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Attorneys for Plaintiff
TOMMY CARRILLO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

TOMMY CARRILLO, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

WEARTECH INTERNATIONAL, INC., a
California corporation; THE LINCOLN
ELECTRIC COMPANY, an Ohio
corporation; LINCOLN ELECTRIC
HOLDINGS, INC., an Ohio Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2020- 01151333-CU-OE-CXC

*Assigned for All Purposes to: Hon. Judge Peter
Wilson, Department CX102*

**NOTICE OF ENTRY OF FINAL ORDER
AND JUDGMENT**

Action Filed: July 27, 2020
Trial Date None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on September 30, 2022, the Honorable Peter J. Wilson, in
3 Department CX102 in the above-entitled Court, located at 751 W. Santa Ana Blvd., Santa Ana,
4 California 92701, executed the Final Order and Judgment Granting Plaintiff's Motion for Final
5 Approval of Class Action and PAGA Settlement.

6 Attached hereto as **Exhibit 1** is a true and correct copy of the Final Order and Judgment
7 which was executed and filed on September 30, 2022.

8
9 Dated: October 6, 2022

PROTECTION LAW GROUP, LLP

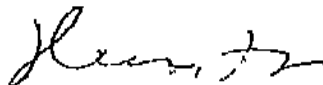
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11 By: 
12 Heather Davis
13 Amir Nayebdadash
14 *Attorneys for Plaintiff*
15 TOMMY CARRILLO
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EXHIBIT 1

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 30 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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

TOMMY CARRILLO, individually, and on
behalf of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

WEARTECH INTERNATIONAL, INC., a
California corporation; THE LINCOLN
ELECTRIC COMPANY, an Ohio
corporation; LINCOLN ELECTRIC
HOLDINGS, INC., an Ohio Corporation,

Defendants.

Case No.: 30-2020-01151333-CU-OE-CXC

[Assigned for all purposes to the Hon. Peter J.
Wilson, Dept. CX102]

FINAL ORDER AND JUDGMENT

Date: September 29, 2022

Time: 2:00 p.m.

Dept: CX-102

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The above-referenced Action ("Action") having come before the Court for a hearing and
3 Final Order Approving Class Action and PAGA Settlement ("Final Order"), consistent with the
4 Court's Preliminary Approval Order ("Preliminary Approval Order"), and as set forth in the Joint
5 Stipulation and Settlement Agreement and Amendments thereto ("Agreement"), and due and
6 adequate notice having been given to all Class Members as required in the Preliminary Approval
7 Order, and the Court having considered all papers filed and proceedings had herein and
8 otherwise being fully informed and good cause appearing therefore, it is hereby **ORDERED,**
9 **ADJUDGED AND DECREED AS FOLLOWS:**

10 1. All terms used herein shall have the same meaning as defined in the Agreement
11 attached hereto as Exhibit I.

12 2. The term "Class" and "Class Members" shall mean the following: "All
13 individuals employed in hourly or non-exempt positions by Defendant Weartech International,
14 Inc. ("Defendant") in California at any time between July 27, 2016, and April 26, 2022." The
15 term "Participating Class Member" includes all Class Members who did not submit a timely and
16 valid Request for Exclusion as provided in the Settlement.

17 3. The term "PAGA Member" shall mean "all individuals employed in an hourly or
18 non-exempt position by Defendant in California at any time between July 27, 2019, and April 26,
19 2022."

20 4. This Court has jurisdiction over the subject matter of this Action and over all
21 Parties to this Action, including all Class Members.

22 5. The Court confirms certification of the proposed class defined above, appoints
23 Plaintiff Tommy Carrillo as the Class Representative, Protection Law Group has been appointed
24 Class Counsel, and appoints ILYM Group, Inc. as the Settlement Administrator

25 6. Distribution of the Notice directed to the Class Members as set forth in the
26 Agreement and the other matters set forth therein has been completed in conformity with the
27 Preliminary Approval Order, including individual notice to all Class Members who could be
28 identified through reasonable effort, and the best notice practicable under the circumstances. The

1 Notice provided due and adequate notice of the proceedings and of the matters set forth therein,
2 including the proposed Settlement set forth in the Agreement, to all persons entitled to such
3 Notice, and the Notice fully satisfied the requirements of due process. All Class Members and all
4 Released Claims are covered by and included within the Settlement and this Final Order.

5 7. The Court further finds that the Settlement is fair, adequate, and reasonable and
6 that Plaintiff has satisfied the standards and applicable requirements for final approval of this
7 class action settlement under California law, including the provisions of California Code of Civil
8 Procedure section 382 and Federal Rule of Civil Procedure 23, approved for use by the
9 California state courts in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971).

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

21 9. Upon the complete funding of the Gross Settlement Amount Plaintiff, all
22 Participating Class Members, all PAGA Members, and the Releasing Parties shall release and
23 discharge the Released Parties from the Released Claims that arose during the Class Period as set
24 forth in the Agreement.

25 10. Additionally, upon the funding of the Gross Settlement Amount, Plaintiff—on
26 behalf of himself only—shall also generally release and discharge the Released Parties from any
27 and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which
28 have been or could have been asserted against the Released Parties arising out of or relating to

1 their employment by Defendant or termination thereof, including but not limited to claims for
2 wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful
3 termination of employment. This release specifically includes any and all claims, demands,
4 obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys'
5 fees and costs (except provided by the Settlement Agreement) relating to or in any way
6 connected with the matters referred to herein, whether or not known or suspected to exist, and
7 whether or not specifically or particularly described herein. This general release includes all
8 employment-related and non-employment related claims, whether known or unknown, arising
9 during the Class Period. Specifically, Plaintiff waives all rights and benefits afforded by
10 California Civil Code Section 1542, which provides:

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

15 This release specifically excludes claims for unemployment insurance, disability, social
16 security, and workers compensation (with the exception of claims arising pursuant to California
17 Labor Code Section 132(a) and 4553)

18 11. No Class Member submitted request to be excluded from the Settlement.
19 Accordingly, all Class Members are bound by this order and Judgment. The last date to timely
20 submit a request for exclusion was July 11, 2022.

21 12. The Court also hereby finds that there were no written objections to the
22 Settlement. The last day to submit a written objection to the settlement was July 11, 2022. The
23 Court also notes there were no objections at the hearing on Final Approval of the Settlement.

24 13. No Class Member submitted a dispute regarding the number of workweeks they
25 were credited with under the Settlement.

26 14. The Court finds the settlement payments provided for under the Agreement to be
27 fair and reasonable in light of all of the circumstances. Pursuant to the terms of the Agreement
28 and amendments thereto the Court orders Defendant to fund the Gross Settlement Amount of

1 \$450,000.00 within 30 days of the Effective Date to provide payments for the Class/PAGA
2 Members individual settlement payments, class representative incentive payment for Plaintiff,
3 Class Counsel's attorney fees and costs, the Settlement Administrator's fees and expenses, and
4 penalties to the California Labor and Workforce Development Agency pursuant to Labor Code
5 Section 2698 et seq. The calculations and the payments shall be made administered in
6 accordance with the terms of the Agreement.

7 15. Pursuant to the terms of the Agreement and amendments thereto, and the
8 authorities, evidence and argument submitted by Class Counsel, the Court hereby awards Class
9 Counsel attorneys' fees in the amount of \$148,500.00 (33% of the Gross Settlement Amount)
10 and litigation costs in the amount of \$17,947.89 from the Gross Settlement Amount as final
11 payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or
12 owed to Class Counsel and any other person or entity related to the Action. The Court further
13 orders that the award of attorneys' fees and costs set forth in this Paragraph shall be administered
14 pursuant to the terms of the Agreement.

15 16. The Court hereby approves and orders a Class Representative Enhancement
16 Payment of \$5,000.00 to Plaintiff from the Gross Settlement Amount.

17 17. The Court approves and orders the payment in the amount of \$26,250 (75% of
18 \$35,000) from the Gross Settlement Amount to the California Labor Workforce Development
19 Agency for penalties arising under the Private Attorneys General Act of 2004 (PAGA). The
20 remaining \$8,750.00 (25% of \$35,000) shall be distributed to the PAGA Members as set forth in
21 the Agreement.

22 18. The Court also hereby approves and orders payment from the Gross Settlement
23 Amount for actual settlement administration expenses incurred by the Settlement Administrator,
24 ILYM Group, Inc., in the amount of \$9,000.

25 19. The Court hereby approves and orders payment of individual settlement payments
26 from the Net Settlement Amount to the Participating Class Members as set forth in the
27 Agreement.

1 20. The Court also hereby approves and orders that any checks distributed from the
2 Gross Settlement Amount yet remaining uncashed after one hundred and eighty (180) calendar
3 days after being issued shall be void. All uncashed settlement checks shall be transferred to the
4 California State Controller's Office and held in trust for such Class Members pursuant to
5 California Unclaimed Property Law, Civil Code Section 1500 et seq.

6 21. Provided the Settlement becomes effective under the terms of the Agreement, the
7 Court also hereby orders that the deadline for mailing the Court-approved individual settlement
8 payments, attorneys' fees and costs, and enhancement payments is as set forth in the Agreement.

9 22. Neither the Settlement nor any of the terms set forth in the Agreement is an
10 admission by Defendant, or any of the other Released Parties, nor is this Final Order a finding of
11 the validity of any claims in the Action or of any wrongdoing by Defendant, or any of the other
12 Released Parties. Neither this Final Order, the Agreement, nor any document referred to herein,
13 nor any action taken to carry out the Agreement is, may be construed as, or may be used as, an
14 admission by or against Defendant, or any of the other Released Parties, of any fault,
15 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
16 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to
17 be evidence of, an admission or concession with regard to the denials or defenses by Defendant,
18 or any of the other Released Parties, and shall not be offered in evidence in any action or
19 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever
20 other than to enforce the provisions of this Final Order, the Agreement, the Released Claims, or
21 any related agreement or release. Notwithstanding these restrictions, any of the Released Parties
22 may file in the Action, or submit in any other proceeding, the Final Order, the Agreement, and
23 any other papers and records on file in the Action as evidence of the Settlement to support a
24 defense of *res judicata*, *collateral estoppel*, or other theory of claim or issue preclusion or similar
25 defense as to the Released Claims.

26 23. Without affecting the finality of this Judgment, the Court shall retain continuing
27 jurisdiction over this action and the parties, including all Class Members, and over all matters
28 pertaining to the implementation and enforcement of the terms of the Agreement pursuant to

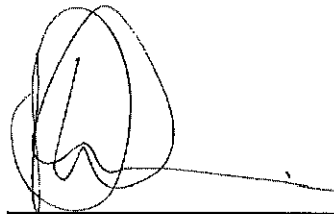
1 California Rule of Court 3.769(h) and California Code of Civil Procedure section 664.6. Except
2 as provided to the contrary herein, any disputes or controversies arising with or with respect to
3 the interpretation, enforcement, or implementation of the Agreement shall be presented to the
4 Court for resolution

5 24. A status conference for a final accounting regarding the status of settlement
6 administration is set for Friday, September 29, 2023, at 9:00 a.m. in Department CX-102.
7 Plaintiff shall file a final report that includes all information necessary for the Court to determine
8 the total amount actually paid to class members and any amounts tendered to the State
9 Controller's Office under Unclaimed Property Law.

10 25. The Settlement Administrator shall post this Judgment on its website in order to
11 provide Notice to the Class for a period of no less than sixty (60) days.

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

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16 DATED: September 30, 2022

A handwritten signature in black ink, appearing to read 'Peter J. Wilson', is written over a horizontal line.

17 Peter J. Wilson
18 Judge of the Superior Court
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Exhibit I

**SECOND AMENDMENT TO JOINT STIPULATION AND SETTLEMENT
AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Tommy Carrillo ("Plaintiff or "the Class Representative"), on behalf of himself and all others similarly situated, and Defendant Weartech International Inc., ("Defendant") (collectively, the "Parties").

RECITALS

1. **WHEREAS**, the Parties entered into a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") on or about October 14, 2021, attached hereto as Exhibit 1.

2. **WHEREAS**, the Parties entered into a First Amendment to the Settlement Agreement on January 31, 2022, attached hereto as Exhibit 2.

3. **WHEREAS**, Plaintiff filed his Motion for Preliminary Approval on February 2, 2022.

4. **WHEREAS**, on March 9, 2022, the Court issued an order continuing the hearing on Plaintiff's Motion for Preliminary Approval and requested supplemental briefing and amendments to the proposed settlement.

5. **WHEREAS**, Section III paragraph M (6) of the Settlement Agreement provides that "The Settlement and any and all parts of it, may be amended, modified, changed, or waived only by a written instrument signed by counsel for all Parties or their successors-in-interest."

6. **WHEREAS**, Counsel whose signatures appear below represent and warrant that they are authorized by the Parties whom they represent to negotiate and enter into this Amendment as set forth in the Settlement Agreement.

NOW, THEREFORE, the Parties hereby agree to amend and modify the Settlement Agreement as follows:

1. Section III (G)(3) shall be revised to state as follows: "The Class portion of each putative class member's Individual Settlement Share will be apportioned as follows: 25% wages for which each Participating Class Member will be issued an IRS Form W-2,

and 75% to interest and penalties for which each Participating Class Members will be issued an IRS Form 1099. The Settlement Administrator will deduct applicable employee and employer payroll taxes and withholdings with respect to the 25% wage portion of the settlement payment. The portion of any Individual Settlement Share consisting of PAGA Penalties shall be allocated as 100% penalties and shall be paid to these PAGA Members in full without deductions or withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each PAGA Member for that amount, to the extent the PAGA Member's share of the PAGA Penalties is Six Hundred Dollars (\$600.00) or more. "

2. Section III (J)(3) shall be revised to state: The Class Notice will provide that the Class Members who wish to submit a written objection to the settlement, must have the objection signed and dated, and must have the objections faxed and/or mailed to the Settlement Administrator postmarked no later than the Response Deadline or 15 days following the response deadline for any returned mailings. Class Members will be sent an Objection Form attached hereto as Exhibit B.

3. Section III (J)(4) shall be revised to state as follows: "The Class Notice Packet will include an Request For Exclusion Form substantially in the form attached hereto as Exhibit C which will allow Class Members who wish to exclude themselves from the Settlement to mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline or an additional 15 days following the Response Deadline for any returned mailings. Class Members may not both object to the settlement and request to exclude themselves. If Class Members submit an objection and a request for exclusion, the Settlement Administrator will contact them to determine which type of response they

would like to submit and to re-submit such response. If the Settlement Administrator is unable to contact the Class Member the request for exclusion will control.

4. Section III (J)(7) shall be added to the Settlement Agreement to state as follows: If a Class Member/PAGA disputes the number of his or her Workweeks stated in their Class Notice, the Class Member must contact the Settlement Administrator regarding how many Workweeks that he or she contends were worked and include any documentation the Class Member and/or PAGA Group Member has to support their contention no later than the Response Deadline or 15 days following the Response Deadline for any returned mailings. The Settlement Administrator shall notify the Parties of the dispute and provide them with a copy of the disputed Class Notice and any documentation received in support of the dispute. Counsel for Plaintiff and Defendant shall meet and confer regarding the workweek disputes. If the Parties are unable to agree or if the dispute is not resolved to the Class Member's satisfaction, the dispute will be decided by the Court.

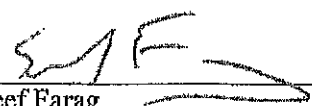
5. Section III (J)(3)(a) shall be revised to state as follows: Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection" or other words to clearly indicate they are objecting to the Settlement; and (c) a concise factual statement of their reasons for the objection.

6. The proposed notice attached to the Settlement Agreement as Exhibit A and attached hereto as Exhibit 3 shall be amended to reflect these changes.

Dated: March 29, 2022

BAKER HOSTETLER

By:


Shareef Farag
Attorneys for Defendant

Dated: March 31, 2021

PROTECTION LAW GROUP, LLP

By:

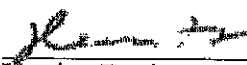

Heather Davis
Attorneys for Plaintiff

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Tommy Carrillo ("Plaintiff"), on behalf of himself, the putative class members ("Class Members"), and the PAGA Members) "PAGA Members" he claims to represent, on the one hand, and Weartech International, Inc. ("Defendant"), on the other hand (jointly referred to as the "Parties").

I. DEFINITIONS

In addition to the other terms defined in this Settlement, the terms below have the following meaning:

- A. Action: *Tommy Carrillo v. Weartech International, Inc.*, Orange County Superior Court, Case No. 30-2020-0115133-CU-OE-CXC.
- B. Administration Costs: The costs incurred by the Settlement Administrator to administer this Settlement, which the Parties estimate will be up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00). All Administration Costs shall be paid from the Gross Settlement Amount.
- C. Attorney Fee Award: The amount, up to thirty-three percent (33%) of the Gross Settlement Amount, or One Hundred Forty Eight Thousand Five Hundred Dollars and Zero Cents (\$148,500.00), subject to Court approval, which will be awarded to Class Counsel under the terms of this Settlement. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members and PAGA Members.
- D. Class: All individuals employed in hourly or non-exempt positions by Defendant in California at any time during the Class Period, which is fully inclusive of the PAGA Members.
- E. Class Counsel: Heather Davis and Amir Nayebdadash of Protection Law Group.
- F. Class Member: Each individual eligible to participate in this Settlement who is a member of the Class, which is fully inclusive of all PAGA Members.
- G. Class Notice or Notice: The Notice of Class Action Settlement, which is inclusive of the PAGA claims in the LWDA Letter, substantially similar to the form attached hereto as Exhibit A, subject to Court approval.

- H. **Class Period:** The time period of July 27, 2016 through the date of preliminary approval of the settlement by the court, which is fully inclusive of the time period applicable to the PAGA Members.
- I. **Class Representative or Plaintiff:** Tommy Carrillo.
- J. **Class Representative Incentive Payment:** The amount the Court awards to Plaintiff for his services as the Class Representative, which will be up to Five Thousand Dollars and Zero Cents (\$5,000.00). This payment shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. This incentive is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members and PAGA Members.
- K. **Cost Award:** The amount that the Court orders Defendant to pay or cause to be paid, based on this Settlement, to Class Counsel for payment of actual litigation costs, which will be up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00). The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members and PAGA Members.
- L. **Counsel for Defendant:** Shareef S. Farag, Jeffrey Vlasek, and Joseph Persoff of Baker Hostetler LLP.
- M. **Defendant:** Weartech International, Inc.
- N. **Effective Final Settlement Date:** The effective date of this Settlement will be the date when the final approval of the Settlement can no longer be appealed, or, if there are no objectors and no plaintiff in intervention at the time the Court grants final approval of the Settlement, then the effective date is the date that the Court enters judgment granting final approval of the Settlement.
- O. **Final Approval:** The final order entered by the Court finally approving this Settlement.
- P. **Gross Settlement Amount:** The total value of the Settlement is a non-reversionary Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00). Exclusive of all payroll taxes and withholdings, this is the maximum amount Defendant can be required to pay or cause to be paid under this Settlement, subject to the conditions set forth herein, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members and PAGA Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the

Class Representative Incentive payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) payments to the LWDA, Participating Class Members, and PAGA Members, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason. Under no circumstances will Defendant be required to pay or cause to be paid greater than the Gross Settlement Amount under the terms of this Settlement.

- Q. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement from the Net Settlement Amount and to PAGA Members for their portion of the PAGA Payment. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Settlement.
- R. **LWDA**: California Labor and Workforce Development Agency.
- S. **LWDA Letter**: The letter Plaintiff submitted to the LWDA on June 30, 2020.
- T. **Net Settlement Amount**: The total amount of money available for payout to Participating Class Members and PAGA Members, which is the Gross Settlement Amount less the Attorney Fee Award, Cost Award, Class Representative Incentive Payment, the PAGA Payment, and Administration Costs.
- U. **Objection Form**: The form Participating Class Members may use to submit objections to the terms of the Settlement, substantially in the form attached hereto as Exhibit B, subject to Court approval.
- V. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- W. **PAGA Members**: All individuals employed in hourly or non-exempt positions by Defendant in California at any time during the PAGA Period.
- X. **PAGA Payment**: The PAGA Payment consists of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) of the Gross Settlement Amount, which is attributed to the PAGA claim as alleged in the LWDA Letter and the Action. Seventy-five percent (75%) of the PAGA Payment (\$26,250) shall be paid to the LWDA, and twenty-five percent (25%) (\$8,750) of the PAGA Payment shall be distributed to PAGA Members as part of their Individual Settlement Share.
- Y. **PAGA Period**: The time period of July 27, 2019 through the date of preliminary approval of the settlement by the court.

- Z. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement, as detailed in Section III.J. Class Members may not exclude themselves from the Settlement with respect to any PAGA claims alleged or released.
- AA. **Parties:** Collectively, Plaintiff and Defendant.
- BB. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- CC. **Qualified Settlement Fund:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff, and Class Counsel.
- DD. **Released Claims:** Any and all causes of action, claims, rights, damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from the facts alleged in both the Notice provided to the LWDA and in the operative complaint in the Action or which could have been alleged based upon such facts including, but not limited to: (a) any alleged failure by Defendant to pay overtime wages, minimum wages, vacation pay, or any other wages due; (b) any alleged failure by Defendant to timely pay wages at termination or during employment; (c) any alleged failure by Defendant to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure by Defendant to provide compliant wage statements; (e) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*, based upon the facts alleged in both the Notice provided to the LWDA and subsequently pled in the operative complaint; (f) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 et seq. arising from or related to the facts alleged in the operative complaint; and (g) any violation or breach of the California Labor Code arising from the conduct alleged in the operative complaint, including without limitation, Labor Code Sections 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1197.1, and 1198, or any other federal, state or local statute, wage order, rule, regulation, or similar causes of action that could have arisen based upon the facts alleged in the operative complaint in the Action. Notwithstanding the above, the Parties understand and agree that the release in this Settlement does not apply to (i) those rights that as a matter of law cannot be released and/or waived, including, but not limited to, workers' compensation claims; (ii) rights or claims that may arise after the close of the Class Period; and (iii) rights or claims regarding enforcement of this Settlement.
- EE. **Releasing Parties:** Plaintiff, all Participating Class Members, all PAGA Members, and all persons purporting to act on behalf of any such individuals or purporting to assert a claim under or through them, including but not limited to,

their dependents, spouses, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, representatives, agents, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

- FF. Released Parties:** Defendant and any of its current, former, and future parent, subsidiary, and affiliated companies, and its/their agents, officers, shareholders, directors, employees, including successors and assigns, related or affiliated companies' predecessors and successors; and, with respect to all such entities, all of its/their past and present employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs) and any other persons acting by, through, under or in concert with any such persons or entities.
- GG. Request for Exclusion Form:** The form that will be sent to the putative class members which they may use to opt-out of the class and participation in the proposed Settlement, substantially similar to the form attached here as Exhibit C, subject to Court approval.
- HH. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Class Notice.
- II. Settlement:** The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- JJ. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members. The Settlement Administrator will mail the Class Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members, subject to update by the Settlement Administrator's skip trace. The Class Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement, except that Class Members may not opt-out with respect to any PAGA claims alleged or released. Any Class Member who does not receive the Class Notice after the steps outlined above have taken place will still be bound by the Settlement and judgment.
- KK. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement will be The ILYM Group, Inc.
- LL. Superior Court:** The Superior Court of California, County of Orange, in the department to which this case is assigned (including any transfers or reassignments).

II. RECITALS

- A. On June 30, 2020, Plaintiff submitted a letter to California's Labor Workforce and Development Agency alleging that Defendant violated California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1197.1, and 1198.
- B. On July 27, 2020, Plaintiff filed a class action complaint in Orange County Superior Court, Case No. 30-2020-0115133-CU-OE-CXC, alleging claims for (1) unpaid overtime; (2) meal period violations; (3) rest period violations; (4) unpaid minimum wages; (5) failure to timely pay final wages; (6) wage statement violations; (7) unpaid vacation wages; and (8) violation of California Business and Professions Code § 17200, et seq.
- C. On September 4, 2020, Plaintiff filed a First Amended Complaint adding an additional cause of action for penalties under California's Private Attorneys General Act.
- D. The Parties engaged in mediation on August 18, 2021 with mediator Paul Grossman. Prior to mediation, the Parties conducted significant investigation and discovery of the facts and law. Defendant produced documents relating to its wage and hour policies, practices, and procedures. Defendant also produced time and pay records and information relating to the size and scope of the Class. Class Counsel represents it reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- E. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Settlement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- F. **Defense Reasons for Settlement.** Defendant recognizes that the defense of this litigation may be protracted and expensive. Substantial amounts of time, energy, and resources of the defense have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by

Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Settlement to put to rest the Released Claims.

G. Defendant's Denial of Wrongdoing. Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than Settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Settlement, nor any document referred to or contemplated by this Settlement, nor any action taken to carry out this Settlement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Settlement be construed as an admission that Plaintiff can serve as an adequate Class Representative except for purposes of this Settlement. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

H. Plaintiff's Claims. Plaintiff asserts that Defendant's defenses are without merit. Neither this Settlement nor any documents referred to or contemplated by this Settlement, nor any action taken to carry out this Settlement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, Plaintiff and Class Counsel will not oppose Defendant's efforts to use this Settlement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

A. Gross Settlement Amount. Subject to the terms and conditions of this Settlement, Defendant shall fund a Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00). With the sole exception of the payment of all payroll taxes and withholdings and the situation provided for in the following sub-paragraph, under no circumstances will Defendant be required to pay or cause to be paid greater than the Gross Settlement Amount under the terms of this Settlement.

1. Increase in Number of Workweeks. The Parties estimate that the total number of Workweeks worked by the Class Members totals approximately 10,348 from July 27, 2016 through October 30, 2020, when the company ceased operations in California. If the total number of Workweeks worked by the Class Members during the Class Period exceeds the foregoing

amounts by more than ten percent (10%), i.e., more than 1,035 workweeks, then the Gross Settlement Amount will increase by the percentage of additional workweeks above 10,348. For example, and for purposes of clarity, if there are in fact 11,590 Workweeks worked by the Class Members during the Class Period, then the Gross Settlement Amount will increase by $1,242 / 10,348$ (the number of additional Workweeks worked by Class Members beyond 10,348), or \$54,000.

- B. Notice to the Labor and Workforce Development Agency ("LWDA").** On June 30, 2020, Plaintiff filed and served his Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 and waited the statutory time period needed without response from the LWDA to file a civil claim for PAGA penalties. Thus, Plaintiff represents that he has satisfied his notice obligations under the PAGA.
- C. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Settlement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the Action, including the question of whether the Court should certify any claims in a non-settlement context in the Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- E. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Plaintiff Tommy Carrillo shall be appointed as representative for the Class.
- F. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Heather Davis and Amir Nayebedadash of Protection Law Group as Class Counsel to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.
 - 1. Calculation of Class Portion of Individual Settlement Share for Participating Class Members.** Each Participating Class Member and will receive a proportionate share of the Net Settlement Amount that is

equal to (i) the number of workweeks he or she worked in the Class Period based on the class data provided by Defendant, divided by (ii) the total number workweeks worked by all Participating Class Members in the Class Period based on the same class data, which is then multiplied by the Net Settlement Amount. One day worked in a given workweek will be credited as a workweek for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the number of workweeks that he or she worked.

2. **Calculation of PAGA Portion of Individual Settlement Share** Each PAGA Member shall receive a share of the \$8,750 employee PAGA Payment, which will be equal to (i) the number of workweeks he or she worked in the PAGA Period based on the class data provided by Defendant, divided by (ii) the total number of workweeks worked by all PAGA Members in the PAGA Period based on the same class data, which is then multiplied by \$8,750. PAGA Members shall receive this portion of their Individual Settlement Share regardless of whether they opt out of the participation regarding the class claims and he or she will still be deemed to have released all Released Claims related to PAGA.
3. **Tax Withholdings.** Each putative class member's gross settlement award will be apportioned as follows: 25% wages for which each Class Member will be issued an IRS Form W-2, and 75% to interest and penalties for which each Class Members will be issued an IRS Form 1099. The Settlement Administrator will deduct applicable employee and employer payroll taxes and withholdings with respect to the 25% wage portion of the settlement payment.

H. Settlement Disbursement. Subject to the terms and conditions of this Settlement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiffs and Class Members.** The Settlement Administrator will pay Plaintiffs, Participating Class Members, and PAGA Members according to the Individual Settlement Share calculations set forth above. All payments shall be made from the Gross Settlement Amount.
2. **To Class Counsel.** Class Counsel will apply to the Superior Court for the Attorney Fee Award and the Cost Award. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Superior Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Superior Court awards, and neither Defendant nor the Settlement Administrator shall be

responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members and PAGA Members.

3. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' and PAGA Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator shall pay Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members and PAGA Members.

- I. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that ILYM Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to the Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with 1099 forms as required under this Settlement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the Qualified Settlement Fund as a result of uncashed checks to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, et. seq. for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property.

J. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for Settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice within a reasonable time after full execution of this Settlement.
- b. At the Preliminary Approval hearing, Plaintiff will support the granting of the motion and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Pursuant to PAGA, California Labor Code Section 2699(l)(2), Plaintiff will submit a copy of the Motion for Preliminary Approval of the Settlement to the LWDA on the same day that it is submitted to the Superior Court.
- d. In the event that class certification for Settlement purposes is deemed null and void, then the conditional class certification for Settlement purposes will have no precedential value and it will not be introduced into evidence or used for any other purpose. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, PAGA Payment, and Administration Costs shall be determined by the Superior Court, and the Superior Court's determination on these amounts shall be final and binding, and that the Superior Court's approval or denial of any amount requested does not void or nullify this Settlement as these items are not conditions of this Settlement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of this Settlement.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates;

and (5) the total number of workweeks during which the Class Member performed work during the Class Period as a member of the Class ("Database"). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- b. Within fourteen (14) days after receipt of this information from Defendant, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former employee Class Members.
- c. If a Class Notice is returned because of an incorrect address, within ten (10) calendar days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.
- d. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion received.

- e. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Settlement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
 - f. Plaintiff agrees that any employee data provided by Defendant to the Settlement Administrator for purposes of this Settlement will be kept confidential.
3. **Objections to Settlement.** The Class Notice will provide that the Class Members who wish to submit a written objection to the settlement, must have the objection signed and dated, and must have the objections faxed and/or mailed to the Settlement Administrator postmarked no later than the Response Deadline. Class Members will be sent an Objection Form attached hereto as Exhibit B. The timeframe to submit an objection will not be increased for returned mailings.
- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection" or other words to clearly indicate they are objecting to the Settlement; (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
 - b. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed objection, the Settlement Administrator may demand additional proof of the Class Member's identity.
 - c. **Appearance at Final Approval Hearing.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel to state his/her reasons for objecting to the terms of the Settlement regardless of whether they have submitted a written objection.
 - d. **No Objection by Plaintiff.** Plaintiff agrees not to object to the settlement.

- 4. Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice Packet will include an Request For Exclusion Form substantially in the form attached hereto as Exhibit C which will allow Class Members who wish to exclude themselves from the Settlement to mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. Class Members may not both object to the settlement and request to exclude themselves. If Class Members submit an objection and a request for exclusion, the Settlement Administrator will contact them to determine which type of response they would like to submit and to re-submit such response.
- a. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
- b. Report.** No later than ten (10) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- c. No Opt-Out By PAGA Members.** This Opt-Out procedure is available to Class Members to opt-out of the non-PAGA claims

only. PAGA Members may not opt-out of with respect to any PAGA claims alleged or released.

d. No Opt-Out By Plaintiff. Plaintiff agrees not to opt-out of the settlement.

5. Defendant's Option to Terminate. If more than five percent (5%) of the Class Members submit requests for exclusion, Defendant, at its sole option, may nullify the Settlement within thirty (30) calendar days of receiving notice that 5% or more of the Settlement Class Members timely and properly requested exclusion from the Settlement.

6. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the judgment.

7. Motion for Final Approval.

a. Class Counsel will file motions and memorandums in support of and for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement and the Preliminary Approval Order: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Incentive; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement.

b. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering judgment accordingly. After entry of judgment, the Court shall have continuing jurisdiction for purposes of: (1) enforcing this Settlement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

8. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Settlement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The

waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

9. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Settlement and the Superior Court's Final Approval Order and judgment. The maximum amount Defendant can be required to pay or cause to be paid under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Settlement.

a. **Funding the Settlement:** No later than thirty (30) calendar days after the Effective Date Defendant shall pay or cause to be paid the Gross Settlement Amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) into the Qualified Settlement Fund set up by the Settlement Administrator by wiring the funds. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's and PAGA Member's Individual Settlement Share.

b. **Disbursement:** The Settlement Administrator shall calculate and pay all payments due under the Settlement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Incentive, the PAGA Payment, and the Administration Costs within fifteen (15) calendar days of the Effective Final Settlement Date. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant and the Released Parties shall have no liability for the Released Claims brought by or on behalf of Participating Class Members during the Class Period.

10. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the

check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 180-day period, or 90-day period after mailing the reminder notice, whichever is earlier, the Settlement Administrator will distribute these funds Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, et. seq. for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the final disbursement of all unclaimed funds to the California State Controller's Office, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

12. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in the Action outside of payments to the Gross Settlement Amount pursuant to this Settlement.

K. Release of Claims. Upon the funding of the Gross Settlement Amount, the Releasing Parties, including all Class Members who do not submit a valid and timely request for exclusion shall release the Released Parties from the Released Claims that arose during the Class Period. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims. Also upon the funding of the Gross Settlement Amount, the Releasing Parties, including all PAGA Members, shall release the Released Parties from all PAGA claims alleged or released under the Released Claims. PAGA Members agree not to sue or otherwise make a claim against of the Released Parties for any PAGA claim released.

L. Plaintiff's Release of Claims and General Release. Plaintiff will provide a separate and confidential general release and settlement agreement in consideration for the Class Representative Incentive Payment to the Plaintiff in an amount up to \$5,000.00 (Five Thousand Dollars and No Cents), in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event the Action had not successfully resolved.

M. Miscellaneous Terms

1. No Effect on Employee Benefits. The Class Representative Incentive Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and PAGA Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacation, holiday pay, retirement plans, etc.). The Parties agree that any Class Representative Incentive and/or Individual Settlement Shares paid under the terms of this

Settlement do not represent any modification of employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Incentive Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

2. **Non-Disclosure and Non-Publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement its terms or contents, or the negotiations underlying the Settlement except as required to effectuate the settlement including communications with the Class Members, the Court, and the Settlement Administrator. Class Counsel may discuss the terms of this Settlement in declarations submitted to a court to establish their adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, final approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement. Nothing in this paragraph shall prevent Class Counsel from carrying out their duties as such. This paragraph does not prevent Class Counsel from posting on its website the amount of the settlement without referencing Defendant and Defendant's counsel directly or indirectly. However, Class Counsel shall not reference this settlement by name on their website or circulate court filings from the Action except as necessary to effectuate the settlement or in furtherance thereof.
3. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties and their counsel, this Settlement and its exhibits will constitute the entire Settlement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Settlement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Settlement and its exhibits. Notwithstanding any provision in this Settlement to the contrary, this Settlement does not replace or supersede any arbitration agreement or other confidentiality or non-disclosure or other individual agreement between the Parties.
4. **Authorization to Enter Into Settlement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of

any document needed to implement this Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Settlement.

5. **Exhibits and Headings.** The terms of this Settlement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth in this Settlement. Any exhibits to this Settlement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Settlement are inserted for convenience of reference only and do not constitute a part of this Settlement.
6. **Amendment or Modification of Agreement.** This Settlement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
7. **Agreement Binding on Successors and Assigns.** This Settlement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
8. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged in this Settlement.
9. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
10. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Settlement. Class Members and PAGA Members, including Plaintiff, and Class Counsel, will assume any tax obligations or consequences that may arise from this Settlement, hold the Released Parties harmless, and will not seek

any indemnification from the Parties or any of the Released Parties regarding any such tax obligations or consequences. In the event that any taxing body determines that additional taxes are due from any Class Member, including Plaintiff, or Class Counsel, such individuals or entities assume all responsibility for the payment of such taxes.

12. Jurisdiction of the Superior Court. The Superior Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgment entered in connection with this Settlement, and the Parties and their counsel submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Settlement and all orders and judgments in connection with this Settlement.

13. Invalidity of Any Provision; Severability. Before declaring any provision of this Settlement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable. In the event any provision of this Settlement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

14. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

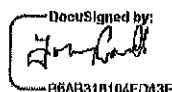
15. Execution in Counterpart. This Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Settlement.

IV. EXECUTION BY PARTIES

The Parties, after consultation with their respective counsel, fully and voluntarily agree to and execute this Settlement.

Dated: 10/13/2021

Tommy Carrillo

DocuSigned by:

B6AB31B104F043E

Dated: 10/14/21

Weartech International, Inc.


Name: John Bronstrup
Title: Chief Executive Officer

Exhibit 2

**FIRST AMENDMENT TO JOINT STIPULATION AND SETTLEMENT
AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Tommy Carrillo ("Plaintiff" or "Class Representative"), on behalf of himself and all others similarly situated, and Defendant Weartech International Inc., ("Defendant") (collectively, the "Parties").

RECITALS

1. **WHEREAS**, Plaintiff and Defendant entered into a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") on or about October 14, 2021.

2. **WHEREAS**, the Settlement Agreement underestimates the costs incurred by Class Counsel.

3. **WHEREAS**, the Settlement Agreement overestimates the anticipated costs of Settlement Administration.

4. **WHEREAS**, the Parties wish to update the Settlement Agreement in order to better reflect the actual costs anticipated by Class Counsel and anticipated to complete the Settlement Administration process.

5. **WHEREAS**, Section III paragraph M (6) of the Settlement Agreement provides that "The Settlement and any and all parts of it, may be amended, modified, changed, or waived only by a written instrument signed by counsel for all Parties or their successors-in-interest."

6. **WHEREAS**, Counsel whose signatures appear below represent and warrant that they are authorized by the Parties whom they represent to negotiate and enter into this Amendment as set forth in the Settlement Agreement.

NOW, THEREFORE, the Parties hereby agree to amend and modify the Stipulation as follows:

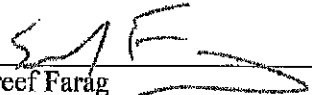
1. Section I paragraph B of the Settlement Agreement shall be revised to state:
"Administration Costs: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$9,000.00. All Administration Costs shall be paid from the Gross Settlement Amount"

2. Section I paragraph K of the Settlement Agreement shall be revised to state:
"Cost Award: The amount that the Court orders Defendant to pay or cause to be paid, based on this Settlement, to Class Counsel for payment of actual litigation costs, which will be up to Twenty Thousand Dollars and Zero Cents (\$20,000.00). The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members and PAGA Members."

3. The proposed notice attached to the Stipulation as Exhibit A and attached hereto as Exhibit 1 shall be amended to reflect the change in these amounts.

Dated: January 31, 2022

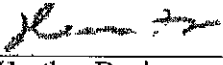
BAKER HOSTETLER

By: 

Shareef Farag
Attorneys for Defendant
Weartech International

PROTECTION LAW GROUP, LLP

Dated: January 31, 2022

By: 

Heather Davis
Amir Nayebeddash
Attorneys for Plaintiff