

Exhibit 1

Amended Class Action Settlement Agreement

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Employees

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL SCHMIDT, on behalf of himself, the
State of California, Aggrieved Employees, and
all others similarly situated,

Plaintiff,

vs.

VISION SERVICE PLAN, VSP GLOBAL,
INC., MARCHON EYEWEAR, INC., VSP
OPTICAL GROUP, INC., EYEFINITY, INC.,
and DOES 1-50, inclusive,

Defendants.

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Case No. 2:20-cv-02400-KJN

**AMENDED CLASS ACTION SETTLEMENT
AGREEMENT**

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

1. This Amended Class Action Settlement Agreement (the “Settlement Agreement,” “Settlement” or “Agreement”) is entered into between Plaintiff Michael Schmidt (“Plaintiff” or “Named Plaintiff”), and Defendants Vision Service Plan, VSP Global, Inc., Marchon Eyewear, Inc., VSP Optical Group, Inc., and Eyefinity, Inc. (collectively, “Defendants”).

DEFINITIONS

2. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

a. “Action” means the above captioned lawsuit, pending in the United States District Court for the Eastern District of California (Case No. 2:20-cv-02400-KJN).

b. The “California Class” or “Members of the California Class” means all current and former employees of Defendants who were employed as CSRs or equivalent positions in California at any time between December 2, 2016 and November 12, 2021 (the “California Class Period”), or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor in interest.

c. “Class Counsel” means Schneider Wallace Cottrell Konecky LLP and the Shavitz Law Group, PC.

d. “Class Counsels’ Costs” refers to out-of-pocket costs incurred by Class Counsel, which currently are estimated to be \$25,000.

e. “Court” means the United States District Court for the Eastern District of California.

f. “Customer Service Representatives” (“CSRs”) means all individuals who are or were employed by Defendants as non-exempt employees and hold or held the job title of Customer Service Representative during the relevant time periods.

g. “Defendants” means Vision Service Plan, VSP Global, Inc., Marchon Eyewear, Inc., VSP Optical Group, Inc., and Eyefinity, Inc.

h. “Defendants’ Counsel” means Procopio, Cory, Hargreaves, & Savitch LLP.

i. “Effective Date” means (i) if there is an objection(s) to the settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court’s Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then after such appeal(s) is dismissed or the Court’s Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court’s order granting Final Approval of the Settlement.

j. “Fee Award” means the award of attorneys’ fees that the Court authorizes to be paid to Class Counsel for the services they rendered to the Settlement Class in the Action. Class Counsel will not seek more than thirty-three and one-third percent (33.33%) of the Gross Settlement Amount as their Fee Award.

k. “Final” shall mean, with respect to a judgment or order, that the judgment or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to the award of attorneys’ fees, attorneys’ costs, or any Service Award shall not by itself in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming “Effective.”

l. “Final Approval” or “Final Approval Order” means the Court’s Final Approval Order approving the Settlement and entering judgment.

m. “Final Approval Hearing” means the hearing to be held by the Court to consider the Final Approval of the Settlement.

n. The “FLSA Collective” or “FLSA Collective Members” is a certified collective action for settlement purposes only pursuant to 29 U.S.C. § 216(b), which includes Plaintiff and all current and former employees of Defendants who were employed as CSRs or equivalent positions in the United States at any time between December 2, 2017 and November 12, 2021 (the “FLSA Period”), or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor in interest.

o. “Gross Settlement Amount” means the non-reversionary maximum amount that Defendants shall pay in connection with this Settlement, in exchange for the release of the Settlement Class Members’ Released Claims. The Gross Settlement Amount is the gross sum of Three Million, Four Hundred and Fifty Thousand Dollars (\$3,450,000). The Gross Settlement Amount includes: (a) all Settlement Awards to Settlement Class Members; (b) payment to the California Labor & Workforce Development Agency (“LWDA”) and members of the PAGA Group under the Private Attorneys’ General Act (“PAGA”); (c) the Class Representative Enhancement Payment; (d) Attorneys’ Fees and Costs to Class Counsel, and (e) Settlement Administration Costs to the Settlement Administrator. Except for the employer’s portion of payroll taxes on Settlement Awards to Eligible Class Members (“Defendants’ Payroll Taxes”), the Parties agree that Defendants will have no obligation to pay any amount in connection with this Settlement Agreement apart from the Gross Settlement Amount. There will be no reversion.

p. “Net Settlement Amount” means the Gross Settlement Amount less: (i) the Service Award; (ii) Fee Awards; (iii) Class Counsels’ Costs; (iv) Settlement Administrator Costs; and (v) the payment to the LWDA and members of the PAGA Group. The Parties acknowledge that all of these amounts are subject to the Court’s approval.

q. “Notice Deadline” means the date forty-five (45) days after the Settlement Notice is initially mailed to the California Class and the FLSA Collective. California Class Members shall have until the Notice Deadline to object to, or opt out of the Settlement. FLSA Collective Members shall have until the Notice Deadline to opt in to the Settlement.

r. “Opt-in Form” means the form that FLSA Collective Members use to consent to join (“opt in”) to the Settlement. FLSA Collective Members who timely sign and return Opt-in Forms will become Opt-in Plaintiffs, will receive a Settlement Award in accordance with this Agreement, and will be bound by the Settlement’s release of the Fair Labor Standards Act (“FLSA”) liability. The Opt-in Form must be signed and returned to the Settlement Administrator within the Notice Period. The proposed Opt-in Form is attached hereto as Exhibit B.

s. “Opt-in Plaintiffs” means those FLSA Collective Members who timely sign and return Opt-in Forms.

t. The “PAGA Group” means all current and former employees of Defendants who were employed as CSRs or equivalent positions in California at any time between July 31, 2019 and November 12, 2021 (the “PAGA Period”), or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor in interest.

u. “Parties” means the parties to this Agreement: Named Plaintiff and Defendants.

v. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Preliminary Approval Order preliminarily approving the terms and conditions of this Agreement.

w. “Qualified Settlement Fund” means a qualified settlement fund under Section 468B of the Internal Revenue Code established by the Settlement Administrator for the purpose of administering this Settlement.

x. “Releasees” or “Released Parties” means Defendants and their present and former parent companies, subsidiaries, affiliates, divisions, and joint ventures, and all of their past and present shareholders, officers, directors, employees, agents, servants, owners, members, investors, executors, administrators, general partners, limited partners, real or alleged alter egos, predecessors, successors, transferees, assigns, registered representatives, attorneys, insurers, partners, profit sharing, savings, health and other employee benefit plans of any nature, the successors of such plans and those plans’ respective trustees, administrators, agents, employees, attorneys, fiduciaries, and other persons acting on their behalf, and each of them, and the predecessors and successors, assigns and legal representatives of all such entities and individuals.

y. “Service Award” means the payment to Named Plaintiff for his efforts in bringing and prosecuting this matter. The Service Award will not exceed Fifteen Thousand Dollars (\$15,000.00).

z. “Settlement Administrator” means ILYM Group, Inc.

aa. “Settlement Administrator Costs” refer to the costs the Settlement Administrator will incur to distribute the Settlement Notice and Settlement Awards, which are estimated to be \$26,700.00.

bb. “Settlement Award” means the payment that each Settlement Class Member shall be entitled to receive pursuant to the terms of this Agreement.

cc. The following individuals are “Settlement Class Members”:

i. Members of the California Class that do not opt out of the Settlement by submitting a timely and valid request for exclusion pursuant to the terms of this Agreement and the Settlement Notice;

ii. Opt-in Plaintiffs; and

iii. The Named Plaintiff.

Defendants represent there are approximately 1,800 members of the California Class and the FLSA Collective. Plaintiff has relied on this number in agreeing to the Settlement.

dd. “Settlement Notice” means the Notice of Class Action Settlement to the Settlement Class substantially in the form of Exhibit A attached hereto or as approved by the Court.

RECITALS

3. This Action originally comprised two lawsuits: *Schmidt v. Vision Service Plan, et al.*, filed in California Superior Court, County of Alameda, Case No: RG20077472, and *Schmidt v. Vision Service Plan, et al.*, filed in E.D. Cal., Case No: 2:20-cv-02400-KJN. Plaintiff alleges that Defendants violated the Fair Labor Standards Act and the wage and hour laws of the State of California, with respect to Plaintiff and other CSRs, by (1) failing to pay for all hours worked; (2) failing to pay minimum wage; (3) failing to pay overtime wages; (4) failing to authorize and permit meal and rest breaks and pay premium compensation for missed breaks; (5) failing to provide timely and accurate wage statements; (6) and failing to timely pay wages owed upon the termination of employment.

4. Plaintiff submitted a letter to the LWDA on July 31, 2020 regarding the allegations above and Plaintiff’s intention to file a civil action under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.* (“PAGA”) unless the LWDA elected to investigate the allegations on its own. The LWDA did not indicate an intention to investigate the allegations on its own within the applicable statutory time period.

1 5. On October 20, 2020, following the expiration of the 65-day PAGA notice period,
2 Plaintiff filed Case No. RG20077472 in the California Superior Court, County of Alameda,
3 alleging causes of action arising under the PAGA. That same day, Plaintiff also filed an updated
4 letter with the LWDA, and subsequently, at the expiration of the corresponding 65-day notice
5 period, filed his First Amended Complaint in the Alameda County action on January 28, 2021.

6 6. Defendants answered Plaintiff's First Amended Complaint in the Alameda County
7 action on March 11, 2021 by asserting a general denial of all claims and asserting nineteen
8 affirmative defenses.

9 7. On December 1, 2020, Plaintiff filed E.D. Cal. Case No: 2:20-cv-02400-JAM-KJN,
10 alleging causes of action under the FLSA, the California Labor Code, and the Unfair Competition
11 Law.

12 8. On March 2, 2021, Defendants filed their answer in the federal case, denying each
13 allegation in Plaintiff's Complaint and asserting twenty-two affirmative defenses.

14 9. On July 15, 2021, Plaintiff and Defendants attended a virtual full-day mediation
15 with mediator Scott Markus. At this mediation, the Parties agreed to resolve all claims asserted in
16 the Action and executed a memorandum of understanding, which serves as the basis for this
17 Agreement.

18 10. After several months of negotiating and conferring over the terms of a long-form
19 settlement agreement, the Parties executed an initial Class Action Settlement Agreement on or
20 about January 4, 2022. As part of the settlement, the Parties agreed that Plaintiff would amend the
21 Complaint in the federal action to include the PAGA claims that Plaintiff brought against
22 Defendants in the Alameda County action.

23 11. The Parties filed a joint stipulation in which they agreed to allow Plaintiff to file an
24 amended complaint to consolidate the claims into this case, which District Judge John A. Mendez
25 granted on February 4, 2022. Plaintiff filed a First Amended Complaint adding the PAGA claims
26 to the federal action on February 8, 2022.

27 12. Plaintiff filed an unopposed motion for preliminary approval of the initial Class
28 Action Settlement Agreement in this Court on April 8, 2022.

 13. Upon review of the motion and the initial Class Action Settlement Agreement,
Chief District Judge Kimberly J. Mueller Judge Mueller issued an order that required certain
amendments to the initial Class Action Settlement Agreement on July 5, 2022. Accordingly, the
Parties executed a revised Class Action Settlement Agreement on or about July 26, 2022.

 14. Plaintiff filed a renewed unopposed motion for preliminary approval of class and
collective action settlement, to obtain approval for the revised Class Action Settlement Agreement,
on August 9, 2022.

 15. Upon review of the renewed motion and the revised Class Action Settlement
Agreement, Chief Magistrate Judge Kendall J. Newman issued an order that required certain

1 further amendments to the initial Class Action Settlement Agreement on August 30, 2023.
2 Accordingly, the Parties now execute this Amended Class Action Settlement Agreement.

3 16. Class Counsel has made an independent investigation of the facts and law relating
4 to the allegations in the Action. In agreeing to this Settlement Agreement, Plaintiff has considered:
5 (a) the facts developed leading up to mediation and through the Parties' mediation process and the
6 law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the
7 outcome of the claims alleged against Defendants; and (c) the desirability of consummating this
8 Settlement according to the terms of this Settlement Agreement. Plaintiff has concluded that the
9 terms of this Settlement are fair, reasonable and adequate, and that it is in the best interests of
10 Plaintiff and the Settlement Class (as defined above) to settle their claims against Defendants
11 pursuant to the terms set forth herein.

12 17. Defendants deny the allegations in the Action and deny any and all liability,
13 including any liability for the alleged violations. This Settlement Agreement shall not be construed
14 as an admission by Defendants or any of the Releasees (as defined above) of any fault, liability or
15 wrongdoing, which Defendants expressly deny. Defendants recognize the defense of class action
16 litigation would be prolonged and expensive, requiring substantial amounts of time, energy, and
17 resources devoted to the defense of the litigation, especially if the findings are appealed. Litigation
18 is also carried out in a public forum and can create a stressful experience for all parties involved.
19 As a not-for-profit organization dedicated to helping people see every possibility through access
20 to affordable, high-quality eye care and eyewear, Defendants prefer to continue focusing on their
21 mission and serve their communities. By reaching a settlement, Defendants are able to resolve the
22 case and take funds that would otherwise go to litigation and reinvest them in Defendant's
23 Enterprise Pillars.

24 18. The Parties recognize that notice to the California Class and FLSA Collective of
25 the material terms of this Settlement, as well as Court approval of this Settlement, are required to
26 effectuate the Settlement, and that the Settlement will not become operative until the Court grants
27 final approval of it, the Settlement becomes Final and the Effective Date occurs.

28 19. The Parties stipulate and agree that, for settlement purposes only, the requisites for
establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b), and
class certification pursuant to FED. R. CIV. P. 23(a) and (b)(3) are met. Should this Settlement not
become Final, such stipulation to certification shall become null and void and shall have no bearing
on, and shall not be admissible in connection with, the issue of whether or not collective or class
certification would be appropriate in a non-settlement context. Defendants deny that class and/or
collective action treatment is appropriate in the litigation context or for trial.

20. In consideration of the foregoing and other good and valuable consideration, the
receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS
HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court
and the other conditions set forth herein, that Named Plaintiff's and the Settlement Class Members'
claims as described herein against Defendants shall be settled, compromised and dismissed, on the
merits and with prejudice, and that the Settlement Class Members' Released Claims shall be finally

and fully compromised, settled and dismissed as to the Defendants and Releasees, in the manner and upon the terms and conditions set forth below.

RELEASES

21. In exchange for the consideration set forth in this Settlement Agreement, Named Plaintiffs and Settlement Class Members agree to release all claims as set forth herein as applicable.

22. **Settlement Members' Released Claims.** Upon Final Approval of the Settlement Agreement, Named Plaintiff and all California Class Members that do not opt out of the Settlement shall and hereby do release and discharge all Releasees, finally, forever and with prejudice, from any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against Releasees that were or could have been asserted in the operative Complaint based on the facts alleged concerning violations of the California Labor Code, the California Unfair Competition Law, and the Industrial Welfare Commission's Wage Orders through November 12, 2021, including all claims based upon the following categories of information: failure to pay minimum wages, failure to properly calculate and pay overtime wages, failure to provide meal periods or meal period premiums, failure to provide rest periods or rest period premiums, failure to provide accurate itemized wage statements, failure to timely pay wages during employment, and failure to pay all wages due upon termination of employment. In addition, upon Final Approval, Named Plaintiff and all Opt-in Plaintiffs shall be deemed to have released their claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* ("FLSA claims"), against all Releasees through November 12, 2021. Release of the Settlement Class Members' Released Claims may not be used to assert waiver of FLSA claims or other claims not included in the Settlement Class Members' Released Claims with respect to individuals who did not specifically release those FLSA or other claims in this Agreement. The Settlement Class Members' Released Claims does not encompass claims under the PAGA, Cal. Labor Code §§ 2689 *et seq.*

23. **Releases of PAGA Claims.** Upon Final Approval of the Settlement Agreement, Plaintiff and the PAGA Group hereby release all Releasees from any and all claims, causes of action, damages, expenses, benefits, interest, penalties, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, under the PAGA, that were asserted or could have been asserted with respect to the claims asserted in Plaintiff's LWDA Notice, the Complaint, and the First Amended Complaint for the entire PAGA Period. The PAGA Period runs from July 31, 2019 through November 12, 2021.

24. **Named Plaintiff's Released Claims.** Named Plaintiff's Released Claims means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, including all unknown claims covered by California Civil Code section 1542 that could be or are asserted based upon any theory or facts whatsoever, arising at any time up to and including the date of the execution of this Settlement Agreement, for any type

of relief, including, without limitation, claims for minimum, regular, or overtime wages, premium pay, other damages, penalties (including, but not limited to, waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Named Plaintiff's Released Claims include, but are not limited to, the Settlement Class Members' Released Claims, as well as any other claims under any provision of federal, state, or local law, including the FLSA, the California Labor Code, and California Wage Orders. Upon Final Approval, Named Plaintiff shall be deemed to have fully, finally, and forever released Releasees from all Named Plaintiff's Released Claims through November 12, 2021. Furthermore, upon Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the Named Plaintiffs' Released Claims pursuant to Section 1542 of the California Civil Code, which provides as follows:

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.

25. Named Plaintiff and Settlement Class Members, to the fullest extent allowed by law, are prohibited from asserting any claims released by them in this Settlement, and from commencing, joining in, prosecuting, or voluntarily assisting in a lawsuit or adversarial proceeding against the Releasees, based on claims released by them in this Settlement. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other legal process.

CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION

26. The Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the California Class and FLSA Collective, and notifying the California Class and FLSA Collective of this Settlement:

a. **Request for Class Certification and Preliminary Approval Order.** Named Plaintiff shall file an Unopposed Motion for Preliminary Approval of Settlement Agreement, requesting that the Court certify the Settlement Class pursuant to 29 U.S.C. § 216(b) and FED. R. CIV. P. 23(a) and (b)(3) for the sole purpose of settlement; preliminarily approve the Settlement Agreement and its terms; approve the proposed form of the Settlement Notice and find that the proposed method of disseminating the Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances; set a date for Plaintiff's motion for Final Approval of the Settlement, and approval of the requested Service Award, Fee Award, Class Counsel's Costs, and Settlement Administrator's Costs; and set a date for the Final Approval Hearing. Class Counsel shall provide Defendants' Counsel a copy of a draft Unopposed Motion for Preliminary Approval of Settlement Agreement at least five (5) business days in advance of filing it with the Court.

b. **Notice.** The Settlement Administrator shall be responsible for preparing, printing and mailing the Settlement Notice to all California Class Members and FLSA Collective

1 Members. The Settlement Administrator will also create a website for the Settlement, which will
2 allow California Class Members and FLSA Collective Members to view the Class Notice (in
3 generic form), this Amended Class Action Settlement Agreement, and all papers filed by Class
4 Counsel to obtain preliminary and final approval of the Amended Class Action Settlement
5 Agreement. Additionally, the Settlement website will provide contact information for Class
6 Counsel and the Settlement Administrator. The Settlement Administrator will provide Class
7 Counsel and Defendants' counsel with a preview of the proposed website. Class Counsel and
8 Defendants' counsel must approve the website before it goes live and also must approve any
9 modifications to the website. The Settlement Administrator shall also create a toll-free call center
10 to field telephone inquiries from Settlement Class Members during the notice and settlement
11 administration periods. The Settlement Administrator will be directed to take the website and call
12 center down after the 180-day check cashing period for Settlement Award Checks.

13 c. Within twenty (20) business days after the Court's Preliminary Approval of
14 the Settlement but no sooner than January 15, 2024, Defendants shall provide to the Settlement
15 Administrator an electronic database containing the names, last known addresses, last known
16 telephone numbers (if any), last known email addresses (if any), social security numbers or tax ID
17 numbers of each California Class Member and FLSA Collective Member, along with the total
18 number of workweeks that each California Class Member and FLSA Collective Member worked
19 as a CSR for Defendants beginning from the longest applicable statute of limitations through
20 November 12, 2021. Also, within twenty (20) business days after the date of Preliminary Approval,
21 Defendants shall provide to Class Counsel a list with the names of California Class Members and
22 FLSA Collective Members and the total number of workweeks that each individual worked as
23 provided above. Class Counsel has requested this information for the stated purpose of assisting
24 with the administration of the Settlement, including fielding questions from California Class
25 Members and FLSA Collective Members. Class Counsel agrees that they will use this information
26 solely for the purpose of Settlement administration.

27 d. In order to provide the best notice practicable, prior to mailing the
28 Settlement Notice, the Settlement Administrator will take reasonable efforts to identify current
addresses via public and proprietary systems.

19 e. Within ten (10) business days after receiving the contact information for the
20 Settlement Class Members, the Settlement Administrator shall mail and email (if email addresses
21 are available) the agreed upon and Court approved Settlement Notice to California Class Members
22 and FLSA Collective Members. The Settlement Administrator shall provide notice to Class
23 Counsel and Defendants' Counsel that the Settlement Notice has been mailed.

24 f. Any Settlement Notice returned to the Settlement Administrator with a
25 forwarding address shall be re-mailed within three (3) business days following receipt of the
26 returned mail. If any Settlement Notice is returned to the Settlement Administrator without a
27 forwarding address, the Settlement Administrator shall undertake reasonable efforts to search for
28 the correct address, and shall promptly re-mail the Settlement Notice to any newly found
addresses. In no circumstance shall such re-mailing extend the Notice Deadline.

g. Defendants will not take any adverse action against any current employee

1 on the grounds that he/she is eligible to participate or does participate in the Settlement. Defendants
2 will not discourage participation in this Settlement Agreement or encourage objections or opt-outs.
3 Defendants are free to encourage FLSA Collective Members to timely submit Opt-In forms to the
Settlement Administrator.

4 27. **Disputes Regarding Workweeks.** To the extent that any California Class Member
5 and/or FLSA Collective Member disputes the number of workweeks that he or she worked, as
6 shown in his or her Settlement Notice, such individuals may produce evidence to the Settlement
7 Administrator establishing the dates they contend to have worked as CSR for Defendants. The
8 deadline for California Class Members and FLSA Collective Members to submit disputes pursuant
9 to this paragraph is the Notice Deadline (disputes must be postmarked by the Notice Deadline).
10 Unless the California Class Member and/or FLSA Collective Member presents convincing
11 evidence proving he or she worked more workweeks than shown by Defendants' records, his/her
12 Settlement Award will be determined based on Defendants' records. The Settlement Administrator
shall notify counsel for the Parties of any disputes it receives. Defendants shall review its records
and provide further information to the Settlement Administrator, as necessary. The Settlement
Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties
shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by
the Parties, it shall be presented to the Court for a resolution. The Settlement Administrator will
notify the disputing California Class Member and/or FLSA Collective Member of the decision.

13 28. **Objections.** The Settlement Notice shall provide that California Class Members
14 who wish to object to the Settlement must, on or before the Notice Deadline, file with the Court a
15 written statement objecting to the Settlement. Such objection shall not be valid unless it includes
16 the information specified in the Settlement Notice. The statement must be signed personally by
17 the objector, and must include the objector's name, address, telephone number, email address (if
18 applicable), the factual and legal grounds for the objection, and whether the objector intends to
19 appear at the Final Approval Hearing. To effect filing of the objection, the objection must be
20 mailed to the Court via U.S. Mail, and copies must be sent to Class Counsel and Defendants'
21 Counsel via U.S. Mail. The Settlement Notice shall advise California Class Members that
22 objections shall only be considered if the California Class Member has not opted out of the
23 Settlement. No California Class Member shall be entitled to be heard at the Final Approval Hearing
24 (whether individually or through counsel), unless written notice of the California Class Member's
25 intention to appear at the Final Approval Hearing has been filed with the Court and served upon
26 Class Counsel and Defendants' Counsel on or before the Notice Deadline and the California Class
27 Member has not opted out of the Settlement. The postmark date of mailing to Class Counsel and
28 Defendants' Counsel shall be the exclusive means for determining that an objection is timely
mailed to counsel. If postmark dates differ, the later of the two postmark dates will control. Persons
who fail to make timely written objections in the manner specified above shall be deemed to have
waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy,
and shall be foreclosed from making any objection (whether by appeal or otherwise) to the
Settlement. However, the requirement that the California Class Member submit a written objection
may be excused by the Court upon a showing of good cause. None of the Parties, their counsel,
nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the
settlement, or appeal from any order of the Court that is consistent with the terms of this
Settlement.

29. **Requests for Exclusion.** The Settlement Notice shall provide that California Class Members, other than Named Plaintiff, who wish to exclude themselves from the Settlement (“opt out”) must mail to the Settlement Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written request for exclusion must contain the California Class Member’s full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No opt-out request may be made on behalf of a group. Such written statement must be postmarked by the Notice Deadline. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the settlement. Members of the PAGA Group may not opt out of the PAGA component of the Settlement; to the extent that a California Class Member validly opts out of the Settlement, he or she will still receive a payment from the PAGA component of the Settlement and will still be subject to the release of PAGA claims pursuant to the terms of this Agreement.

30. **Opt-in Process.** Any FLSA Collective Member who wants to obtain payment of his or her FLSA share under the Settlement, in exchange for releasing claims under the FLSA, must sign and return an Opt-in Form. Opt-in Forms may be submitted by FLSA Collective Members to the Settlement Administrator via U.S. Mail or email. The Parties may agree to other forms of electronic submission of Opt-in Forms to the Settlement Administrator. To become an Opt-In Plaintiff, FLSA Collective Members must timely submit the Opt-In Form, such that it is emailed, postmarked, or submitted via other agreed-upon means of electronic submission, by the Notice Deadline. The Settlement Administrator will provide counsel for the Parties with the Opt-in Forms that are submitted. Class Counsel will promptly file Opt-in Forms with the Court on a rolling basis. California Class Members that worked as CSRs or equivalent positions between December 2, 2017 and November 12, 2021 are required to submit an Opt-in Form in order to receive payment of their FLSA shares under the Settlement. Thus, California Class Members that worked as CSRs or equivalent positions between December 2, 2017 and November 12, 2021, that submit timely and valid Opt-in Forms and do not opt out of the Settlement, will receive both a California share and an FLSA share under the Settlement.

31. **Cure Period.** In the event any request for exclusion or Opt-in Form is timely submitted but does not contain sufficient information to be valid, the Settlement Administrator shall provide the California Class Member and/or FLSA Collective Member, within seven (7) calendar days, a letter requesting the information that was not provided and giving the individual fourteen (14) days from the mailing of such cure letter to respond. Any invalid submission that is not timely cured will be considered a nullity.

32. **Final Approval Hearing.** Class Counsel shall provide Defendants’ Counsel a copy of a draft Unopposed Motion for Final Approval of Settlement Agreement at least five (5) business days in advance of filing it with the Court. Plaintiff shall request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after the Notice Deadline to determine final approval of the settlement and to enter a Final Approval Order:

a. certifying this Action and Settlement Class as an FLSA collective action under 29 U.S.C. § 216(b) and as a class action under FED. R. CIV. P. 23(a) and (b)(3) for purposes of settlement only;

b. finding dissemination of the Settlement Notice was accomplished as directed and met the requirements of due process;

c. approving the Settlement as final and its terms as a fair, reasonable and adequate;

d. directing that the Settlement funds be distributed in accordance with the terms of this Settlement Agreement;

e. directing that the Action be dismissed finally, fully, forever and with prejudice and in full and final discharge of any and all Settlement Class Members' Released Claims; and

f. retaining continuing jurisdiction over this Action for purposes only of overseeing all settlement administration matters.

33. **Final Approval Order.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. Such entry of final Judgment shall operate to permanently bar and enjoin all Settlement Class Members and the PAGA Group, as applicable, from instituting, commencing, prosecuting, or pursuing, either directly or in any other capacity, any of the claims, damages, causes of action, or claims for attorneys' fees asserted in the Action or identified as Released Claims in this Agreement. Notwithstanding the entry of final judgment in the Actions, the Court shall retain jurisdiction to interpret and enforce this Settlement. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

a. The Preliminary Approval Order and Final Judgment will contain provisions enjoining Plaintiff and the Settlement Class Members from prosecuting the claims released herein and enjoining Plaintiff and the Settlement Class Members from initiating or continuing other proceedings regarding the claims released herein, including but not limited to filing any claims for monetary relief of the Released Claims before the Division of Labor Standards and Enforcement ("DLSE") or in any forum whatsoever. Inclusion of these provisions in the Order of Preliminary Approval Order and Final Judgment and Order of Final Approval is a material part of the consideration for this Settlement. After approval of the Settlement at the Final Approval Hearing and upon receipt of the final payment, the Settlement Class Members and Plaintiff each release the Releasees, and each of them, of and from any and all of the Released Claims.

SETTLEMENT FUNDS AND AWARD CALCULATION

34. **Gross Settlement Amount.**

a. **Funding of Settlement.** Within ten (10) business days after the Effective Date, Defendants shall pay the Gross Settlement Amount into the Qualified Settlement Fund. The Gross Settlement Fund is fully non-reversionary.

b. **Disbursement by Settlement Administrator.** All disbursements shall be made from the Qualified Settlement Fund. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Fund.

35. **Payments.** Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

a. **Service Award to Named Plaintiff.** Subject to the Court's approval, Plaintiff Michael Schmidt shall receive Fifteen Thousand Dollars (\$15,000.00) for his efforts in bringing and prosecuting this matter. The Qualified Settlement Fund shall issue an IRS Form 1099 for these payments. These payments shall be made within (30) days after the Effective Date or as soon as reasonably practicable. If the Court approves a Service Award in an amount less than what Named Plaintiff requests, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Award in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming Effective.

b. **Fee Awards and Costs.**

(i) Subject to the Court's approval, Class Counsel shall receive a Fee Award in an amount up to thirty-three and one-third percent (33.33%) of the Gross Settlement Amount, which will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action. In addition, Class Counsel shall, subject to Court approval, receive reimbursement of Class Counsels' Costs, to be approved by the Court. These payments of attorneys' fees and costs shall be made within thirty (30) days after the Effective Date or as soon as reasonably practicable. Defendant agrees not to oppose any Fee Award request up to thirty-three and one-third percent (33.33%) of the Gross Settlement Amount.

(ii) The approved Fee Award and Class Counsels' Costs, even if less than what Class Counsel request, shall constitute full satisfaction of Defendants' obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in this Action on behalf of Named Plaintiff and Settlement Class Members, and shall relieve Defendants from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Named Plaintiff or any other Settlement Class Member. If the Court approves a Fee Award and/or Class Counsels' Costs in amounts less than what Class Counsel request, the reduction in the Fee Award and/or Class Counsels' Costs shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Fee Award and/or Class Counsels' Costs in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming Effective. Any reduction in Class Counsels' fee award will not revert back to Defendant, but will instead be added to the settlement proceeds distributed to Settlement Class Members.

(iii) An IRS Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

c. **Labor and Workforce Development Agency Payment.** Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000) from the Gross Settlement Amount will be paid in settlement of all individual and representative claims brought in the Action by or on behalf of Plaintiff and Class Members and allegedly aggrieved parties under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq., “PAGA”). Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy-Five Thousand Dollars (\$75,000), of this sum will be paid to the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five Percent (25%), or Twenty-Five Thousand Dollars (\$25,000), will be distributed to the PAGA Group on a *pro rata* basis, as set forth in Paragraph 40, below. The payment to the LWDA should be made within thirty (30) days after the Effective Date or as soon as reasonably practicable.

d. **Settlement Administration Costs.** Settlement Administration costs shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

e. **Settlement Awards to Eligible Class Members.** Settlement Awards shall be made to Settlement Class Members as set forth below.

36. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against Defendants, Class Counsel, or Defendants’ Counsel based on distributions or payments made in accordance with this Settlement Agreement.

CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS

37. **Settlement Award Eligibility.** All Settlement Class Members shall be paid a Settlement Award from the Net Settlement Amount.

38. Any California Class Member who fails to submit a timely request to exclude themselves from the Settlement by following the procedure set forth in the Settlement Notice shall automatically be deemed a Settlement Class Member whose rights and claims with respect to the issues raised in the Action are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the Action. Any such Settlement Class Member’s rights to pursue any Released Claims (as defined in this Settlement Agreement) will be extinguished. Similarly, any Opt-in Plaintiff’s rights to pursue any applicable Released Claims (as defined in this Settlement Agreement) will be extinguished.

39. The Settlement Administrator shall be responsible for determining the amount of the Settlement Award to be paid to each Settlement Class Member based on the following formula:

1 a. Settlement Class Members shall receive a *pro rata* portion of the Net
2 Settlement Amount as follows:

3 i. Each Settlement Class Member will be assigned a number of
4 settlement shares based on their respective number of workweeks covered by the Settlement. The
5 following workweeks are covered by the Settlement: (1) workweeks during which an Opt-in
6 Plaintiff was employed by Defendants as a CSR or equivalent position in any state in the United
7 States (including California) at any time between December 2, 2017 and November 12, 2021
8 (“FLSA Workweeks”); and (2) workweeks during which a participating California Class Member
9 was employed by Defendants as a CSR or equivalent position in California at any time between
10 December 2, 2016 and November 12, 2021 (“California Workweeks”). Each FLSA Workweek
11 will be equal to one (1) settlement share. To reflect the increased value of state law claims,
12 California Workweeks will be equal to two (2) settlement shares. To the extent that Settlement
13 Class Members are both Opt-in Plaintiffs and California Class Members, they will be credited with
14 three (3) settlement shares for California Workweeks that were worked during the Collective
15 Period (i.e., between December 2, 2017 and November 12, 2021).

16 ii. The total number of settlement shares for all Settlement Class
17 Members will be added together and the resulting sum will be divided into the Net Settlement
18 Amount to reach a per share dollar figure. That figure will then be multiplied by each Settlement
19 Class Member’s number of settlement shares to determine the Settlement Class Member’s
20 Settlement Award.

21 40. Members of the PAGA Group shall receive a *pro rata* portion of 25% (\$25,000) of
22 the Labor and Workforce Development Agency Payment based on the number of pay periods they
23 worked for Defendants during the PAGA Period. The total number of pay periods in which
24 members of the PAGA Group worked for Defendants shall be added up to determine the total
25 number of pay periods worked. The \$25,000 sum shall then be divided by the total number of pay
26 periods worked to determine a per-pay-period amount. Each member of the PAGA Group shall
27 receive a payment equal to his or her pay periods worked during the PAGA Period multiplied by
28 the per-pay-period amount. Such payments will be treated as non-wage penalties and liquidated
damages, to be reported on an IRS Form 1099-MISC, and shall not be subject to FICA and FUTA
withholding taxes. Members of the PAGA Group may not opt out of such payments.

41. In addition to other information contained on the Settlement Notice, the Settlement
Notice shall state the estimated minimum payment the class member is expected to receive
assuming full participation of all Settlement Class Members (i.e., that all FLSA Collective
Members opt in to the Settlement and no California Class Members opt out of the Settlement).

42. All Settlement Award determinations shall be based on Defendants’ timekeeping,
payroll, and/or HRIS records. If the Parties determine, based upon further review of available data,
that a person previously identified as being a Settlement Class Member is not a Settlement Class
Member, or an individual who was not previously identified as a Settlement Class Member is in
fact a Settlement Class Member but was not so included, the Settlement Administrator shall
promptly make such addition or deletion as appropriate.

43. Twenty percent (20%) of each Settlement Award to Settlement Class Members shall be treated as back wages, and accordingly, on each Settlement Award, the Settlement Administrator shall effectuate federal and applicable state income and employment tax withholding as required by law with respect to 20% of each Settlement Award distributed, and Defendants shall pay the employer's share of all required FICA and FUTA taxes on such amounts. The Settlement Administrator shall calculate the employer share of taxes and provide Defendants with the total employer tax contributions within five days after the final Settlement Award calculations are approved. Defendants shall deposit the calculated employer tax contributions into the Qualified Settlement Fund within seven days after the Settlement Administrator provides Defendants with the amount of the total employer tax contributions due. Amounts withheld will be remitted by the Settlement Administrator from the Qualified Settlement Fund to the appropriate governmental authorities. Forty percent (40%) of each Settlement Award shall be treated as non-wage penalties and liquidated damages, to be reported on an IRS Form 1099-MISC, and shall not be subject to FICA and FUTA withholding taxes. The remaining forty percent (40%) shall be treated as interest and shall be reported on IRS form 1099-INT. Defendants shall cooperate with the Settlement Administrator to provide payroll tax information as necessary to accomplish the income and employment tax withholding on the wage portion of each Settlement Award, and the Form 1099 reporting for the non-wage portion of each Settlement Award.

44. Class Counsel and Defendants' Counsel do not intend this Settlement Agreement to constitute legal advice relating to the tax liability of any Settlement Class Member. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

45. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final report of all Settlement Awards, at least ten (10) business days before the Settlement Awards to Settlement Class Members are mailed.

46. The Settlement Administrator shall mail all Settlement Awards to Settlement Class Members within thirty (30) days after the Effective Date or as soon as reasonably practicable. The Settlement Administrator shall then provide written certification of mailing to Class Counsel and Defendants' Counsel.

47. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter will be sent via U.S. mail and email to those who have not yet cashed their settlement check, and during the last sixty (60) days of the check cashing period, a call will be placed to those that have still not cashed their check to remind them to do so. At the conclusion of the 180 day check cashing deadline, any Settlement Class Members who have not cashed their Settlement Award checks shall nevertheless be deemed to have finally and forever released the Named Plaintiffs' Released Claims or Settlement Class Members' Released Claims, as applicable, except that the Settlement Class Member – unless they are a Named Plaintiff and/or Opt-in Plaintiff – shall not release any FLSA claims against Defendants.

48. **Remaining Monies.** If at the conclusion of the 180-day check void period set forth above, there are any monies remaining, those monies shall be distributed as follows:

a. If the total residual amount is less than \$25,000, then the amount will revert to *cy pres*. The *cy pres* recipient shall be proposed by the parties and approved by the Court. The Parties propose the Monarch School, a non-profit organization that cares for homeless children, as *cy pres* beneficiary in compliance with section 384 of the California Code of Civil Procedure. The Settlement Administrator shall distribute any *cy pres* payment.

b. If the total residual amount is \$25,000 or greater, a second distribution will occur to those Settlement Class Members who cashed their Settlement Award check. The second distribution will occur on a *pro rata* basis as provided for in Paragraph 39. In the event of a redistribution of uncashed check funds to Settlement Class Members who cashed their Settlement Award, the additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution.

c. If a check to a Settlement Class Member is returned to the Settlement Administrator as undeliverable during the second distribution, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If none is found, then said check shall revert to the *cy pres* recipient.

d. Within 21 days after the distribution of any remaining monies to Settlement Class Members who cashed their Settlement Award check or to the *cy pres* recipient, Plaintiff will file a Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement fund, the total number of Settlement Class Members, the total number of Settlement Class Members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to the *cy pres* recipient (if applicable), the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

MISCELLANEOUS

49. **Submissions to the LWDA.** At the same time as they submit this Amended Class Action Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).

50. **No Admission of Liability.** This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendants or any of the Releasees of any fault or liability or wrongdoing.

51. **Public Comment.** The Parties and their Counsel agree that they will not issue a press release or hold any press conferences or initiate contact with a member of the press, including on social media, about this case and/or the fact, amount or terms of the Settlement. If the Parties are contacted by the press about the Settlement, they will respond only that the case has been resolved. Nothing in this paragraph shall prevent Class Counsel from communicating with the Settlement Class Members, the LWDA, the DLSE, or the courts in which the Action is pending, as may be required to carry out the terms of this Settlement and/or fulfill their ethical responsibilities under the Settlement and to their respective clients.

52. **Defendants' Legal Fees.** Defendants' legal fees and expenses in this Action shall be borne by Defendants.

53. **Defendants' Option to Void Settlement.** If more than five percent (5%) of the total number of California Class Members submit timely and valid Requests for Exclusion / Opt-Out Requests, then Defendants shall have the option to void the Settlement in their sole discretion. To exercise this option, Defendants' counsel must send written notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement Administrator informing Defendants' Counsel that the total number of timely and valid Requests for Exclusion / Opt-Out Requests is more than five percent (5%). If Defendants choose to exercise this option, the effect will be precisely the same as if Final Judgment did not occur, as discussed herein, and all Settlement Administrator Costs incurred by the Settlement Administrator through that date will be paid by Defendants.

54. **Reduced Service Award, Fee Award, or Class Counsels' Costs Not a Basis for Voiding Settlement.** If the Court approves a Service Award, Fee Award, and/or Class Counsels' Costs in amounts less than what Named Plaintiff and/or Class Counsel request, the Parties agree that the reduction in the Service Award, Fee Award, and/or Class Counsels' Costs will not be a basis for nullification of this Settlement. Nor will a reduction in the Service Award, Fee Award, or Class Counsels' Cost in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming Effective.

55. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

56. **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the following business day. The term “days” shall mean calendar days unless otherwise noted.

57. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement. Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

58. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

59. **Entire Settlement Agreement.** This Agreement with exhibits constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing.

60. **Authorization to Enter Into Settlement Agreement.** The Parties warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of any document needed to implement this Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the mediator, Scott Markus, to resolve such disagreement.

61. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Named Plaintiff, Defendants, the Settlement Class Members and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant and warrant that they have 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 herein released and discharged except as set forth herein.

62. **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement, and photocopies thereof

(including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

63. **No Signature Required by Eligible Class Members.** Only the Named Plaintiff will be required to execute this Settlement Agreement. The Settlement Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settling Class Member.

64. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

65. **Governing Law.** All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

66. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

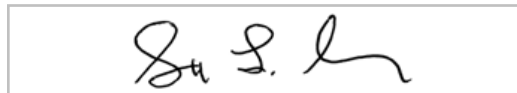
PLAINTIFF:



Michael Schmidt

Date: December 8, 2023

APPROVED AS TO FORM BY CLASS COUNSEL:



Date: December 8, 2023

Carolyn Hunt Cottrell
David C. Leimbach
Scott L. Gordon
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608

1
2 **DEFENDANT:**

DocuSigned by:

Amy Dickinson

8C12EFE2285747A...

On behalf of Vision Service Plan

Date: 12/8/2023, 2023

4 **DEFENDANT:**

DocuSigned by:

Amy Dickinson

8C12EFE2285747A...

On behalf of Marchon Eyewear, Inc.

Date: 12/8/2023, 2023

6 **DEFENDANT:**

DocuSigned by:

Amy Dickinson

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On behalf of VSP Optical Group, Inc.

Date: 12/8/2023, 2023

8
9 **DEFENDANT:**

DocuSigned by:

Amy Dickinson

8C12EFE2285747A...

On behalf of Eyefinity, Inc.

Date: 12/8/2023, 2023

11
12 **APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:**

14 DocuSigned by:

Marie Burke Kenny

63F49C8AEE864CD...

Marie Burke Kenny

Ashley N. Fasano

Procopio, Cory, Hargreaves & Savitch LLP

525 B Street, Suite 2200

San Diego, CA 92101

Date: December 8, 2023

EXHIBIT A

Schmidt v. Vision Service Plan, et al.
Case No. 20-CV-02400-KJN (E. D. Cal.)

NOTICE OF SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY.

You received this Notice of Settlement (“Notice”) because the records of Vision Service Plan, VSP Global, Inc., Marchon Eyewear, Inc., VSP Optical Group, and/or Eyefinity, Inc. (“Defendants”) show you performed work as a Customer Service Representative for one or more of the above entities sometime between December 2, 2016 and [end date]. Because you fit this definition, **you may be entitled to receive a settlement payment from a Settlement¹ in this case, as described below.**

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement. The Settlement resolves claims under both federal law and California state law, and your rights and options under the Settlement depend on whether you are covered by the federal law claims, the California state law claims, or both.

The notice further explains your right to opt in to the Settlement, and the procedure for doing so, if you are covered by the federal law claim. It also explains your rights to exclude yourself (“opt out”) from the Settlement or object to the Settlement, and the procedures for doing so, if you are covered by the California state law claims. It further provides the estimated monetary payment(s) that you will receive from the Settlement.

The United States District Court for the Eastern District of California has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on _____, 2021 at _____, before the Honorable Judge Kendall J. Newman at the Robert T. Matsui United States Courthouse, Courtroom 25, 501 I Street, Sacramento, CA 95814.

2. What Is This Case About?

This lawsuit alleges that individuals who were employed as non-exempt Customer Service Representatives (“CSRs”) in call center facilities by Vision Service Plan and related entities were not paid for all of the hours that they actually worked. It alleges claims under both federal law (the Fair Labor Standards Act, also known as the FLSA) and California law (including the California Labor Code). This is known as a “hybrid” lawsuit, because it asserts claims under both federal law and state law on behalf of the CSRs.

The federal law claim under the Fair Labor Standards Act applies to all current and former employees of Defendants who were employed as CSRs or equivalent positions in the United States at any time between December 2, 2017 and November 12, 2021. Plaintiff Michael Schmidt

¹ The capitalized terms in this Notice of Settlement have defined meanings that are set out in detail in the Settlement Agreement. To review a copy of the Settlement Agreement, please visit the Settlement website at [INSERT URL].

(“Plaintiff”) alleges that Defendants violated the Fair Labor Standards Act by failing to pay these CSRs for all hours that they worked, including federal minimum wage and overtime wages. The federal law claim applies to the weeks you worked (if any) as a CSR from December 2, 2017 and November 12, 2021, in any state (including California).

The state law claim under California law, including the California Labor Code and California Business and Professions Code, applies to all current and former employees of Defendants who were employed as CSRs or equivalent positions in California at any time between December 2, 2016 and November 12, 2021. Plaintiff alleges that Defendants violated California law by failing to pay these CSRs for all hours that they worked, including California minimum wage and overtime wages. Plaintiff also alleges further violations of California law, including that these CSRs were not provided compliant meal and rest breaks, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, and were not properly compensated for missed meal and rest periods.

Plaintiff further brings an additional claim for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), based on these alleged California Labor Code violations, with respect to CSRs that worked in California between July 31, 2019 and November 12, 2021.

This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under the PAGA, restitution, interest, and attorneys’ fees and costs. The Parties have reached this Settlement to resolve all of the claims asserted in the lawsuit.

Defendants deny the allegations in the lawsuit and deny any and all liability, including any liability for the alleged violations of state, federal or other laws. This Settlement is not an admission by Defendants of any fault, liability or wrongdoing, which Defendants expressly deny. Defendants contend they have at all times made a good faith effort to comply with the laws and regulations at issue in this litigation. Specifically, Defendants contend that its wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, and rest breaks, are lawful and have been lawful throughout the relevant time period. Defendants contend that they have strong legal and factual defenses to these claims, including the defense that Plaintiffs’ claims do not meet the requirements for class certification. Defendants recognize the defense of class action litigation would be prolonged and expensive, requiring substantial amounts of time, energy, and resources devoted to the defense of the litigation, especially if the findings are appealed. Litigation is also carried out in a public forum and can create a stressful experience for all parties involved. As a not-for-profit organization dedicated to helping people see every possibility through access to affordable, high-quality eye care and eyewear, Defendants prefer to continue focusing on their mission and serve their communities. By reaching a settlement, Defendants are able to resolve the case and take funds that would otherwise go to litigation and reinvest them in Defendant’s Enterprise Pillars.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the

circumstances, and in the best interests of the Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Settlement Administrator has created a Settlement website, which can be accessed at [INSERT URL]. The Settlement website allows Class Members to view the Settlement Agreement, all papers filed by Class Counsel to obtain Court approval of the Settlement Agreement, this Notice of Settlement (in generic form), and the Opt-in Form. The Settlement website also provides contact information for Class Counsel and the Settlement Administrator.

3. What Are the Terms of the Settlement?

Defendants have agreed to pay Three Million Four Hundred and Fifty Thousand Dollars (\$3,450,000) to settle this lawsuit (“Gross Settlement Amount”). Deductions from this amount will be made for attorneys’ fees and costs for Class Counsel (see below), settlement administration costs (up to \$____), and a service award (up to \$15,000) to Named Plaintiff Michael Schmidt for his service to the Settlement Class. After deductions of these amounts, what remains of the Gross Settlement Amount (the “Net Settlement Amount”) will be available to pay monetary Settlement Awards to:

- **FLSA Collective Members.** The FLSA Collective includes all current and former employees of Defendants who were employed as CSRs or equivalent positions in any state in the United States (including California) at any time between December 2, 2017 and November 12, 2021.
- **California Class Members.** The California Class includes all current and former employees of Defendants who were employed as CSRs or equivalent positions in California at any time between December 2, 2016 and November 12, 2021
- **PAGA Group Members.** The PAGA Group includes all current and former employees of Defendants who were employed as CSRs or equivalent positions in California at any time between July 31, 2019 and November 12, 2021.

FLSA Collective Members, California Class Members, and PAGA Group Members, including Plaintiff, will be eligible to receive a monetary award from the Net Settlement Amount.

Please note that the Settlement provides three separate types of payments, based on the definitions above: (1) FLSA payments for the federal law claims; (2) California payments for the California state law claims; and (3) PAGA payments for the California PAGA claims. You are eligible to receive one or more of these payments under the Settlement. Some CSRs will be eligible for one payment, while others may be eligible two or three of these payments. Your eligibility for each payment depends on where and when you worked for Defendants as a CSR.

Section 4 of this Notice explains how much (if any) you may receive under each of these three payments.

FLSA Collective Members must submit timely and valid opt-in forms in order to become “Opt-in Plaintiffs” and receive an FLSA payment under the Settlement. Additionally, California Class Members will receive a California payment under the Settlement unless they opt out of the Settlement. FLSA Collective Members that submit timely and valid opt-in forms and California Class Members who do not opt out of the Settlement are together referred to as the “Settlement Class” and/or “Settlement Class Members.”

IMPORTANT – If you are eligible to receive an FLSA payment, you MUST submit the enclosed Opt-in Form by [insert date] to receive your FLSA payment. If you do NOT submit the enclosed Opt-in Form by [insert date], you will not receive an FLSA payment. You do not have to submit an Opt-in Form to receive a California Class payment. Please see Section 6 of this Notice for further information regarding your options under the Settlement.

4. How Much Can I Expect to Receive?

All Settlement Class Members will receive a *pro rata* share of the Net Settlement Amount based on the total number of workweeks that the Settlement Class Member worked for Defendants during the relevant period. Settlement Class Members shall receive a *pro rata* portion of the Net Settlement Amount as follows:

1. Each Settlement Class Member will be assigned a number of settlement shares based on their respective number of workweeks covered by the Settlement. The following workweeks are covered by the Settlement: (1) workweeks during which an Opt-in Plaintiff was employed by Defendants as a CSR or equivalent position in any state in the United States (including California) at any time between December 2, 2017 and November 12, 2021 (“FLSA Workweeks”); and (2) workweeks during which a participating California Class Member was employed by Defendants as a CSR or equivalent position in California at any time between December 2, 2016 and November 12, 2021 (“California Workweeks”). Each FLSA Workweek will be equal to one (1) settlement share. To reflect the increased value of state law claims, California Workweeks will be equal to two (2) settlement shares. To the extent that Settlement Class Members are both Opt-in Plaintiffs and California Class Members, they will be credited with three (3) settlement shares for California Workweeks that were worked during the Collective Period (i.e., between December 2, 2017 and November 12, 2021).
2. The total number of settlement shares for all Settlement Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Settlement Class Member’s number of settlement shares to determine the Settlement Class Member’s Settlement Award.

All Settlement Award determinations will be based on Defendants’ timekeeping, payroll, and/or Human Resources Information Systems (“HRIS”) records for Settlement Class members.

According to records maintained by Defendants, your total estimated settlement payment(s) will be as follows:

- **FLSA payment:** \$ _____. You worked _____ FLSA Workweeks for Defendants, in all states, between December 2, 2017 and November 12, 2021. You must submit a timely, valid Opt-in Form to be paid your FLSA payment under this Settlement.
- **California payment:** \$ _____. You worked _____ California Workweeks for Defendants between December 2, 2016 and November 12, 2021.
- **PAGA payment:** \$ _____. You worked _____ PAGA pay periods between July 31, 2019 and November 12, 2021 (please note that the PAGA payment is based on pay periods, and not workweeks).

The payment amounts reported here are estimated amounts, and your final settlement payment is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as set forth above.

If you dispute the number of workweeks as shown on this Notice of Settlement, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked as a Customer Service Representative for Defendants. To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendants' records, your Settlement Award will be determined based on Defendants' records. Any disputes must be postmarked by [INSERT DATE], and should be mailed to [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. The Settlement Administrator will notify you of the decision on the dispute.

For tax reporting purposes, Settlement Awards to Settlement Class Members will be allocated twenty percent (20%) as wages, forty percent (40%) as penalties, and forty percent (40%) as interest. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the Parties' agreed upon *cy pres* recipient, the Monarch School, subject to the Court's approval in the Final Approval Order, if the total residual amount is less than \$25,000. If the total residual amount is \$25,000 or greater, a second distribution will occur to those Settlement Class Members who cashed their check on a *pro rata* basis.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are The Releases?

The term “Releasees” or “Released Parties” means Defendants Vision Service Plan, VSP Global, Inc., Marchon Eyewear, Inc., VSP Optical Group, and/or Eyefinity, Inc. (“Defendants”) and their present and former parent companies, subsidiaries, affiliates, divisions, and joint ventures, and all of their past and present shareholders, officers, directors, employees, agents, servants, owners, members, investors, executors, administrators, general partners, limited partners, real or alleged alter egos, predecessors, successors, transferees, assigns, registered representatives, attorneys, insurers, partners, profit sharing, savings, health and other employee benefit plans of any nature, the successors of such plans and those plans’ respective trustees, administrators, agents, employees, attorneys, fiduciaries, and other persons acting on their behalf, and each of them, and the predecessors and successors, assigns and legal representatives of all such entities and individuals.

Upon Final Approval of the Settlement Agreement, all California Class Members that do not opt out of the Settlement will release and discharge all Releasees, finally, forever and with prejudice, from any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against Releasees that were or could have been asserted in the operative Complaint based on the facts alleged concerning violations of the California Labor Code, the California Unfair Competition Law, and the Industrial Welfare Commission’s Wage Orders through November 12, 2021, including all claims based upon the following categories of information: failure to pay minimum wages, failure to properly calculate and pay overtime wages, failure to provide meal periods or meal period premiums, failure to provide rest periods or rest period premiums, failure to provide accurate itemized wage statements, failure to timely pay wages during employment, and failure to pay all wages due upon termination of employment. In addition, upon Final Approval, all Opt-in Plaintiffs shall be deemed to have released their claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.* (“FLSA claims”), against all Releasees through November 12, 2021. Release of the Settlement Class Members’ Released Claims may not be used to assert waiver of FLSA claims or other claims not included in the Settlement Class Members’ Released Claims with respect to individuals who did not specifically release those FLSA or other claims in this Agreement. The Settlement Class Members’ Released Claims does not encompass claims under the PAGA, Cal. Labor Code §§ 2689 *et seq.*

Upon Final Approval of the Settlement Agreement, the PAGA Group will release all Releasees from any and all claims, causes of action, damages, expenses, benefits, interest, penalties, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, under the PAGA, that were asserted or could have been asserted with respect to the claims asserted in Plaintiff’s LWDA Notice, the Complaint, and the First Amended Complaint for the entire PAGA Period. The PAGA Period runs from July 31, 2019 through November 12, 2021.

6. What Are My Options?

- **Claim your FLSA payment:** If you are eligible for an FLSA payment, you **MUST** complete and submit the enclosed Opt-in Form by [insert date] to receive your FLSA payment. The Opt-in Form must be submitted to the Settlement Administrator by electronic

submission at [INSERT WEBSITE ADDRESS], by email at [INSERT EMAIL ADDRESS], or by mail at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. If you do not submit the enclosed Opt-in Form by [insert date], you will not receive an FLSA payment.

- **Do nothing:** If you are eligible for an FLSA payment and you do nothing (you do not submit the Opt-in Form), you will **not** receive an FLSA payment, and you will not release any claims under the FLSA. If you are a California Class Member and do not timely and validly opt-out, you will automatically receive your California payment and will be bound by the Settlement including its release provisions as to California law claims.
- **Opt out:** If you are a member of the California Class and do not wish to be bound by the Settlement, you must submit a written request for exclusion from the Settlement (“opt-out”), postmarked by [INSERT]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. **Any California Class Member who requests exclusion (opts out) of the Settlement will not be entitled to any California payment, will not release claims as a Settlement Class Member, and will not have any right to object, appeal or comment on the Settlement.** Only California Class Members may opt out of the Settlement. California Class Members that submit a timely and valid request for exclusion, that are also members of the PAGA Group, may not opt out of the PAGA portion of the Settlement—any such California Class Members will still receive their PAGA payment and will be subject to the release of PAGA claims under the Settlement.
- **Enter an appearance through an attorney:** If you elect to participate in the Settlement, you have the right to do so with the assistance of an attorney of your choosing, at your own cost, if you so desire. Your attorney may appear in this action on your behalf.
- **Object:** If you are a member of the California Class and wish to object to the Settlement, you must submit a written statement objecting to the Settlement. The statement must state the factual and legal grounds for your objection to the settlement. Your objection must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. Only California Class Members may object the Settlement.

Any objection must be filed with the United States District Court for the Eastern District of California by mailing it to the following:

Clerk’s Office
United States District Court for the Eastern District of California
Robert T. Matsui United States Courthouse
Room 4-200
501 "I" Street

Sacramento, CA 95814

Additionally, you must mail copies of the objection to:

Carolyn Cottrell
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, CA 94608

Tamra Givens
SHAVITZ LAW GROUP, PC
951 Yamato Road, Suite 285
Boca Raton, Florida 33431

Class Counsel

Marie Burke Kenny
**PROCOPIO, CORY,
HARGREAVES & SAVITCH LLP**
500 Capitol Mall
525 B Street, Suite 2200
San Diego, CA 92101

*Counsel for Defendants Vision
Service Plan, VSP Global, Inc.,
Marchon Eyewear, Inc., VSP Optical
Group, Inc., and Eyefinity, Inc.*

Written objections must be postmarked by [INSERT]. If you file a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the Parties to this lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendants' counsel on or before the Notice Deadline. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defendants' counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the California Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

7. Can Defendants Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this lawsuit will in no way affect your present or future work or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this lawsuit. In fact, Defendants encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiff and the Settlement Class?

Plaintiff and the Settlement Class are represented by the following attorneys acting as Class Counsel:

Carolyn Cottrell
David C. Leimbach
Scott L. Gordon
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
sgordon@schneiderwallace.com

Tamra C. Givens
SHAVITZ LAW GROUP, PC
951 Yamato Road, Suite 285
Boca Raton, Florida 33431
Telephone: (800) 616-4000
Facsimile: (561) 447-8831
tgivens@shavitzlaw.com

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$3,450,000. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to thirty-three and one-third percent (33.33%) of the Gross Settlement Amount (\$1,149,885) plus their out-of-pocket costs, which are presently below \$25,000. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where can I get more information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact Class Counsel.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement and other documents for this case at the Settlement website, which can be accessed at [INSERT URL]. The Settlement Agreement contains the complete terms of the proposed Settlement, and is also available through Class Counsel and publicly accessible and on file with the Court.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT B

OPT-IN FORM

Schmidt v. Vision Service Plan, et al.

OPT-IN FORM

***Schmidt v. Vision Service Plan, et al.*, Case No. 20-CV-02400-KJN
United States District Court for the Eastern District of California**

**TO RECEIVE YOUR FAIR LABOR STANDARDS ACT (FLSA) SETTLEMENT
PAYMENT YOU MUST COMPLETE, SIGN, AND SUBMIT THIS OPT-IN CLAIM FORM
ELECTRONICALLY OR BY FIRST CLASS U.S. MAIL, ON OR BEFORE _____
(POSTMARK DEADLINE), TO:**

[insert Settlement Website address] (*You may electronically submit the Opt-in Form at this site*)

[insert Settlement Administrator name]

[insert Settlement Administrator address line 1]

[insert Settlement Administrator address line 2]

[insert Settlement Administrator email address]

Name:	Date of Birth:
Address:	Phone No. 1: Phone No. 2: Email Address:

CONSENT TO JOIN COLLECTIVE ACTION AND OPT-IN TO THE SETTLEMENT

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

1. I consent and agree to pursue my claims relating to and arising from the alleged violations of Defendants Vision Service Plan, VSP Global, Inc., Marchon Eyewear, Inc., VSP Optical Group, Inc., and Eyefinity, Inc. (“Defendants”) of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* in connection with the above-referenced litigation.

2. I have worked as a non-exempt Customer Service Representative for Defendants in the United States at any time between December 2, 2017 and November 12, 2021.

3. I understand that this Action has been filed as a proposed collective action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* I hereby consent, agree, and opt-in to join this lawsuit and become an Opt-in Plaintiff herein and be bound by any judgment of the Court or any settlement of this Action.

4. I hereby consent and agree to be bound by the settlement of the Fair Labor Standards Act (FLSA) claims asserted in the above-entitled lawsuit, as set forth in the Notice of Settlement and the Amended Class Action Settlement Agreement (“Settlement”). I understand that to receive my settlement payment for the release of my FLSA claims, I must expressly agree to opt into this Settlement and expressly release my claims under the FLSA.

5. Upon Final Approval, my signature below constitutes a full and final release and discharge of claims against Defendants and the Releasees under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.* (“FLSA claims”), through November 12, 2021, as described more fully in the Settlement on file with the Court.

6. I agree that the information as shown in this FLSA Opt-In Claim Form is true and correct to the best of my knowledge, and I hereby expressly agree to opt-in to the Settlement.

(Date Signed)	(Signature)
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****IMPORTANT NOTICE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.

YOU MUST SUBMIT THIS OPT-IN FORM BY [INSERT DATE] TO RECEIVE AN FLSA PAYMENT UNDER THE SETTLEMENT.

This form may be submitted electronically via the Settlement website (INSERT WEBSITE ADDRESS) or via U.S. Mail or email.

Please keep a copy of the completed Opt-in Form for your records.