walter, presiding (in which I was approved for an hourly
23 rate of \$550 for work performed in 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor*
24 *Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo,
25 Honorable Martin J. Tangeman, presiding (in which I was approved for an hourly rate of \$550
26 for work performed in 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*,
27 Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy
28 D. Hogue, presiding (in which I was approved for an hourly rate of \$550 for work performed in

2014 and 2015); *Escobar v. Century West, LLC*, Case No BC564873, California Superior Court, County of Los Angeles, Honorable Judge Jane L. Johnson, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015 and 2016); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis, presiding (approving an hourly rate of \$575 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No. BC537042, California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding (approving an hourly rate of \$575 for work performed in 2014, 2015, and 2016); and *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Cristobal v. Koos Manufacturing, Inc.*, Case No. BC591484, California Superior Court, County of Los Angeles, Hon. William F. Highberger presiding (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-100007-DRL, California Superior Court, County of Kern, Honorable David R. Lampe presiding (approving hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No. RG14727191, California Superior Court, Alameda County, Honorable Winifred Y. Smith presiding (approving an hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr., presiding (approved at an hourly rate of \$600 for work performed in 2016 and 2017); *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$600 for work performed in 2016 and 2017); *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger presiding (granting final approval of settlement on behalf of direct support professionals involving claims for unpaid wages, meal and rest period violations, wage statement violations, and other claims).

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1 7. I have also moved to certify and have received an order certifying a class action
2 and/or conditionally certifying a collective action, in the following cases:

- 3 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
4 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
5 presiding (certifying a class of employees who were misclassified as independent
6 contractors);
- 7 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
8 States District Court, Central District of California, Honorable Judge Beverly Reid
9 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 10 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
11 District Court, Central District of California, Honorable Judge John F. Walter, presiding
12 (certifying a rest period violation class and conditionally certifying an FLSA unpaid
13 overtime wage class);
- 14 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
15 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
16 (conditionally certifying an unpaid FLSA overtime wage class);
- 17 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
18 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding
19 (conditionally certifying an unpaid FLSA overtime wage class);
- 20 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
21 California Superior Court, County of Orange, Honorable Judge William Claster,
22 presiding (certifying unpaid overtime wage class and waiting time penalty class);
- 23 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
24 States District Court, Central District of California, Honorable Dolly M. Gee presiding
25 (certifying six classes of employees for rest period violations, wage statement violations,
26 meal period violations, and overtime and double-time violations);
- 27 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
28 States District Court, Southern District of California, Honorable William Q. Hayes

presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);

- *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);
- *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, San Bernardino County Superior Court, Honorable David S. Cohn presiding (certifying wage statement class);
- *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying one class of employees for wage statement violations); and
- *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four classes for meal period violations, rest period violations, wage statement violations, and waiting time penalties).

8. In 2015, 2016 and 2017, Thomson Reuters and Los Angeles Magazine recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an honor awarded to no more than two and a half percent of attorneys under the age of forty in Southern California each year. In 2018 and 2019 Thomson Reuters recognized me as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five percent of all attorneys in Southern California each year.

9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class.

10. Founded in 1996, Defendant No Ordinary Moments, Inc. (“Defendant”) provides long-term residential care as well as contracts with a variety of Regional Centers to provide services to the developmentally disabled. Defendant provides 24-hour care to individuals who suffer from severe behavioral challenges, psychiatric issues and/or medical issues. Plaintiff and

1 Settlement Class members are current and former non-exempt employees who worked for
2 Defendant in California during the Class Period.

3 11. On March 10, 2020, Plaintiff sent a letter by certified mail to Defendant, and
4 online to the LWDA, describing Defendant's alleged Labor Code violations, as required by Labor
5 Code § 2699.3. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff's March 10,
6 2020 PAGA letter. On May 26, 2020, after the prescribed 65-day waiting period under Labor
7 Code § 2699.3(a)(2)(A), Plaintiff filed this instant action in this Court, alleging claims for civil
8 penalties under the Private Attorneys General Act, Labor Code § 2698, *et seq.* As part of the
9 Settlement, the parties stipulated to the filing of a First Amended Class and Representative Action
10 Complaint ("FAC"), which added class-wide causes of action for failure to pay all overtime
11 wages, failure to pay minimum wages, failure to provide all legally required meal periods, failure
12 to authorize and permit all legally required rest periods, failure to reimburse non-exempt
13 employees for all necessary business expenditures, failure to timely pay all wages, failure to issue
14 accurate and itemized wage statements, and unfair business practices. On October 6, 2021,
15 Plaintiff filed the FAC.

16 12. In connection with mediation, the parties engaged in extensive informal
17 discovery, including Defendant's production of a 14.25% random sampling of timekeeping and
18 payroll data for putative class members; its relevant written wage and hour policies and employee
19 handbooks, and other relevant documents; as well as the total number of class members, average
20 hourly rate of pay, and additional relevant data points. The sampled employees were selected as
21 follows: Defendant created a class list containing all putative class members, the list was sorted
22 alphabetically, and then every 7th employee was selected for the sampling. This yielded a random
23 sampling of approximately 14.25% of all putative class members and included both current and
24 former non-exempt employees. Plaintiff analyzed and extrapolated the data produced by
25 Defendant which allowed Plaintiff to develop a comprehensive class-wide exposure model. This
26 discovery allowed the parties to assess the merits and value of Plaintiff's claims, as well as
27 Defendant's potential defenses.

13. The parties attended a full-day mediation on May 18, 2021 with Tripper Ortman, Esq., a well-respected wage and hour class action mediator. During mediation, the parties vigorously debated their legal positions, including the likelihood of class certification and the legal bases for their respective claims and defenses. At the conclusion of mediation, Mr. Ortman issued a mediator's proposal for a classwide settlement, which was ultimately accepted by both sides. During the months that followed, the parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before this Court.

14. A true and correct copy of the fully executed Settlement Agreement is attached hereto as **Exhibit A**. The proposed Class Notice, Request for Exclusion Form, and Notice of Settlement Award are attached as **Exhibits 1, 2, and 3**, respectively, to the Settlement Agreement.

15. The monetary terms of the Settlement are summarized below:

Total Settlement Amount:	\$775,000.00
Minus Court-approved attorneys' fees (one-third):	\$258,333.33
Minus Court-approved verified costs (up to):	\$25,000.00
Minus Court-approved Enhancement Award:	\$5,000.00
Minus Amount Designated as PAGA penalties:	\$50,000.00
Minus estimated settlement administration costs:	\$17,500.00
Net Settlement Amount ("NSA"):	\$419,166.67
Plus 25% of PAGA penalties to Settlement Class:	\$12,500.00
Total Amount Paid to Settlement Class members:	\$431,666.67

16. According to Defendant, there are approximately 1,680 Settlement Class members. Therefore, the average Individual Settlement Award is projected to be approximately \$256.94.

17. As an initial matter, Defendant asserts that nearly all Settlement Class members signed valid and enforceable arbitration agreements. Setting aside any arguments as to the merits of Plaintiff's claims, Defendant contends that absent settlement, a class-wide recovery was not possible and that only PAGA civil penalties could potentially be recovered on behalf of a subset of the Settlement Class members. As such, Defendant contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to the Settlement Class

members through a representative action would be limited to only the employees' potential 25% share of PAGA civil penalties.

18. Plaintiff alleges that due to the nature of caring for clients with intellectual and developmental disabilities, Plaintiff and other non-exempt employees were not provided with off-duty rest periods as required by law. As part of its onboarding process, Plaintiff alleges that Defendant requires employees to sign on-duty meal period agreements stating that "I understand and agree that the nature of my work as a Personal Attendant at No Ordinary Moments may prevent me from being relieved of all duties during meal periods." Plaintiff contends that by arguing that the nature of their work prevents employees from being relieved of all duty during meal periods, Defendant concedes that this necessarily means that it has not been possible to provide compliant off-duty rest periods as required by California law. Plaintiff further alleges that because Defendant's non-exempt employees are required to maintain constant supervision of its clients, Plaintiff and other Settlement Class members cannot be relieved of all work duties and are not provided off-duty rest periods. Based on Plaintiff's analysis and extrapolation of the timekeeping records provided by Defendant, there were approximately 520,297 rest period eligible shifts worked during the Class Period. Therefore, assuming a rest period violation on each shift during the Class Period, Plaintiff calculated a maximum estimated exposure of approximately \$9,235,271 (520,297 non-compliant rest periods * \$17.75 average premium) for Plaintiff's rest period claim. As a threshold issue, Defendant contends that its non-exempt employees are "Personal Attendants," and therefore, need not be provided with off-duty rest periods. Therefore, Plaintiff's rest and meal period claims were to a large extent a "zero-sum game," as an unfavorable ruling on the classification of Settlement Class members as "Personal Attendants" would necessarily decimate Plaintiff's rest and meal period claims. Defendant also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an inquiry into why each Settlement Class member failed to take rest periods on each shift, which would devolve into an unmanageable series of mini-trials. Therefore, in light of these arguments, as well as the risk that Plaintiff's class claims could be precluded by the arbitration agreements, Plaintiff discounted this maximum amount by 80% for risk of non-certification to account for the

1 risk of non-certification based upon the arbitration agreements, and an additional 85% for a risk
2 of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an
3 estimated realistic exposure of \$277,059.

4 19. Because Settlement Class members care for intellectually and developmentally
5 challenged children and adults, the nature of their work prevents them from being fully relieved
6 of their duties during their shift. Plaintiff does not dispute these truths and concedes that the
7 nature of the work necessitates on-duty meal period agreements. Plaintiff's analysis showed there
8 were approximately 433,308 shifts of over 6.0 hours worked during the Class Period, and nearly
9 all of these shifts reflected an on-duty meal period. Assuming Defendant's on-duty meal period
10 agreement was found to be unlawful, Plaintiff calculated Defendant's maximum exposure for
11 meal period violations at approximately \$7,691,217 (433,308 non-compliant first meal periods *
12 \$17.75 average premium). Defendant contends that it has always maintained compliant written
13 meal period policies and contends that it utilized a lawful on-duty meal period agreement
14 throughout the Class Period. Plaintiff's counsel was provided with on-duty meal period
15 agreements utilized during the Class Period, and Plaintiff's counsel believes the on-duty meal
16 period agreements comport with the requirements of the applicable Wage Order. As with
17 Plaintiff's rest period claims, Defendant argues that Personal Attendants are exempted from the
18 Wage Order's meal period requirements. In light of these defenses, Plaintiff discounted this
19 maximum amount by 80% for risk of non-certification to account for the risk of non-certification
20 based upon the arbitration agreements, and an additional 85% for a risk of being unsuccessful on
21 the merits or of failing to recover the full amount sought, to arrive at an estimated realistic
22 exposure of \$230,737.

23 20. Plaintiff contends that Settlement Class members were required to use their
24 personal cell phone to clock-in and clock out for their shift after May 2019, and were required to
25 utilize their personal cell phones to report any special incidents with their clients and
26 communicate with their managers. Although Defendant requires its employees to use their
27 personal cellphones for business purposes, Plaintiff contends that Defendant did not reimburse
28 Plaintiff and other aggrieved employees for the use of their personal cell phones. As a result,

1 Plaintiff alleges that Defendant failed to reimburse aggrieved employees for all expenses
2 incurred, is in violation of Labor Code §§ 2802 and 2804. Plaintiff estimates that there were
3 approximately 30,063 aggregate months during the Class Period. Plaintiff contends that \$20.00
4 per month is an adequate reimbursement for cell phone expenses. Therefore, Plaintiff calculates
5 Defendant's maximum exposure for this claim at \$601,260 (30,063 months * \$20.00
6 reimbursement). Defendant contends that it properly reimbursed employees for all necessary
7 business expenditures throughout the Class Period, including cell phone expenses. To support
8 this contention, Defendant points to its "Payment for Required Phone Use" policy which provides
9 for an \$8 per month reimbursement for cell phone usage. Defendant further contends that
10 Plaintiff's claim for unreimbursed cell phone use is unfounded because Defendant provides
11 employees with a method to seek reimbursement for work-related expenses. Defendant further
12 contends that any expenses incurred by Settlement Class members were minimal, given the wide
13 availability of low-cost cellular phone plans. Defendant further argues that this claim is not
14 suitable for class treatment, as it would require individualized determinations as to the
15 reasonableness of the expense incurred by the employee, whether each employee was properly
16 reimbursed for his or her expenses, and if they were under-reimbursed, by how much. Therefore,
17 in light of these arguments, as well as the risk that Plaintiff's class claims could be precluded by
18 the arbitration agreements, Plaintiff discounted this maximum amount by 80% for risk of non-
19 certification to account for the risk of non-certification based upon the arbitration agreements,
20 and an additional 60% for a risk of being unsuccessful on the merits or of failing to recover the
21 full amount sought, to arrive at an estimated realistic exposure of \$48,101.

22 21. Plaintiff contends that Defendant underpaid Settlement Class members due to its
23 allegedly unlawful timekeeping policies/practices. Specifically, for a portion of the Class Period,
24 Plaintiff alleges that Defendant required its non-exempt employees to record their time in quarter-
25 hour increments rather than the actual time they began and ended each workday, and that as a
26 result, Settlement Class members were not compensated for all hours worked. Plaintiff estimates
27 that from the beginning of the Class Period through May 2019, Settlement Class members were
28 underpaid by approximately five (5) minutes each shift as a result of Defendant's timekeeping

1 policies/practices, for a total of approximately 25,175 unpaid hours. Therefore, Plaintiff
2 calculated exposure for unpaid wages at approximately \$446,856 (25,175 unpaid hours * \$17.75
3 average rate of pay). Defendant argues that its timekeeping policies/practices were lawful and
4 that it has always compensated employees for all hours worked. Defendant further argues that
5 prior to May 2019, Settlement Class members recorded their own hours worked through
6 handwritten timesheets, and Defendant always paid employees for all time recorded by
7 Settlement Class members. Defendant further argues that in approximately May 2019 it
8 implemented an electronic timekeeping system that recorded and paid employees to the minute,
9 thereby cutting off its liability for this claim for a significant portion of the Class Period.
10 Defendant contends that Plaintiff's theory of liability amounts to an "off-the-clock" claim, which
11 Plaintiff would not be able to certify. Therefore, in light of these arguments, as well as the risk
12 that Plaintiff's class claims could be precluded by the arbitration agreements, Plaintiff discounted
13 this maximum amount by 80% for risk of non-certification to account for the risk of non-
14 certification based upon the arbitration agreements, and an additional 75% for a risk of being
15 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
16 realistic exposure of \$22,343.

17 22. As a result of the foregoing violations, Plaintiff asserts that Defendant failed to
18 comply with its final payment and wage statement obligations, in violation of Cal. Labor Code
19 §§ 203 and 226, respectively, and that Defendant is liable for civil penalties under the PAGA.
20 Based on data provided by Defendant, there are approximately 1,092 Settlement Class members
21 who have separated their employment with Defendant since May 26, 2017. Plaintiff estimates an
22 average waiting time penalty of \$4,260 (\$17.75 * 8 hours * 30 days), and therefore, calculated
23 Defendant's maximum waiting time penalty exposure at approximately \$4,651,920 (1,092
24 former employees * \$4,260 avg. waiting time penalty). Defendant asserts it has strong, good-
25 faith defenses to Plaintiff's underlying claims, most notably their assertion that because they
26 possessed good-faith defenses to the underlying claims, any failure to pay wages was not
27 "willful" as a matter of law. Defendant further contends Plaintiff's meal and rest period claims
28 cannot support a claim for waiting time penalties, as multiple courts have held. Therefore, in light

1 of these arguments, as well as the risk that Plaintiff's class claims could be precluded by the
2 arbitration agreements, Plaintiff discounted this maximum amount by 80% for risk of non-
3 certification to account for the risk of non-certification based upon the arbitration agreements,
4 and an additional 75% for a risk of being unsuccessful on the merits or of failing to recover the
5 full amount sought, to arrive at an estimated realistic exposure of \$232,596.

6 23. Plaintiff alleges that Defendant has derivative liability for wage statement
7 penalties as a result of its failure to pay all wages, and for its failure to pay all meal and rest
8 period premium wages. In calculating Defendant's exposure, Plaintiff gave Defendant the benefit
9 of assuming Plaintiff could only obtain the "initial" wage statement violation rate of \$50 per pay
10 period, for a total of \$1,408,800 (28,176 pay periods * \$50 "initial" penalty) in potential penalties.
11 Defendant argues that no violations occurred, that employees suffered no "injury," that any
12 alleged violations were not "knowing and intentional," and that meal and rest period claims
13 cannot support wage statement penalties. Defendant further argues wage statements always
14 accurately reflected hours worked and amounts paid to employees, and thus Defendant could not
15 be found liable for wage statement penalties. Defendant also argues that Plaintiff's underlying
16 claims will fail as well. In light of these defenses, Plaintiff discounted the maximum exposure by
17 80% for risk of non-certification, and by an additional 70% for risk of being unsuccessful on the
18 merits, for an estimated realistic exposure of \$84,528.

19 24. Based on these alleged violations of the Labor Code, Plaintiff alleges that
20 Defendant is liable for civil penalties under the PAGA. Plaintiff's analysis reflected there were
21 approximately 28,176 pay periods worked in the PAGA Period (i.e., March 10, 2019 through
22 July 16, 2021). Therefore, Plaintiff estimated a maximum PAGA exposure of \$2,817,600 (28,176
23 pay periods * \$100 "initial" violation rate). As noted, however, Defendant argues that Plaintiff's
24 PAGA claim will fail because Plaintiff's underlying claims will fail. Defendant also argues the
25 Court would substantially reduce penalties significantly given its good-faith defenses. Thus,
26 Plaintiff discounted the maximum figure by 75% for risk of losing on the merits and by an
27 additional 80% for risk of the Court reducing penalties, to arrive at estimated exposure of
28 \$140,880.

1 25. Using these estimated figures for each of the claims described above, Plaintiff
2 estimated a realistic total recovery for the Settlement Class of approximately \$1,036,244. The
3 proposed settlement of \$775,000 therefore represents approximately 74.8% of the reasonably
4 forecasted recovery for the Settlement Class. Preliminary approval is appropriate since the
5 Settlement will provide significant monetary relief to the Settlement Class, which is consistent
6 with what Plaintiff's counsel believe could have been recovered had the case proceeded through
7 trial.

8 26. Plaintiff will apply for Class Representative Enhancement Award at the time of
9 seeking final approval of the proposed class action settlement in the amount of \$5,000 for his
10 services to the Settlement Class. As will be fully briefed at the time of final approval, Plaintiff's
11 requested Enhancement Award is intended to recognize the time and effort Plaintiff expended on
12 behalf of the Settlement Class, including providing substantial factual information and
13 documents to Class Counsel, attending multiple in-person and telephonic meetings with Class
14 Counsel to discuss the claims and theories at issue in the litigation, actively participating in the
15 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
16 as the named plaintiff in a class action against a former employer, and the fact that Plaintiff
17 agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

18 27. Class Counsel will also apply for an attorneys' fees award of one-third of the Total
19 Settlement Amount, which is currently estimated to be \$258,333.33, and up to \$25,000 in verified
20 costs reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking
21 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class
22 Counsel has incurred substantial attorney fees conducting pre-filing investigation; conducting
23 legal research; reviewing documents and data produced by Defendant; analyzing employee
24 timekeeping, payroll, and other data to create a comprehensive damages model; preparing for
25 and attending mediation; negotiating and preparing the Settlement Agreement; preparing this
26 Motion; and otherwise prosecuting this case. Further, counsel anticipate incurring significant
27 future attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement
28 Class members, preparing the Motion for Final Approval and supporting documents, and

1 appearing at the Final Approval Hearing.

2 28. Although the parties engaged in significant informal discovery in advance of
3 mediation, they had not yet completed formal written and deposition discovery, which would
4 have required expenditure of substantial time and resources by all parties. Even if Plaintiff were
5 to certify the classes, the parties would incur considerably more attorneys' fees and costs through
6 a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks
7 and the accompanying expense. Thus, this factor supports preliminary approval.

8 I declare under penalty of perjury under the laws of the State of California and the United
9 States that the foregoing is true and correct. Executed on May 10, 2022, at El Segundo,
10 California.

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Paul K. Haines

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Alvin N. Williams III (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant No Ordinary Moments, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by James P. Carter and Nasim S. Tourkaman of Jackson Lewis P.C.

On May 26, 2020, Plaintiff filed a representative action complaint under the Private Attorneys General Act against Defendant in Orange County Superior Court entitled *Alvin N. Williams III v. No Ordinary Moments, Inc.*, Case No. 30-2020-01140925-CU-OE-CXC. As a material term of this Settlement, the Parties agreed to file a First Amended Class and Representative Action Complaint to add class-wide allegations against Defendant (the “Action”). The Action alleges that Defendant: (i) failed to pay all overtime wages; (ii) failed to pay minimum wages for all hours worked; (iii) failed to provide all legally required meal periods; (iv) failed to provide all legally required rest periods; (v) failed to reimburse non-exempt employees for all necessary business expenditures; (vi) failed to timely pay all wages; (vii) failed to issue accurate and itemized wage statements; (viii) engaged in unfair unlawful business practices; and (ix) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”).

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and PAGA Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendant employed in the State of California from May 26, 2016, through July 16, 2021 (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “PAGA Aggrieved Employees” shall be defined as:

All current and former non-exempt employees of Defendant employed in the State of California from March 10, 2019 through July 16, 2021 (the “PAGA Period”).

2. Release by Settlement Class Members, PAGA Aggrieved Employees, and Plaintiff. Plaintiff and every member of the Settlement Class (except those who opt out) will release and discharge Defendant and all of its current and former parent companies, subsidiaries, divisions, related or and affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims (collectively, the “Released Parties”), as follows:

- A. Release by Settlement Class Members. Settlement Class members (except those who opt out) will release and discharge the Released Parties from all claims under state, or local law, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative First Amended Class and Representative Action Complaint or Plaintiff’s March 10, 2020 PAGA Notice to the Labor & Workforce Development Agency (“LWDA”), including but not limited to: failure to pay overtime wages; failure to pay minimum wages; failure to pay reimbursement for business expenses; meal period violations; rest period violations; itemized wage statement violations; failure to pay wages when due; unfair competition, including but not limited to, injunctive relief; liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or that could have been made based on the allegations in the Action, with the exception of the PAGA claims addressed separately in Paragraph 2.B. below, from May 26, 2016 through July 16, 2021 (collectively, “Released Claims”).
- B. Released PAGA Claims. Plaintiff and all PAGA Aggrieved Employees will release and discharge the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff’s letter to the LWDA dated March 10, 2020 that arose during the PAGA Period (the “PAGA Release”). It is understood and acknowledged that PAGA Aggrieved Employees receiving a share of the PAGA Amount as set forth in Paragraph 4.C. will be issued a check for their share of the PAGA Amount and will not have the opportunity to opt out of, or object to, the PAGA Release as set forth in this Paragraph. The PAGA Release is binding upon Plaintiff and all PAGA Aggrieved Employees upon Court approval and payment of the PAGA Amount as set forth in Paragraph 4.C. Further, the PAGA Aggrieved Employees are bound by the PAGA Release regardless of whether they cash their PAGA check.
- C. In light of Plaintiff’s Class Representative Enhancement Award, Plaintiff has agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits, which cannot be released as a matter of law.

3. **Total Settlement Amount.** As consideration, Defendant agrees to pay a "Total Settlement Amount" of Seven Hundred Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) in full and complete settlement of the Lawsuit, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
 - B. The Total Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the "Effective Date." ("Effective Date"). The Effective date shall mean the date when all of the following events have occurred: (1) this Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendant's Counsel; (2) the Court has granted preliminary approval to this Stipulation of Settlement; (3) the Class Notice has been given to the Settlement Class members, providing them with an opportunity to object to the terms of this Stipulation of Settlement or opt out of the settlement; (4) the Court has held a Final Fairness hearing and entered a final Order and Judgment certifying the Settlement Class and approving this Stipulation of Settlement; (5) 65 calendars days have passed since the Court has entered a final Order and Judgment certifying the Settlement Class, and approving the Stipulation of Settlement; and (6) in the event there are written objections filed prior to the final fairness hearing which are not later withdrawn or denied, the alter of the following events: five business days after the period for filing any appeal, writ or other appellate proceeding opposing the Court's final Order approving this Stipulation of Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or, if any appeal, writ or other appellate proceeding opposing the Court's final Order approving this Stipulation of Settlement has been filed, five business days after any appeal, writ or other appellate proceedings opposing this Stipulation of Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.
 - C. This is a non-reversionary settlement. The Total Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00);

- (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Award in recognition for Plaintiff's contributions to the Lawsuit and Plaintiff's service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Award, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
 - (4) Up to one-third (33.33%) of the Total Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$258,333.33), plus actual costs and expenses incurred by Class Counsel related to the Lawsuit as supported by declaration, which are currently estimated to be no greater than \$25,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
 - (5) \$50,000.00 of the Total Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$37,500.00, will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$12,500.00, will be payable to the Settlement Class members as the "PAGA Amount," as described below.
- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt-out.
- E. **Escalator Clause.** Defendant represents that there are approximately 122,000 workweeks worked, based on approximately 503,514 shifts worked, through the date of mediation. If at the time of preliminary approval, the number of workweeks, based on the number of shifts worked, has increased by 10% or more (i.e., if there are 134,201 or more workweeks) then Defendant agrees to increase the Total Settlement Amount on a proportional basis (e.g., if there was a 15% increase in the number of workweeks, Defendant shall increase the Total Settlement Amount by 15%).
- F. **Employer Payroll Taxes.** The Total Settlement Amount does not include the employer's share of standard payroll taxes (FICA, FUTA, etc.), which shall be paid by Defendant separate and apart from, and in addition to, the Total Settlement Amount.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Total Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class

Counsel's costs and expenses, the Class Representative Enhancement Award, the Settlement Administrator's fees and expenses for administration, and the PAGA Amount. The remaining amount shall be known as the "Net Settlement Amount."

- B. Payments from the Net Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
- i. Waiting Time Amount: 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between May 26, 2017 and the end of the Class Period.
 - ii. Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time from May 26, 2019 through July 16, 2021 shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks that he or she worked during the period from May 26, 2019 through July 16, 2021, and which will be calculated by multiplying 5% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from May 26, 2019 through July 16, 2021, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from May 26, 2019 through July 16, 2021.
 - iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- C. Payments from the PAGA Amount. In addition to the NSA, 25% of the amount set aside as PAGA civil penalties (i.e., \$12,500) has been set aside as the "PAGA Amount", as mentioned above. The PAGA Amount shall be paid to all PAGA Aggrieved Employees (regardless whether they opt out) who worked for Defendant in California at any time during the PAGA Period, based on their proportional number of pay periods worked for Defendant in California during the PAGA Period. Specifically, each Settlement Class member's payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Aggrieved Employee's number of pay periods

worked during the PAGA Period, and the denominator of which is the total pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.

- D. Within 10 business days following the funding of the Total Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class members.
- E. Each Settlement Award shall be allocated as 20% wages and 80% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest).
- F. Defendant shall fully discharge its obligation to the participating Settlement Class members who will receive an Individual Settlement Payment through the mailing of a Settlement check, regardless of whether such checks are actually received and/or negotiated by Class Members. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property.
- G. All Individual Settlement Payments to individual Settlement Class members shall be deemed to be paid to such Settlement Class member solely in the year in which such payments actually are received by the Settlement Class member. It is expressly understood and agreed that the receipt of such Individual Settlement Payments will not entitle any Settlement Class member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Individual Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Settlement Class member, and that the Settlement Class member are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).
- H. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Total Settlement Amount, which is currently estimated to be \$258,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$25,000.00 from the Total Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Award.** Defendant will not object to a request for Class Representative Enhancement Award of \$5,000.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00).00 for the administration services from the Total Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Total Settlement Amount, sending Notice Packets to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Total Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also provide notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Sean M. Blakely and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Alvin N. Williams III as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators, as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Notice of Estimated Settlement Payment, and Request for Exclusion Form), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 14 calendar days after the Court signs an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, dates of employment, and workweek information for each Settlement Class member during the Class Period.
- B. Within 14 calendar days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion Form (defined below) to the Settlement Administrator within 45 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion Form not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion Form has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Settlement Class members whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Amount described above, and will release all claims for civil penalties under the PAGA premised on the facts and/or allegations in Plaintiff's letter to the LWDA dated March 10, 2020 that arose during the PAGA Period, whether they submit a valid and timely Request for Exclusion or not.
- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
- iii. Right to Rescind. Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if more than 5% of the Settlement Class members validly opt-out of the Settlement. Defendant shall communicate its decision to nullify the Settlement Agreement in writing to the Settlement Administrator and Class Counsel within 30 calendar days of the expiration of the Response Deadline. Should Defendant exercise this right, Defendant shall be solely responsible for all costs incurred by the Settlement Administrator through the date that Defendant communicates its decision to nullify the Settlement Agreement to the Settlement Administrator and Class Counsel.

- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Lawsuit.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Award, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. The final judgment shall be posted to the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party until after the date of filing of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Ste 180, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: James P. Carter of Jackson Lewis, P.C.
200 Spectrum Center Drive, Ste 500, Irvine, CA 92618
james.carter@jacksonlewis.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Enforcement Action.** In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED:

NO ORDINARY MOMENTS, INC.

By: _____
Name: _____
Title: _____

DATED:

PLAINTIFF ALVIN N. WILLIAMS III

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

Jackson Lewis, P.C.

By: _____
James P. Carter
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

DATED:

NO ORDINARY MOMENTS, INC.

By: _____
Name: _____
Title: _____

DATED: Mar 23, 2022

PLAINTIFF ALVIN N. WILLIAMS III

By: Alvin Williams
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

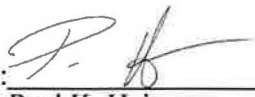
DATED:

Jackson Lewis, P.C.

By: _____
James P. Carter
Attorneys for Defendant

DATED: March 23, 2022

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff

including expert witness fees incurred in connection with any enforcement actions

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED: NO ORDINARY MOMENTS, INC.

4/12/2022

By:

Name:

Title:


President

DATED: PLAINTIFF ALVIN N. WILLIAMS III

By:
and Settlement Class Representative

Plaintiff

APPROVED AS TO FORM:

DATED: Jackson Lewis, P.C.

By:

James P. Carter

Attorneys for Defendant

DATED: HAINES LAW GROUP, APC

By:

Paul K. Haines

Attorneys for Plaintiff

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ALVIN N. WILLIAMS III, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NO ORDINARY MOMENTS, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2020-01140925-CU-OE-CXC

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees of No Ordinary Moments, Inc (“No Ordinary Moments”) employed in the State of California from May 26, 2016, through July 16, 2021 (the “Class Period”). Collectively, these employees will be referred to as “Settlement Class members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Alvin N. Williams III v. No Ordinary Moments, Inc.*, Orange County Superior Court, Case No. 30-2020-01140925-CU-OE-CXC (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant No Ordinary Moments, Inc.’s (“No Ordinary Moments”) records show that you were employed as a non-exempt employee in California from May 26, 2016 through July 16, 2021 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Alvin N. Williams III (“Plaintiff”) filed this lawsuit against No Ordinary Moments, asserting claims on behalf of all Settlement Class members. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that No Ordinary Moments: (1) failed to pay all overtime wages; (2) failed to pay minimum wages for all hours worked; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to reimburse non-exempt employees for all necessary business expenditures; (6) failed to issue accurate and itemized wage statements; (7) failed to timely pay all wages; (8) engaged in unfair, unlawful business practices; and (9) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”).

No Ordinary Moments denies that it has done anything wrong. No Ordinary Moments denies that it owes Settlement Class members any wages, restitution, penalties, or other damages or amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of No Ordinary Moments, who expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in No Ordinary Moments' best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. No Ordinary Moments provided relevant information to Class Counsel and the Settlement was reached after mediation conducted by an experienced mediator and arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to No Ordinary Moments, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by No Ordinary Moments, your decision about whether to participate in the Settlement will not affect your employment. California law and No Ordinary Moments' policy strictly prohibit unlawful retaliation. No Ordinary Moments will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class members:	Attorneys for No Ordinary Moments:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Sean M. Blakely (SBN 264384) sblakely@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	JACKSON LEWIS P.C. James P. Carter (SBN 150052) James.Carter@jacksonlewis.com Nasim S. Tourkaman (SBN 300933) Nasim.Tourkaman@jacksonlewis.com 200 Spectrum Center Drive, Suite 500 Irvine, California 92618 Tel: (949) 885-1360 Fax: (949) 885-1380 jacksonlewis.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt (hourly paid) employees who worked for No Ordinary Moments in California during the Class Period. Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against No Ordinary Moments as described below in the “Release” section.

No Ordinary Moments has agreed to pay \$775,000.00 (the “Total Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys' fees and expenses, settlement administration costs, the class representative enhancement award, and the amount designated as PAGA civil penalties.

The Total Settlement Amount will be paid within 30 days of the effective date, which is 65 calendar days of receiving final court approval of the Settlement if there are no objectors, or if there are objectors, within 5 business days of receiving final court approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals (“Effective Date”).

The following deductions from the Total Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$17,500.00 from the Total Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Total Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Total Settlement Amount (which is currently estimated to be \$258,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Award. Class Counsel will ask the Court to award \$5,000.00 as the Class Representative enhancement award. This payment is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Total Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the Settlement Class as the "PAGA Amount."

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Total Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by No Ordinary Moments at any time between May 26, 2019 and July 16, 2021, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Waiting Time Amount: 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from No Ordinary Moments at any time between May 26, 2017 and the end of the Class Period.
- (iii) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period.

Payment from PAGA Amount: In addition to the Net Settlement Amount, \$12,500.00 of the Total Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) who worked for No Ordinary Moments in California at any time between March 10, 2019 and July 16, 2021 (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for No Ordinary Moments in California during that time period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Payments will be mailed to Settlement Class members who did not opt out of the settlement by submitting a valid and timely Request for Exclusion. Settlement Class members may not opt-out of the release of PAGA claims (as described in the "Release" paragraph on page 4) and will thus receive payment for their share of the PAGA Amount even if they opt out of the Settlement and do not receive a class portion of their Settlement Payments.

Each participating Settlement Class member who receives a Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be allocated as 20% wages and 80% penalties and interest. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Settlement Class members are responsible for the proper income tax treatment of the Settlement Payments. The Settlement Administrator, No Ordinary Moments and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release by Settlement Class members. If the Court approves the Settlement, each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully release and discharge No Ordinary Moments and all of its current and former parent companies, subsidiaries, divisions, related or and affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims (collectively the “Released Parties”) from all claims under state, or local law, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative Complaint or Plaintiff’s March 10, 2020 PAGA Notice to the Labor & Workforce Development Agency (“LWDA”), including but not limited to: failure to pay overtime wages; failure to pay minimum wages; failure to pay reimbursement for business expenses; meal period violations; rest period violations; itemized wage statement violations; failure to pay wages when due; unfair competition, including but not limited to, injunctive relief; liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or that could have been made based on the allegations in the Action, with the exception of the PAGA claims addressed separately below, from May 26, 2016 through July 16, 2021 (collectively, “Released Claims”).

Regardless of whether Settlement Class members submit a valid and timely Request for Exclusion from the class action settlement, Settlement Class members who worked for No Ordinary Moments during the PAGA Period will release and discharge the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff’s letter to the LWDA dated March 10, 2020 that arose during the PAGA Period.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, as well as your eligibility to receive a share of the Wage Statement Amount, the Waiting Time Amount, and the PAGA Amount. The information contained in No Ordinary Moments’ records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. Should a consensus among the Parties not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion Form no later than **<<RESPONSE**

DEADLINE>>, with your name, address, telephone number, and last four digits of your social security number. A Request for Exclusion Form is included with this Notice.

A Request for Exclusion Form must be sent directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, and shall be barred from participating in any portion of the class action settlement. However, Settlement Class members who were employed by No Ordinary Moments at any time during the PAGA Period shall still be entitled to their portion of the PAGA Amount described above. **Do not submit both a Dispute and a Request for Exclusion Form.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. All objections and correspondence must be sent directly to the Settlement Administrator, please do not send objections or correspondence to the Court. Any objections will be provided to the Court by Plaintiff in connection with the Final Approval Hearing. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department CX104 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, California 92701. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Alvin N. Williams III v. No Ordinary Moments, Inc.*, Orange County Superior Court, Case No. 30-2020-01140925-CU-OE-CXC.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department CX104 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the enhancement award to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, California 92701, during regular court hours. You may also visit the Orange County Superior Court website at www.occourts.org to inspect the Court's files by going to the "Online Case Access" tab, selecting "Civil Case & Document Access," and entering the case number information. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, NO ORDINARY MOMENTS OR IT'S ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

Alvin N. Williams III v. No Ordinary Moments, Inc.
Orange County Superior Court Case No. 30-2020-01140925-CU-OE-CXC

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

**PHOENIX SETTLEMENT ADMINISTRATORS
ALVIN N. WILLIAMS III v. NO ORDINARY MOMENTS, INC.
SETTLEMENT ADMINISTRATOR
ADDRESS
ADDRESS
PHONE
FAX**

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE CLASS ACTION SETTLEMENT. PLEASE NOTE THAT EMPLOYEES MAY NOT EXCLUDE THEMSELVES FROM THEIR SHARE OF THE PAGA AMOUNT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the class action settlement of the lawsuit entitled *Alvin N. Williams III v. No Ordinary Moments, Inc.*, Orange County Superior Court Case No. 30-2020-01140925-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ALVIN WILLIAMS III V. NO ORDINARY MOMENTS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

EXHIBIT 3

NOTICE OF SETTLEMENT AWARD

Alvin N. Williams III v. No Ordinary Moments, Inc.
Orange County Superior Court Case No. 30-2020-01140925-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to the records of Defendant No Ordinary Moments, Inc. ("No Ordinary Moments"):

- (a) You worked for No Ordinary Moments in California from _____ to _____;
- (b) You worked _____ workweeks from May 26, 2016 through July 16, 2021;
- (c) You worked _____ workweeks from May 26, 2019 through July 16, 2021;
- (d) You worked _____ pay periods from March 10, 2019 through July 16, 2021; and
- (e) Your employment with No Ordinary Moments <<DID/DID NOT>> end between May 26, 2017 and July 16, 2021.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____.

(IV) If you disagree with items (a)-(e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from No Ordinary Moments' records, those records will control unless you are able to provide documentation that establishes that No Ordinary Moments' records are mistaken. If there is a dispute about whether No Ordinary Moments' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties with input from the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT B

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

March 10, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Alvin N. Williams III v. No Ordinary Moments, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Alvin N. Williams III (“Mr. Williams”) in claims arising from his employment with No Ordinary Moments, Inc.; and Does 1 through 100 (collectively “No Ordinary Moments”). Mr. Williams is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to No Ordinary Moments’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Mr. Williams worked for No Ordinary Moments from approximately September 2018 until approximately April 15, 2019 as a non-exempt “Direct Support Professional” and/or “Personal Attendant” (or similarly titled positions). Mr. Williams’ job duties primarily consisted of caring for patients with autism, schizophrenia, and/or other disabilities, including, but not limited to, taking them out into the community, including to the beach, parks, and stores. The “aggrieved employees” whom Mr. Williams seeks to represent are all current and former non-exempt employees of No Ordinary Moments who performed work for No Ordinary Moments in the State of California during the one year immediately preceding the date of this letter through the present.

During Mr. Williams’ employment with No Ordinary Moments, No Ordinary Moments utilized a timekeeping system that failed to compensate Mr. Williams and other aggrieved employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, No Ordinary Moments required Mr. Williams and other aggrieved employees to clock in and out of shifts through a smartphone application. Upon information and belief, although No Ordinary Moments recorded Mr. Williams and other aggrieved employees’ hours worked to the minute, No Ordinary Moments rounded Mr. Williams’ and other aggrieved employees’ timekeeping entries to the nearest quarter hour increment. No Ordinary Moments’ timekeeping policies/practices regularly, systematically, and impermissibly rounded the hours worked by Mr. Williams and other aggrieved employees in No Ordinary Moments’ favor resulting, over a period of time, in

a failure to properly compensate Mr. Williams and other non-exempt employees for all hours worked, including on occasions where they worked over 8.0 hours in a workday and/or 40.0 hours in a workweek. As a result of No Ordinary Moments' timekeeping policies/practices, Mr. Williams and other aggrieved employees were not compensated for all minimum and overtime wages earned.

No Ordinary Moments' meal period policies/practices failed to provide Mr. Williams and other aggrieved employees with legally compliant meal periods. Specifically, No Ordinary Moments failed to relieve Mr. Williams and other aggrieved employees of all work-duties during meal periods and required Mr. Williams and other aggrieved employees to enter into on-duty meal period agreements. Assuming, *arguendo*, that Mr. Williams and No Ordinary Moments entered into lawful on-duty meal period agreements, such agreements inherently concede that the nature of Mr. Williams and other aggrieved employees' work precluded lawful rest periods. On those occasions when Mr. Williams and other aggrieved employees were not provided with all the legally-compliant meal periods to which they were entitled, No Ordinary Moments failed to compensate Mr. Williams and other aggrieved employees with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, No Ordinary Moments maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal period was not provided to their non-exempt employees.

No Ordinary Moments' rest period policies/practices failed to authorize and permit Mr. Williams and other aggrieved employees to take all legally compliant rest periods. Specifically, No Ordinary Moments' rest period policies and/or practices failed to relieve Mr. Williams and other aggrieved employees of all work during required rest periods due to the purported on-duty nature of their work. On those occasions when Mr. Williams and other aggrieved employees were not provided with all legally-compliant rest periods to which they were entitled, No Ordinary Moments failed to compensate Mr. Williams and other aggrieved employees with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, No Ordinary Moments maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that No Ordinary Moments failed to authorize and permit all lawful rest periods to be taken.

No Ordinary Moments also required Mr. Williams and other aggrieved employees to use their personal cellular phones and personal vehicles for work-related purposes, including but not limited to, clocking in and out of their shifts through a smartphone application, and using their personal vehicles to travel to and from patients' homes. Although No Ordinary Moments required Mr. Williams and other aggrieved employees to use their personal cell phones and vehicles for work-related purposes, No Ordinary Moments failed to reimburse them for these work-related expenses.

As a result of No Ordinary Moments' failure to pay all overtime and minimum wages and meal and rest period premiums, No Ordinary Moments maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Williams and other aggrieved employees, and failed to pay Mr. Williams and other aggrieved employees all wages owed at the time of their respective separations of employment with No Ordinary Moments.

As described above, No Ordinary Moments committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Overtime Wage Violations

No Ordinary Moments was required to pay Mr. Williams and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." As alleged above, the No Ordinary Moments regularly and systematically, as a policy and practice, did not pay Mr. Williams and other aggrieved employees for all overtime hours worked as a result of No Ordinary Moments' timekeeping policies/practices. As a result of these policies/practices, Mr. Williams and other aggrieved employees were not compensated for all overtime wages.

Minimum Wage Violations

No Ordinary Moments was required to pay Mr. Williams and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 4, § 4. As alleged above, No Ordinary Moments failed to conform its pay practices to the requirements of the law. This unlawful conduct included but was not limited to No Ordinary Moments' uniform and unlawful timekeeping policies/practices, which resulted in these individuals not being paid for all hours actually worked. As a result, Mr. Williams and other aggrieved employees were deprived of all required minimum wages.

Meal Period Violations

As alleged above, No Ordinary Moments failed to provide Mr. Williams and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Williams and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee

one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, No Ordinary Moments also failed to authorize and permit Mr. Williams and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. As a result, Mr. Williams and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.").

Failure to Reimburse Employees for Necessary Business Expenditures

No Ordinary Moments failed to reimburse Mr. Williams and other aggrieved employees for necessary work expenses, including the use of their personal cellular phones and personal vehicles for business purposes. No Ordinary Moments' policy of not providing reimbursement for necessary work-related expenses violates Wage Order 4, § 9, and Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Mr. Williams and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Wage Statement Violations

No Ordinary Moments was required to furnish Mr. Williams and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 4, § 7. As a result of No Ordinary Moments' failure to pay all meal and rest period premiums, and minimum and overtime wages, No Ordinary Moments maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Williams and other aggrieved employees in violation of Labor Code § 226. No Ordinary Moments' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Williams and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separations of employment. No Ordinary Moments failed to timely pay

Mr. Williams and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid overtime and minimum wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, No Ordinary Moments' failure to pay all final wages due to Mr. Williams and other aggrieved employees was willful and, consequently, entitles Mr. Williams and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day No Ordinary Moments failed to pay their final wages after their separations, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Williams will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Williams' own investigation, and on information and belief, No Ordinary Moments committed and continues to commit the following Labor Code violations:

- a. No Ordinary Moments violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Williams and other aggrieved employees all overtime compensation earned;
- b. No Ordinary Moments violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Williams and other aggrieved employees the statutory minimum wage for all hours worked;
- c. No Ordinary Moments violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Williams and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. No Ordinary Moments violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Williams and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Williams and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. No Ordinary Moments violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Williams and other aggrieved employees for all necessary expenditures incurred;
- f. No Ordinary Moments violated Labor Code § 226 by failing to furnish Mr. Williams and other aggrieved employees with accurate and compliant itemized wage statements;
- g. No Ordinary Moments violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Williams and other aggrieved employees;

- h. No Ordinary Moments violated Labor Code § 204 by failing to pay Mr. Williams and other aggrieved employees all wages earned at least twice during each calendar month; and
- i. No Ordinary Moments violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Williams and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and No Ordinary Moments if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: No Ordinary Moments, Inc. (via certified mail)

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No Ordinary Moments, Inc.

c/o Andrew R. Gale

1820 W. Orangewood Avenue, Suite 104

Orange, CA 92868 (Attn AC)

PS Form 3800, April 2015 PSN 7530-02-000-9047

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 c/o Andrew R. Gale
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 Orange, CA 92868



9590 9402 5738 0003 7924 37

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
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3/10/2020

LWDA Case No. LWDA-CM-777559-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Alvin N. Williams, III
Employer: No Ordinary Moments, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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