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ILDIKO O'CONNOR, LAURA RAYA, and DINA
SHASHUA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ILDIKO O'CONNOR, an individual and on
behalf of all others similarly situated,
LAURA RAYA, an individual and on
behalf of all others similarly situated, and
DINA SHASHUA, an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

FERGUSON SM, INC., a California
Corporation; SEAN CORREA, an
individual; THOMAS HUMPHREY, an
individual, MICHAEL REYES, an
individual, INFINITI HR WEST, LLC, an
Arizona Limited Liability Company, HR
SERVICE GROUP, LLC, a Maryland
Limited Liability Company, and DOES 3-
50, inclusive,

Defendants.

CASE NO.: 56-2020-00543357-CU-OE-VTA

**DECLARATION OF PATRICK R. KITCHIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: May 16, 2024
Hearing Time: 8:30 a.m.
Department 40
Judge: Hon. Judge Mark S. Borrell

Complaint Filed: July 17, 2020
SAC Filed: Nov. 24, 2020
Trial Date: None set

I, Patrick Kitchin, declare as follows:

I. I am an attorney licensed to practice in California and, together with the Kelly B. Hanker, Esq. and Trial Lawyers for Justice, serve as counsel of record to Plaintiffs Ildiko O'Connor, Laura

1 Raya, and Dina Shashua ("Plaintiffs") and the certified plaintiff class. I make this declaration in
2 support of Plaintiffs' motion for preliminary approval of the class action settlement in this case.

3 2. Attached hereto as **EXHIBIT 1** is a true and complete copy of the executed Joint Stipulation
4 of Class Action Settlement and Release ("Settlement" or "Settlement Agreement") preliminarily
5 approved by the Court in its January 18, 2024 Order.

6 3. I have substantial experience in the prosecution, defense and resolution of employment wage
7 and hour class actions. I have served as lead and/or co-lead counsel in several wage and hour cases
8 since 2002, including the following that received final approval by the courts:

9 a. *Boleyn v. The Gap*. San Francisco Superior Court case number CGC-03-417075.
10 Final approval of class-wide settlement on May 31, 2005.

11 b. *Villanueva v. Chico's, Fas, Inc.* San Francisco Superior Court case number 420380.
12 Final approval of class-wide settlement on December 2, 2005.

13 c. *Young v. Polo Ralph Lauren Corporation*. U.S.D.C case number C02-4546 VRW.
14 Final approval of class-wide settlement on March 28, 2007.

15 d. *Bhatnagar v. Catalina Restaurant Group, Inc.* Alameda County Superior Court case
16 number RG05224331 Final approval of class-wide settlement on May 30, 2007.

17 e. *Otsuka v. Polo Ralph Lauren Corporation*, San Francisco Superior Court, Case No.
18 CGC-06-452655. Settlement during trial in 2010.

19 f. *Solano v. Forever 21 Retail, Inc., et al.*, San Francisco Superior Court case number
20 CGC-12-517423 (consolidated with *Josue Delgado and Virginia Nunez. V. Forever 21, Retail, Inc.*,
21 Case No. 372012-00099716-CU-OE-CTL, in San Diego County Superior Court). Final approval
22 granted in 2013.

23 g. *La Luz v. VoxelMaps, Inc., et al.* (San Francisco Superior Court case number CGC-
24 20-584129). Final approval granted August 2, 2021.

25 h. *Valdivia, et al. v. DiPietro Todd-Post Street, LLC, et al.*, San Francisco Superior
26 Court case number CGC-16-551342. Final approval granted September 8, 2017.

27 4. I have also served as defense counsel in a number of wage and hour class actions.
28

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1 5. In this specific case, I have worked diligently to protect and advance the interest of my clients
2 and the putative class. Together with my co-counsel, Kelly Hanker, we have:

- 3 • Met with Ms. O'Connor, Mr. Shashua and Ms. Raya multiple times;
- 4 • Interviewed 12 additional witnesses;
- 5 • Obtained an Order to provide privacy notices to the putative class;
- 6 • Analyzed very complex wage systems developed by Defendants to develop appropriate
7 theories of liability;
- 8 • Prepared significant written discovery requests to all defendants, and analyzed Defendants'
9 responses and extensive rolling document production;
- 10 • Taken the deposition of Defendant Thomas Humphrey, the designated person most qualified
11 to address all of the wage and hour matters at issue in the case;
- 12 • Negotiated the terms of a further exchange of data before mediation that enabled us to
13 develop an evidence-based damages and penalties model;
- 14 • Retained a qualified wage economist to develop a damages and penalties model based on the
15 records produced to Plaintiffs in response to our written discovery, together with data
16 obtained during settlement negotiations and in the mediation process; and
- 17 • Worked closely with our wage economist to ensure that his calculations were firmly
18 grounded in California law, including with respect to the calculation of civil penalties under
19 our clients' PAGA claims.

20 6. By the time we engaged in mediation with the Hon. Judge Jamie Jacobs-May (Ret.) in
21 January 2023, our clients, Ms.. Hanker and I were well equipped with all of the data and analyses
22 we needed to negotiate a fair, evidence-based and risk-assessment-based resolution, as were our
23 clients.

24 7. During the course of this litigation, we learned that Ferguson SM, Inc. ceased operations
25 entirely in mid-2020 during the COVID-19 pandemic. The company has no assets and its primary
26 owner, Thomas Humphreys, has financed the defense of this lawsuit, and will be responsible for
27 paying Ferguson's share of the proposed settlement.

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1 8. We also learned through discovery that the Infiniti defendants served as Ferguson's PEO
2 (Professional Employer Organization), only from November 2018 through December 2019.

3 9. Ferguson is out of business and the Infiniti defendants' potential liability exposure is limited
4 to about 14 months. These factors raised the significant risk that absent settlement, our clients and
5 the putative class likely would soon face an insolvent defendant (Ferguson and its owner) and a
6 difficult fight establishing liability against the PEO as a joint employer. Several times Ferguson's
7 counsel has informed me that his clients were unable to pay his attorneys' fees, and that they were
8 considering filing for bankruptcy. Prior to mediation, Mr. Skogen provided me with sufficient
9 information relating to his clients' resources to establish, in my opinion, a basis for seeking
10 bankruptcy protection.

11 10. Our wage and hour economist, Nikita Pimenov, calculated the Class's underlying damages
12 to be approximately \$3 million, comprised of \$1,613,500 in all PAGA penalties combined
13 ("stacked"), plus \$1,339,617 in wage and hour damages and statutory penalties. Defendants did not
14 provide any damages calculations at mediation.

15 11. Plaintiffs' damages models relied on a number of assumptions regarding the putative class.
16 Because Defendants failed to keep a record of meal period times, for example, we used liberal
17 estimates of the number of meal periods missed and the number of meal periods provided late to the
18 class based on limited data. Workweek calculations, days and hours worked, and commissions paid
19 were based entirely on Defendants' own payroll records, however.

20 12. With respect to all major components of the damages analysis, our wage economist generated
21 a range of models based on assumptions we provide to him based on our understanding of the
22 experience of our clients and others who worked for Defendants. We used those models in our
23 negotiations with the Defendants.

24 13. We determined that the only alternative to the settlement agreement we were able to achieve
25 at mediation was high-risk litigation. Further litigation would have subjected our clients and the
26 putative class to substantial and unwarranted risks, including the risk that Defendant Thomas
27 Humphreys (the owner of Ferguson SM, Inc.) would file for bankruptcy protection.
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1 14. The gross settlement amount is \$175,000. The net settlement amount to be paid to the class
2 is estimated to be \$67,452.13.

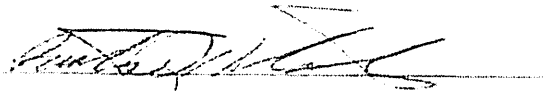
3 15. The Claims Administrator determined the amounts of Individual Settlement Payments to be
4 awarded to the Participating Class Members as follows: Class Members' gross share of the Net
5 Settlement Amount (before deduction for the standard employee's share of payroll taxes) was
6 calculated by dividing the Net Settlement Amount by the total number of weeks worked by all Class
7 Members during the Class Period and multiplying that amount by the number of workweeks worked
8 by each Class Member during the Class Period.

9 16. Defendant Ferguson SM, Inc. became insolvent during the Covid-19 Pandemic. Infiniti
10 served as a PEO for only 14 months during the applicable statutes of limitation. Given the risks
11 inherent in further litigation under these conditions, including the inevitability of substantial
12 additional delays and costs regardless of the outcome of the initial trial, I believe the proposed
13 settlement is fair and in the best interest of all Class Members.

14 17. On April 24, 2024, I electronically filed all documents in support of this motion for final
15 approval of the settlement and all documents filed in support of Plaintiffs' motion for attorneys' fees,
16 costs and service payments to the putative Class representatives with the California Department of
17 Industrial Relations, Labor & Workforce Development Agency ("LWDA");

18 18. On April 24, 2024, I received an email confirmation from the LWDA confirming receipt of
19 the electronic filing.

20 I declare under penalty of perjury under the laws of the California that the foregoing
21 declaration is true and correct to the best of my recollection, and that this declaration was made on
22 April 19, 2024, in Oakland, CA.

23 

24 Patrick R. Kitchen

25
26 Kitchen
27 Legal, APC
28 Oakland

EXHIBIT 1

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Attorneys for ILDIKO O'CONNOR, LAURA RAYA AND DINA SHASHUA

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF VENTURA

ILDIKO O'CONNOR, LAURA RAYA,
DINA SHASHUA, individuals and on behalf
of all others similarly situated,
Plaintiffs,

v.

FERGUSON SM, INC., a California
Corporation; SEAN CORREA, an individual;
THOMAS HUMPHREY, an individual,
MICHAEL REYES, an individual, INFINITI
WEST, LLC, an Arizona Limited Liability
Company, HR SERVICE GROUP, LLC, a
Maryland Limited Liability Company, and
DOES 3-50, inclusive,
Defendants.

Case No.: 56-2020-00543357-CU-OE-VTA

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

This Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement Agreement") is made and entered into by and between Plaintiffs Ildiko O'Connor, Laura Raya and Dina Shashua ("Plaintiffs"), on behalf of themselves and the putative class ("Class Members"), and Ferguson SM, Inc., ("Ferguson") Sean Correa ("Correa"), Thomas Humphrey ("Humphrey"), Michael Reyes ("Reyes")(Ferguson, Correa, and Humphrey are collectively the "Ferguson Defendants"), Infiniti HR West, LLC ("Infiniti HR") and HR Service Group, LLC ("HRSG")(Infiniti HR and HRSG are collectively the

1 “Infiniti Defendants”) (Infiniti Defendants and Ferguson Defendant are collectively referred
2 to as “Defendants”)(Plaintiffs and Defendants collectively referred to as the “Parties).

3 **RECITALS**

4 1. On July 17, 2020, Plaintiff Ildiko O’Connor filed a putative class action in the
5 California Superior Court for the County of Ventura, Case No. 56-2020-00543357-CU-OE-
6 VTA, asserting the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure
7 to Pay Overtime Wages; (3) Failure to Pay for Nonproductive Time and Rest/Recovery Periods
8 for Piece Rate Workers; (4) Violations of Labor Code § 204.11; (5) Failure to Provide Meal
9 Periods; (6) Failure to Provide Rest Periods; (7) Willful Failure to Pay All Wages Due Upon
10 Termination; (8) Unfair Competition; and (9) Declaratory Relief.

11 2. On July 29, 2020, pursuant to the California Labor Code Private Attorneys
12 General Act (“PAGA”), Plaintiff gave notice to the California Labor and Workforce
13 Development Agency (“LWDA”) pursuant to Labor Code § 2698.3 (a)(1)(A) of certain alleged
14 violations of California employment law by Defendants.

15 3. On September 3, 2020, Plaintiffs Ildiko O’Connor, Laura Raya and Dina
16 Shashua filed a first amended complaint asserting the following causes of action: (1) Failure to
17 Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Pay for Nonproductive
18 Time and Rest/Recovery Periods for Piece Rate Workers; (4) Violations of Labor Code §
19 204.11; (5) Failure to Provide Meal Periods; (6) Failure to Provide Rest Periods; (7) Violations
20 of Labor Code § 226; (8) Willful Failure to Pay All Wages Due Upon Termination; (9) Unfair
21 Competition; and (10) Declaratory Relief.

22 4. On November 24, 2020, Plaintiffs filed a second amended complaint asserting
23 the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime
24 Wages; (3) Failure to Pay for Nonproductive Time and Res/Recovery Periods for Piece Rate
25 Workers; (4) Violations of Labor Code § 204.11; (5) Failure to Provide Meal Periods; (6)
26 Failure to Provide Rest Periods; (7) Violations of Labor Code § 226; (8) Willful Failure to Pay
All Wages Due Upon Termination; (9) Unfair Competition; (10) Declaratory Relief; and (11)

1 Labor Code Private Attorneys General Act.

2 5. The Ferguson Defendants answered Plaintiffs' second amended complaint on
3 January 19, 2021, denying all allegations.

4 6. On March 5, 2021, Infiniti HR West, LLC answered Plaintiffs' second amended
5 complaint, denying all allegations.

6 7. On April 1, 2021, Plaintiff added Defendant HR Service Group, LLC, pursuant
7 to California Code of Civil Procedure § 474.

8 8. On May 13, 2021, HR Service Group, LLC, answered Plaintiffs' second
9 amended complaint, denying all allegations.

10 9. Plaintiffs' counsels, Kitchin Legal, APC and Trial Lawyers For Justice ("Class
11 Counsel"), diligently pursued an investigation of the proposed Class Members' claims against
12 Defendants, including any and all applicable defenses and the applicable law. The investigation
13 included, *inter alia*, the exchange of information pursuant to both formal and informal
14 discovery, analysis of information and data produced by Defendants, and telephonic
15 conferences and email correspondence between Class Counsel and Defendants' counsel.

16 10. Based on the data produced pursuant to discovery and Class Counsel's own
17 independent investigation and evaluation, Class Counsel believes that the settlement with
18 Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair,
19 reasonable, and adequate, and is in the best interest of the Class in light of all known facts and
20 circumstances, including the risk of significant delay and uncertainty associated with litigation,
21 various defenses asserted by Defendants, Defendant Ferguson SM going out of business, and
22 potential appellate issues.

23 11. Defendants deny any liability or wrongdoing of any kind associated with the
24 claims alleged in this Action and further deny that this case is appropriate for class treatment
25 for any purpose other than this settlement.

26 12. Plaintiffs, on behalf of themselves and the Class, along with Defendants, and
subject to the approval of the Court, stipulate that the case will be compromised and settled

1 pursuant to the terms and conditions set forth in this Settlement Agreement and that after the
2 date of the Court's final approval of this Settlement Agreement, judgment shall be entered,
3 subject to the continuing jurisdiction of the Court as set forth below, subject to the recitals set
4 forth above which by this reference become an integral part of this Settlement Agreement, and
5 subject to the following definitions, terms and conditions:

6 **DEFINITIONS**

7 The following definitions are applicable to this Settlement Agreement. Definitions
8 contained elsewhere in this Settlement Agreement also shall be effective.

9 13. "Action" means *Ildiko O'Connor, et al. v. Ferguson SM, Inc., et al.*, Ventura
10 County Superior Case No. 56-2020-00543357-CU-OE-VTA (filed July 17, 2020), and includes
11 the Complaint, First Amended Complaint and Second Amended Complaint.

12 14. "Employees" include all licensed cosmetologists who worked for the Ferguson
13 Defendants or the Infiniti Defendants at any time in the state of California from May 1, 2018,
14 through July 31, 2021.

15 15. "Claims Administrator" means Phoenix Class Action Administration Solutions,
16 or any other third-party class action settlement claims administrator agreed to by the Parties and
17 approved by the Court for the purposes of administering this Settlement. The Parties each
18 represent that they do not have any financial interest in the Claims Administrator or otherwise
19 have a relationship with the Claims Administrator that could create a conflict of interest.

20 16. "Claims Administration Costs" means the cost payable from the Gross
21 Settlement Fund to the Claims Administrator for administering this Settlement, including, but
22 not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,
23 distributing the portions of the Net Settlement Amount as provided for herein, and providing
24 necessary reports and declarations at the Parties' request. The estimated Claims Administration
25 Costs are estimated to be eight thousand dollars (\$8,000.00). The Claims Administration Costs
26 shall be paid from the Gross Settlement Amount, including, if necessary, any such costs in

1 excess of the foregoing estimate represented by the Claims Administrator as being the amount
2 of costs and fees necessary to administer the Settlement.

3 17. "Class Counsel" is Kitchin Legal, APC, and Trial Lawyers for Justice.

4 18. "Class Counsel Award" means attorneys' fees agreed upon by the Parties and
5 approved by the Court for Class Counsel's litigation and resolution of this Action, and all costs
6 incurred and to be incurred by Class Counsel in the Action and approved by the Court,
7 including, but not limited to, litigation costs, mediation costs, costs associated with
8 documenting the Settlement, securing the Court's approval of the Settlement, and obtaining
9 entry of the Judgment terminating this Action pursuant to California Rule of Court 3.769
10 ("Judgment"). The Class Counsel Award of fees and costs shall be paid from the Gross
11 Settlement Amount. Defendants agree not to oppose a request for Class Counsel's attorneys'
12 fees of one-third (1/3) of the Gross Settlement Amount (\$58,332.00), ("Class Counsel Fee
13 Award"), plus a request for Class Counsel's actual costs incurred, which are estimated to be
14 approximately \$16,250.00 ("Class Counsel Cost Award").

15 19. "Class List" means a list of Class Members that Defendants will diligently and
16 in good faith compile from their records and provide to the Claims Administrator within
17 fourteen calendar days (14) calendar days after preliminary approval of this Settlement. The
18 Class List shall be formatted in Microsoft Office Excel and shall include each Class Member's
19 full name; most recent mailing address and telephone number; most recent email address; social
20 security number; dates of employment in California during the Class Period; the total number
21 of workweeks worked by each Class Member during the Class Period, and any other relevant
22 information needed to calculate settlement payments. The Class List is confidential and not to
23 be disclosed to any party other than the Claims Administrator. To the extent Class Counsel
24 requires the contact information of any Class Member who is disputing the information in the
25 Settlement Award Form, such information shall be provided by Defendants' counsel as
26 required.

1 20. “Class Members” or “Class” means “all licensed cosmetologists who worked
2 for the Ferguson Defendants or the Infiniti Defendants, at any time in the state of California
3 from May 1, 2018, through July 31, 2021.”

4 21. “PAGA Aggrieved Employees” means “all licensed cosmetologists who worked
5 for the Ferguson Defendants or the Infiniti Defendants, at any time in the state of California
6 from June 28, 2019, through July 31, 2021.” (PAGA claim number LWDA-CM-800523-20
7 filed July 29, 2020, and amended September 25, 2020)

8 22. The Class, including the PAGA Aggrieved Employees, is estimated to include
9 approximately 193 past Employees of Defendants.

10 23. “Class Period” means the period from May 1, 2018, through July 31, 2021.

11 24. “Class Representatives Enhancement Payments” means the amount to be paid
12 to Plaintiffs in recognition of their efforts and work in prosecuting the Action on behalf of Class
13 Members and in exchange for a general release. The Class Representatives Enhancement
14 Payments shall be paid from the Gross Settlement Amount. The Class Representatives
15 Enhancement Payments is Fifteen Thousand Dollars (\$15,000) in total to be distributed to the
16 three Class Representatives (O’Connor \$5,000.00; Shashua \$5,000.00; Raya \$5,000.00),
17 subject to Court Approval and the Court finally approving this Settlement Agreement, and
18 subject to the exhaustion of any and all appeals.

19 25. To settle claims and remedies under Labor Code Sections 2699, *et seq.*, subject
20 to Court approval, the Parties allocate \$7,500.00 to PAGA penalties, with 75% of this amount
21 (\$5,625.00) to be paid directly to the LWDA and 25% of this amount (\$1,875.00) to be paid to
22 the PAGA Aggrieved Employees. PAGA penalties will still be paid to Class Members who
23 submit a timely request for exclusion of the Class Settlement.

24 26. “Gross Settlement Amount” means the total amount of One Hundred Seventy
25 Five Thousand Dollars and No/Cents (\$175,000.00) from which will be paid Individual
26 Settlement Payments to Participating Class Members, the PAGA Payments, the Class
Representatives Enhancement Payments, the Claims Administration Costs to the Claims

1 Administrator, the standard employee and employer share of payroll taxes on the wage portion
2 of the Individual Settlement Payments, and the Class Counsel Award of fees and costs.

3 27. "Net Settlement Amount" means the Gross Settlement Amount minus the Court
4 approved Class Representative Enhancement Payments to Plaintiffs, the Court approved
5 Administration Costs to the Claims Administrator, the Court approved Class Counsel Award
6 of attorneys' fees, the Court approved Class Counsel Award of costs, and Court approved
7 PAGA Payment. The Net Settlement Amount is the amount from which Individual Settlement
8 Payments to Participating Class Members and to PAGA Aggrieved Employees are made to and
9 is estimated to be approximately \$69,421.00 [Gross Settlement Amount (\$175,000) – Claims
10 Administration Costs (\$8,000.00) – Class Representatives Enhancement Payments (\$15,000) –
11 Class Counsel Award for Fees (\$58,332.00) – Class Counsel Award for Costs (approximately
12 \$16,250.94) – LWDA Payment (\$5,625.00).]

13 28. "Court" means the California Superior Court for the County of Ventura with
14 jurisdiction over this Action.

15 29. "Defendants" Ferguson SM, Inc., Sean Correa, Thomas Humphrey Michael
16 Reyes, Infiniti HR West, LLC and HR Service Group, LLC. Defendant Michael Reyes shall
17 have no responsibility with respect to any payments required under this Agreement.

18 30. "Effective Date" This Agreement shall become effective upon the later of the
19 occurrence of all of the following events:

20 A. Defendants do not invoke their right, at their sole discretion, to revoke
21 the Settlement as described in this paragraph. Specifically, Defendants, at their sole discretion,
22 have the right but not the obligation to revoke the Settlement if 15% or more of the Class files
23 timely opt outs. Defendants shall exercise their rights under this paragraph, if at all, within ten
24 (10) business days of the Exclusion Deadline as defined in Paragraph 39 by written notice to
25 Class Counsel.

26 B. The Court's final approval of settlement if no objections by members of
the Class have been filed or such objections have been withdrawn.

1 C. Objections have been overruled and the time to appeal has expired, or the
2 final resolution of any appeal that has been filed.

3 D. The Effective Date of this Settlement Agreement shall be the date of the
4 last event in items A-C above to occur.

5 31. "Individual Settlement Payment" means each Class Member's gross share of the
6 Net Settlement Amount (before deduction for the standard employee's share of payroll taxes)
7 is calculated by dividing the Net Settlement Amount by the Total Class Member Workweeks
8 and then multiplying that amount by the number of weeks worked by each Class Member during
9 the Class Period.

10 32. Settlement Payments to the Class shall be made within thirty (30) calendar days
11 after the Effective Date.

12 33. "Notice" means the Notice of Pendency of Class Action Settlement, in a form
13 substantially similar to the form attached hereto as Exhibit "A" and which the Court orders to
14 be sent to all Class Members via regular First-Class U.S. Mail and via email to the last known
15 email address on file with Defendants. The Notice will be in English.

16 34. "Participating Class" and "Participating Class Members" means all Class
17 Members who did not submit a timely Request for Exclusion pursuant to paragraph 38 of this
18 Agreement.

19 35. "Plaintiffs" means the Plaintiffs named in the Action: Ildiko O'Connor, Laura
20 Raya and Dina Shashua.

21 36. "Preliminary Approval" means the Order of Preliminary Approval of Class
22 Action Settlement by which the Court grants preliminary approval of the Settlement Agreement
23 and in a form substantially similar to the form attached hereto as Exhibit "B."

24 37. "Released Claims" means all claims, rights, demands, liabilities and causes of
25 action, alleged in the Action during the Class Period. The primary facts alleged in the Action
26 are that Defendants failed to pay Plaintiffs and the Class in compliance with California law, and
failed to provide Plaintiff and the Class payment of overtime wages, compliant wage

1 statements, rest breaks, meal periods, and all wages due upon termination. Additionally,
2 Plaintiff alleges that in doing the above, Defendants violated Sections 17200, *et seq.* of the
3 California Business and Professions Code and Sections 2698, *et seq.*, of the California Labor
4 Code. The Released Claims include all claims for legal or equitable relief, for compensatory
5 and statutory damages, penalties, liquidated damages, restitution, injunctive relief, pre-
6 judgment and post-judgment interest, and attorney fees and costs of suit that arise from, or relate
7 to, the facts alleged in the Action. The foregoing is intended to include all claims for minimum
8 wages, straight time wages, overtime wages, meal and rest periods, claims under Labor Code
9 Sections 200, 201, 201.5, 202, 203, 204, 205.5, 218, 218.5, 218.6, 221, 225.5, 226, 226(a),
10 226(e), 226(g), 226.7, 226.8, 500, 510, 512, 1174, 1194, 1194(a), 1194.2, 1194.2(a), 1197,
11 1198, 2698 *et seq.*, and 2802 related only to the Released Claims; California Industrial Welfare
12 Commission Wage Order 1-2001 §1, §2, §3, §4, §7, §11 and §12; California Code of
13 Regulations, Title 8, section 11000(2); and California Civil Code section 3287; and all other
14 wage, interest, statutory damages, penalty, injunctive and attorney fee claims arising from, or
15 related to, the facts alleged in the Action.

16 38. "Request for Exclusion" means a timely and valid letter by a Class Member
17 which unambiguously indicates a request to be excluded from the Settlement and which must
18 also: (a) set forth the name, address, telephone number, and last four digits of the Social security
19 number of the person requesting exclusion; (b) be signed by the Class Member requesting
20 exclusion; (c) be addressed to the Claims Administrator at the specified address indicated in the
21 Notice; and (d) be post marked on or before the Response Deadline. Class Members who
22 exclude themselves shall not have the right to object to the Settlement and any objection filed
23 by a Class Member who has excluded themselves shall be disregarded by the Court.

24 39. "Response Deadline" means the deadline by which Class Members must
25 mail/postmark to the Claims Administrator a Request for Exclusion or an Objection to the
26 Settlement or Settlement Award Form. The Response Deadline shall be forty-five (45) calendar
days from the initial mailing of the Notice by the Claims Administrator, unless the 45th day

1 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to
2 the next day on which the U.S. Postal Service is open. The Response Deadline for any Class
3 Member who is re-mailed a Notice by the Claims Administrator in accordance with the Notice
4 Procedure shall be the earlier of (1) forty-five (45) calendar days from the date the Notice
5 Package is re-mailed or (2) a date which is thirty (30) calendar days prior to the final approval
6 hearing. The Response Deadline may also be extended by express agreement between Class
7 Counsel and Defendants' Counsel.

8 40. "Settlement" or "Settlement Agreement" means this Joint Stipulation of Class
9 Action Settlement and Release, which is made and entered into by and between Plaintiffs, and
10 on behalf of all others similarly situated, and Defendants.

11 41. "Settlement Award Form" means the Settlement Award Form, a form
12 substantially similar to the form attached hereto as Exhibit "C" and which the Court orders to
13 be sent to all Class Members via regular First-Class Mail and by email. The Settlement Award
14 Form shall be in English.

15 42. "Total Class Member Workweeks" means the aggregate of all weeks worked by
16 the Participating Class Members during the Class Period. The aggregate number of weeks
17 worked by all Class Members totals approximately _____ weeks.

18 43. "Workweek Dollar Value" means the Net Settlement Amount (estimated to be
19 \$6,7,546.00), divided by the Total Class Member Workweeks (approximately _____). The
20 Workweek Dollar Value is estimated to be \$_____ (\$_____ ÷ _____ = \$_____).

21 TERMS OF AGREEMENT

22 Plaintiffs, on behalf of themselves and Class Members, and Defendants all agree as
23 follows:

24 **Defendants' Primary Obligations under the Settlement Agreement**

25 44. Funding the Gross Settlement Amount. Funding the Gross Settlement Amount.
26 Defendants shall wire to the Claims Administrator the Gross Settlement Amount as set forth

1 below:

2 A. Infiniti Defendants' Settlement Amount, equal to Ninety Thousand
3 Dollars and No/Cents (\$90,000.00), shall be wire-transferred to the Claims Administrator
4 fifteen (15) calendar days after the Effective Date. One-half of Ferguson Defendants'
5 Settlement Amount, equal to Forty-Two Thousand and Five Hundred Dollars and No/Cents
6 (\$42,500.00), shall be wire-transferred to the Claims Administrator fifteen (15) calendar days
7 after the Effective Date. In accordance with this Agreement, this portion of the Gross
8 Settlement Amount (\$132,500.00) shall be distributed as follows: 100% of the approved
9 enhancement payments to Plaintiffs (\$15,000.00), 100% of the approved costs to Class
10 Counsels (\$18,617.00), \$23,837.00 out of the total approved attorneys' fees, and \$5,625.00 to
11 the LWDA, with the remainder to be paid to the Settlement Class as the complete Class payment
12 (\$69,421.00), including \$1,875.00 to the PAGA Aggrieved Employees).

13 B. No later than six months after the Effective Date, Ferguson Defendants
14 shall transfer the second and remaining settlement payment of Forty-Two Thousand and Five
15 Hundred Dollars and No/Cents (\$42,500.00) to the Claims Administrator. In accordance with
16 this Agreement, this portion of the Gross Settlement Amount shall be distributed as follows:
17 approved attorneys' fees (\$34,500), and 100% of the approved Claims Administrator fees
18 (\$8,000.00).

18 **Payments to Be Taken from the Gross Settlement Amount**

19 45. Payments to be taken from the Gross Settlement Amount shall be distributed as
20 follows:

21 A. Payment of Class Counsel Award. Defendants agree not to oppose or
22 impede any application or motion by Class Counsel for a Class Counsel Award of not in excess
23 one-third of the Gross Settlement Amount, equal to Fifty-Eight Thousand, Three Hundred and
24 Thirty-Two Thousand (\$58,332.00) in attorneys' fees, plus actual costs incurred of
25 approximately Eighteen Thousand, Six Hundred and Seventeen Dollars (\$18,617.00), which
26 amount shall include any and all costs and expenses associated with Class Counsel's

1 prosecution and settlement of the Action. Class Counsel shall be solely and legally responsible
2 to pay all applicable taxes on the payments made pursuant to this paragraph and shall indemnify
3 and hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising
4 as a result of the taxes owed by Class Counsel. The appropriate 1099 tax forms shall be
5 provided by the Claims Administrator to Class Counsel for the payments made pursuant to this
6 paragraph. The Class Counsel Award shall be paid as follows: (1) \$23,832.00 shall be paid no
7 later than thirty (30) calendar days after the Effective Date; and \$34,500.00 shall be paid no
8 later 6 months after the Effective Date.

9 B. Class Representatives Enhancement Payment. In recognition of their
10 efforts, work, stigma and risk in prosecuting the Action on behalf of Class Members, and in
11 exchange for an individual general release, Defendants agree not to oppose or impede any
12 application or motion by Plaintiffs for Class Representative Enhancement Payment of Fifteen
13 Thousand Dollars (O'Connor \$_____; Shashua \$_____; Raya \$_____), subject to Court
14 approval and the Court finally approving this Settlement Agreement. The Class
15 Representatives Enhancement Payment shall be in addition to the Plaintiffs' Individual
16 Settlement Payments paid pursuant to the Settlement. The Claims Administrator shall release
17 to Plaintiffs their shares of the Court approved Representatives Enhancement Payment from the
18 monies collected from Defendants. The Class Representatives Enhancement Payment shall be
19 made within thirty (30) calendar days after the Effective Date. Plaintiffs shall be solely and
20 legally responsible to pay any and all applicable taxes on their Class Representative
21 Enhancement Payments and shall indemnify and hold harmless the Parties and their respective
22 counsel from any claim or liability for taxes, penalties, or interest arising from the Class
23 Representative Enhancement Payments and owed by the Plaintiff Class Representative. The
24 Claims Administrator shall issue to Plaintiffs the appropriate 1099 tax form(s) for the Class
25 Representatives Enhancement Payments.

26 C. PAGA Payment to PAGA Aggrieved Employees and Notification of
LWDA of PAGA Claims and Settlement. Plaintiffs' counsel shall be responsible for notifying

1 the LWDA of the (1) pending settlement, (2) the release of PAGA claims herein, (3) the amount
2 of the PAGA Payment, and (4) preliminary and final approval hearings and rulings thereon.
3 The Claims Administrator shall distribute the *pro rata* share of the Court approved PAGA
4 Payment as follows: (i) payment of \$5,625.00 to be paid to the LWDA within thirty (30)
5 calendar days after the Effective Date; and (ii) payment of \$1,875.00 to the PAGA Aggrieved
6 Employees within thirty (30) calendar days after the Effective Date based on the *pro rata*
7 number of weeks worked June 28, 2019 through July 31, 2021, as set forth in Paragraphs 42
8 and 43.

9 D. Claims Administration Costs. The Claims Administration Costs are
10 currently estimated to be \$8,000.00. These costs shall include the cost of notifying the Class
11 of the settlement, distributing the required payments to the Class and to Plaintiffs, Class
12 Counsel, and the LWDA, required tax reporting and payment to the taxing authorities on the
13 Individual Settlement Payments, and the issuing of 1099 and W-2 IRS Forms. The Claim
14 Administrator shall pay itself as provided for in this Agreement and approved by the Court,
15 from the monies collected from Defendants 6 months after the Effective Date.

16 46. Net Settlement Amount. After deducting the Class Counsel Award, Class
17 Representatives Enhancement Payments, Claims Administration Costs, the LWDA PAGA
18 Payment, the PAGA allocation to the PAGA Aggrieved Employees, the remaining Net
19 Settlement Amount (after deduction of standard employee payroll taxes on the payroll portion
20 of the Individual Settlement Payments) shall be awarded to all Class Members who do not file
21 a Request for Exclusion as provided in the Settlement. The Net Settlement Amount is estimated
22 to be \$65,676.00.

23 47. Calculation and Distribution of Individual Settlement Payments. The Claims
24 Administrator will determine the amounts of Individual Settlement Payments to be awarded to
25 the Participating Class Members as follows: Class Member's gross share of the Net Settlement
26 Amount (before deduction for the standard employee's share of payroll taxes) is calculated by
dividing the Net Settlement Amount by the total number of weeks worked by all Class Members

1 during the Class Period and multiplying that amount by the number of workweeks worked by
2 each Class Member during the Class Period.

3 The Individual Settlement Payment shall be made to the Participating Class Members
4 in accordance with the schedule set forth in Paragraph 45.

5 48. Calculation and Distribution of PAGA Payments to the PAGA Aggrieved
6 Employees. Out of the \$7,500.00 allocated to PAGA civil penalties under the Settlement,
7 twenty-five percent, or \$1,875.00, will be distributed to PAGA Aggrieved Employees on a pro
8 rata basis by dividing \$1,875.00 by the total number of weeks worked by all PAGA Aggrieved
9 Employees between June 28, 2019 and July 31, 2021, and multiplying that amount by the
10 number of workweeks worked by each PAGA Aggrieved Employee.

11 49. Voided Settlement Checks Will Be Donated to a Cy Pres Beneficiary. The
12 amount that Defendants have agreed to pay under this Settlement Agreement to Participating
13 Class Members shall remain the property of Defendants until the checks issued to each
14 Participating Class Member are cashed. Any checks issued by the Claims Administrator to
15 Participating Class Members shall be negotiable for one-hundred and eighty (180)
16 calendar days. Those funds represented by Settlement checks returned as undeliverable and
17 those Settlement checks remaining un-cashed for more than 180 days after issuance
18 (collectively, "Voided Settlement Checks") shall constitute "unpaid residuals in Class Action
19 litigation" as described in *Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718.
20 Those checks shall be voided by the Claims Administrator and the funds shall be paid to Swords
21 to Plowshares, subject to approval of the Court.

22 **Tax Treatments, Liabilities and Disclaimers**

23 50. Tax Treatment of Individual Settlement Payments. All Individual Settlement
24 Payments will be allocated as follows: 20% to settlement of wage claims and 80% to settlement
25 for interest and statutory penalties. The portion allocated to wages shall be reported on an IRS
26 Form W-2 and the portion allocated to interest and penalties, including PAGA civil penalties,
shall be reported on an IRS Form-1099 issued by the Claims Administrator. The Claims

1 Administrator shall deduct the standard employee's share of payroll withholding taxes for the
2 portion of the Individual Settlement Payments allocated to wages from the Individual
3 Settlement Payments and remit such payroll taxes to the taxing authorities. The Claims
4 Administrator shall also pay from the Gross Settlement Amount the employers' share of payroll
5 withholding taxes.

6 51. Tax Liability (Defendants and Class Counsel Disclaimers). Circular 230
7 Disclaimer. Defendants and Class Counsel make no representations as to the tax treatment or
8 legal effect of the payments called for hereunder, and Participating Class Members are not
9 relying on any statement or representation by Defendants or Class Counsel in this regard.

10 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
11 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER
12 THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES
13 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
14 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
15 THEIR ATTORNEYS AND OTHER ADVISORS, IS OR WAS INTENDED TO BE, NOR
16 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE, OR BE
17 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
18 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
19 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
20 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
21 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
22 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
23 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
24 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
25 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY
26 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER

1 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
2 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES
3 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
4 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
5 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
6 CONTEMPLATED BY THIS AGREEMENT.

7 Participating Class Members understand and agree that Participating Class Members
8 will be solely responsible for the payment of any income taxes and penalties assessed on the
9 payments described herein and will hold Defendants, Plaintiffs and Class Counsel free and
10 harmless from any claims concerning the tax liability associated with any payments made to
11 Participating Class Members pursuant to this Settlement Agreement.

12 **Notice & Administrative Execution Procedures**

13 The Notice Procedures to notify all Class Members of the Settlement Agreement
14 provisions shall be managed and administered as follows:

15 52. Class List. Within fourteen (14) calendar days after Preliminary Approval,
16 Defendants shall provide the Class List to the Claims Administrator in conformity with the
17 definition, substance, and format as previously indicated.

18 53. Notice by First Class U.S. Mail, Email and Establishment of Case Website.
19 Within twenty (20) calendar days after receiving the Class List from Defendants as provided
20 herein, the Claims Administrator shall send a Notice and Settlement Award Form to all Class
21 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
22 identified in the Class List or the National Change of Address Database. Within twenty (20)
23 calendar days of receiving the Class List from Defendants, the Claims Administrator also shall
24 send a Notice and Settlement Award Form via email to the last known email address on file
25 with Defendants. Concurrently, the Claims Administrator shall also establish a website for the
26 case on which Class Members can access the Second Amended Complaint and Defendants'
answers to the Second Amended Complaint, Plaintiffs' Motion for Preliminary Approval, the

1 proposed settlement agreement, Class Notice and, when filed, Plaintiffs' Motion for Final
2 Approval and Plaintiffs' Motion for Attorneys' Fees and Costs. The case website shall also
3 contain information regarding the Final Approval Hearing.

4 54. Confirmation of Contact Information in the Class List. Prior to mailing, the
5 Claims Administrator shall perform a search based on the National Change of Address Database
6 for information to update and correct for any known or identifiable address changes. Any
7 Notices returned to the Claims Administrator as non-deliverable on or before the Response
8 Deadline shall be sent promptly via regular First-Class U.S. Mail to the forwarding address
9 affixed thereto and the Claims Administrator shall indicate the date of such re-mailing on the
10 Notice. If no forwarding address is provided, the Claims Administrator shall promptly attempt
11 to determine the correct address using a single skip-trace or other search using the name, address
12 and/or social security number of the Class Member involved and shall then perform a single re-
13 mailing. If, after performing a skip-trace search, the Notice is still returned to the Claims
14 Administrator as non-deliverable, that individual will be deemed a Class Member for purposes
15 of the Released Claims described herein, without any further effort of the Claims Administrator
16 required.

17 55. Notices. All Class Members will receive a Notice. Each Notice will list:
18 (1) information regarding the nature of the Action, (2) a summary of the substance of the
19 Settlement, (3) the Class definition, (4) the formula for calculating Individual Settlement
20 Payments, (5) the deadlines by which the Class Member must postmark a Request for
21 Exclusion, file an objection to the Settlement with the Claims Administrator or postmark
22 disputes regarding the amounts in the Settlement Award Form, and (6) a description of the
23 claims to be released by all Class Members who do not submit timely and valid Requests for
24 Exclusion. Subject to the approval of the Court, the Notice shall be substantially in the form
25 attached hereto as Exhibit "A."

26 56. Settlement Award Form. All Class Members will receive a Settlement Award
Form. Each Settlement Award form will list the number of Workweeks the Class Member

1 worked during the Class Period, and the period of time during the Class Period worked by the
2 Class Members. Subject to approval of the Court, the Settlement Award Form shall be
3 substantial in the form attached hereto as Exhibit "C" and shall be in English.

4 57. Disputed Information on Settlement Award Forms. If a Class Member disputes
5 the information listed in their Settlement Award Form, the Class Member may produce
6 evidence to the Claims Administrator substantiating factual information different from that
7 appearing in the Settlement Award Form. To the extent any Class Member disputes the
8 information listed on their Settlement Award Form prior to the Response Deadline, the Class
9 Member may produce evidence to the Claims Administrator showing the correct employment
10 dates or data that they contend should be shown in the Settlement Award Form. Defendants'
11 records will be presumed determinative, absent evidence to rebut those records, but the Claims
12 Administrator shall evaluate the evidence submitted by the Class Member and make the final
13 decisions as to which dates and data should be applied, which determination will be conclusive,
14 final and binding. Defendants agree to diligently and in good faith resolve any Class Member
15 dispute regarding the information listed in Settlement Award Form. Class Members who failed
16 to provide information in support of any dispute by the Response Deadline, shall be foreclosed
17 from contesting Defendants' data.

18 58. No Requirement for a Claim Form. Class Members shall not be required to
19 submit a claim form to receive an Individual Settlement Payment.

20 59. Request for Exclusion Procedures. Any Class Member wishing to opt out from
21 the Settlement Agreement must sign and postmark a written Request for Exclusion to the
22 Claims Administrator not later than the Response Deadline. The Request for Exclusion must
23 (a) state the name, address, telephone number, and last four digits of the social security number
24 of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be addressed
25 to the Claims Administrator at the specified address indicated in the Notice; and (d) be post
26 marked on or before the appropriate deadline. The Notice shall provide these instructions to
the Class Members who wish to exclude themselves from the Class. The date of the postmark

1 on the return mailing envelope shall be the exclusive means to determine whether a Request for
2 Exclusion has been timely submitted. Class Members who submit Requests for Exclusion shall
3 not be entitled to file objections to the Settlement and any objections filed by a Class Member
4 who has excluded themselves from the Settlement shall be disregarded by the Court. Class
5 Members who do not submit valid Requests for Exclusion shall be bound by all terms of the
6 Settlement Agreement, Release, and any Final Judgment entered by the Court if the Settlement
7 is granted final approval by it.

8 60. Defective Requests for Exclusion. If any Class Member submits a defective
9 Request for Exclusion postmarked before the Response Deadline, the Claims Administrator
10 shall, in that case, send a Cure Letter to such Class Member, advising that the Request for
11 Exclusion is defective, stating the nature of the defect and that the defect must be cured to render
12 the Request for Exclusion valid. The Claims Administrator must mail the Cure Letter within
13 five (5) business days of receiving the defective Request for Exclusion. The Cure Letter shall
14 state that the Class Member has ten (10) calendar days from the date of the Cure Letter or the
15 Response Deadline, whichever date is later, to postmark a revised Request for Exclusion. If a
16 Class Member responds to a Cure Letter by resubmitting a defective Request for Exclusion,
17 then the Claims Administrator shall have no further obligation to give notice of a need to cure.
18 Defective Requests for Exclusion will be considered invalid and, if post marked after the
19 Response Deadline, Class Members will have no right to cure them, except as provided for
20 herein or by the agreement of the Parties.

21 61. Objection Procedures. To object to the Settlement Agreement, a Class Member
22 must submit his or her objection to the Claims Administrator by not later than the Response
23 Deadline. The postmark date of the filing and service of the Notice of Objection shall be
24 deemed the exclusive means for determining if the Notice of Objection is timely. The Notice
25 of Objection must be signed by the Class Member and provide the Class Member's name, most
26 current address, most current telephone number, the basis for each objection, and the Class
Member's dates of employment with Defendants. The Notice shall provide these instructions

1 about how to object to the Settlement. Class Members who fail to make written objections in
2 the manner specified above shall be deemed to have waived any objections and shall be
3 foreclosed from making any future objection (whether by appeal or otherwise) to the Settlement
4 Agreement. Class Members who submit and serve timely Notices of Objection in compliance
5 with the foregoing provision shall have a right to appear at the Final Approval Hearing if they
6 file with the Court and serve on counsel for the parties a Notice of Intention to Appear at Final
7 Appeal Hearing.

8 Class Members who have mailed timely and valid exclusion letters shall not have the
9 right to object to the Settlement and any such objections shall not be considered by the Court.

10 The Parties agree not to encourage any Class Members to object to the Settlement
11 Agreement, or to opt out of the settlement.

12 62. Certification of Requests for Exclusion and Objections. All Requests for
13 Exclusion and Objections will be submitted to the Claims Administrator, who shall then certify
14 jointly to Class Counsel, Defendants' Counsel, and the Court the total number of Class
15 Members who have submitted Requests for Exclusion and Objections and provide copies of
16 same to Counsel.

17 63. Notification Reports Regarding Requests for Exclusion and Objections. The
18 Claims Administrator shall provide Defendants' Counsel and Class Counsel a weekly report
19 showing at a minimum: (i) the number of Class Members who have submitted timely, valid
20 Requests for Exclusion and/or Objections; (ii) whether any Class Member has submitted a
21 challenge to the employment dates identified in their Notice, or any other information contained
22 in the Notice; and (iii) statistics showing which disputes that have been resolved and which
23 have not been resolved. Additionally, the Claims Administrator will provide counsel for
24 Defendants' Counsel and Class Counsel any updated reports as needed or requested.

25 64. Resolution of Disputes Concerning Individual Settlement Payments. Should
26 any questions arise regarding the determination of eligibility for the amounts of any Individual
Settlement Payments under the terms of this Settlement Agreement that are not otherwise

1 resolved by the Claims Administrator, counsel for the Parties shall meet and confer in an
2 attempt to reach an agreement. If Class Counsel and Defendants' Counsel cannot agree, the
3 Claims Administrator shall then make the final determination, and that determination shall be
4 conclusive, final and binding.

5 65. Posting of Judgment. The Claims Administrator shall post any judgment on its
6 website in English.

7 66. Additional Administrative Duties of the Claims Administrator. The Claims
8 Administrator shall report Individual Settlement Payments to all required taxing and other
9 authorities, withhold the standard employee's share of payroll taxes from the wage portion of
10 each Individual Settlement Awards, pay all employer share of payroll taxes, and transmit these
11 amounts to the taxing authorities, and issue IRS Forms W-2 and 1099. Upon completion of
12 administration of the Settlement, the Claims Administrator shall provide written certification
13 of such completion to the Court and counsel for all Parties.

14 67. Minimization of Administrative Costs. The Parties agree to cooperate in the
15 settlement administration process and to make all reasonable efforts to control and minimize
16 the costs and expenses incurred in administration of the Settlement Agreement.

17 Release of Claims

18 68. Settlement Class Members' Released Claims. Aside from those who submit a
19 valid and timely request for exclusion from the settlement, Plaintiffs and each member of the
20 Settlement Class will release Defendants and any past, present or future parent, subsidiary,
21 affiliate, predecessor or successor, and all agents, employees, owners, shareholders, insurers,
22 reinsurers, assigns, officers, directors and attorneys thereof (collectively the "Released
23 Parties"), from any and all claims, debts, liabilities, demands, obligations, guarantees, costs,
24 expenses, attorneys' fees, damages, action or causes of action arising out of the allegations and
25 claims asserted in the operative Complaint, including without limitation to, any and all claims
26 for alleged unpaid wages (including but not limited to minimum, overtime, final pay upon
termination), alleged unpaid meal and rest period premiums, failure to pay timely wages, failure

1 to maintain required records, itemized wage statements, failure to pay sick leave; and penalties
2 arising under the California Labor Code (including PAGA), California Civil Code, or Business
3 & Professions Code Section 17200, and claims for restitution and other equitable relief,
4 liquidated damages, or penalties; and any other benefit claimed on account of the allegations
5 asserted in the operative Complaint. Released Claims include all claims arising under the
6 California Labor Code sections 201, 202, 203, 204, 204.11, 208, 226, 226(a), 226.2, 226.7, 510,
7 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2698, 2699, 2699.5, 2802, and 2810.5; the
8 Wage Orders of the California Industrial Welfare Commission ("IWC") Wage Orders 5-2001.
9 This release shall apply to all claims arising at any point during the Class Period.

10 69. PAGA Aggrieved Employees Released Claims. Plaintiffs and each member of
11 the PAGA Aggrieved Employees will release Defendants and any past, present or future
12 parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, owners,
13 shareholders, insurers, reinsurers, assigns, officers, directors and attorneys thereof (collectively
14 the "Released Parties"), from any and all claims for civil penalties arising out of the allegations
15 and claims asserted in the operative Complaint and LWDA letters submitted on July 29, 2020
16 and September 25, 2020 (PAGA claim number LWDA-CM-800523-20), including without
17 limitation to, any and all underlying claims for alleged unpaid wages (including but not limited
18 to minimum, overtime, final pay upon termination), alleged unpaid meal and rest period
19 premiums, failure to pay timely wages, failure to maintain required records, itemized wage
20 statements, failure to pay sick leave. Released Claims under PAGA include all claims arising
21 under the California Labor Code sections 201, 202, 203, 204, 204.11, 208, 226, 226(a), 226.2,
22 226.7, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2698, 2699, 2699.5, 2802, and
23 2810.5; the Wage Orders of the California Industrial Welfare Commission ("IWC") Wage
24 Orders 5-2001. This release, subject to the Court's final approval of the Class Settlement and
25 full payment of all settlement funds, shall apply to all claims arising at any point during the
26 PAGA Aggrieved Employee period.

1 70. Plaintiffs' Released Claims. Plaintiffs Ildiko O'Connor, Laura Raya and
2 Dina Shashua, and each of them, will release Defendants and any past, present or future
3 parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, owners,
4 shareholders, insurers, reinsurers, assigns, officers, directors and attorneys thereof (collectively
5 the "Released Parties"), subject to the Court's final approval of the Class Settlement and full
6 payment of all settlement funds, from all claims, known and unknown, including but not
7 limited to all claims arising under the California Labor Code sections 201, 202, 203, 204,
8 204.11, 208, 226, 226(a), 226.2, 226.7, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199,
9 2698, 2699, 2699.5, 2802, 2810.5; the Wage Orders of the California Industrial Welfare
10 Commission ("IWC") Wage Orders 5-2001, the California Private Attorneys General Act of
11 2004 ("PAGA"); California Business and Professions Code section 17200; the California Civil
12 Code, to include, but not limited to, section 3336 and 3294; the California common law of
13 contract; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; federal common law; and the
14 Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. ("Plaintiffs' Released
15 Claims"). Plaintiffs' Released Claims also include all claims for lost wages and benefits,
16 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
17 federal, state, or local laws for discrimination, harassment, and wrongful termination such as
18 by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights
19 Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act,
20 and the California Fair Employment and Housing Act; and the law of contract and tort. The
21 intent of this agreement is to provide a release of all claims that Plaintiffs may have had prior
22 to the date this Agreement is fully executed, except that this release excludes the release of
23 claims not permitted by law. As to the Plaintiffs' Released Claims only, Plaintiffs expressly
24 waive all rights and benefits under the terms of section 1542 of the California Civil Code.
25 Section 1542 reads as follows:

26 **A general release does not extend to claims that the creditor
or releasing party does not know or suspect to exist in his**

1 or her favor at the time of executing the release and that, if
2 known by him or her, would have materially affected his or
her settlement with the debtor or releasing party.

3 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full
4 and complete release and discharge of all of their Released Claims, Plaintiffs expressly
5 acknowledge that this Settlement is intended to include in its effect, without limitation, all
6 Released Claims which Plaintiffs do not know or suspects to exist in their favor at the time
7 of execution hereof, and that the Settlement contemplates the extinguishment of all such
8 Released Claims.

9 71. Labor Code § 206.5 Inapplicable. It is acknowledged that this Settlement is
10 made with respect to disputed claims and each Class Member who has not opted out will be
11 deemed to have acknowledged and agreed that California Labor Code § 206.5 is not applicable.
12 That section provides:

13 (a) An employer shall not require the execution of a release of a claim
14 or right on account of wages due, or to become due, or made as an
15 advance on wages to be earned, unless payment of those wages has been
16 made. A release required or executed in violation of the provisions of
17 this section shall be null and void as between the employer and the
18 employee. Violation of this section by the employer is a misdemeanor.
19

20 (b) For purposes of this section, "execution of a release" includes
21 requiring an employee, as a condition of being paid, to execute a
22 statement of the hours he or she worked during a pay period which the
23 employer knows to be false.

24 **Revocation or Nullification of Settlement Agreement**

25 72. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
26 the order of Preliminary Approval specified herein; (ii) the Court does not finally approve the

1 Settlement as provided herein; (iii) the Court does not enter the Final Judgment as provided
2 herein, which becomes final as a result of the occurrence of the Effective Date; (iv) more than
3 15% of the Class timely opts out and Defendants exercise their right to revoke the Settlement;
4 or (v) the settlement does not become final for any other reasons, this Settlement Agreement
5 shall be null and void. In such a case, the Parties shall proceed in all respects as if this
6 Settlement Agreement had not been executed, except that any fees already incurred by the
7 Claims Administrator up to the date that Defendants receive notice by the Court of any of the
8 events (i) through (iv) shall be paid by the Ferguson Defendants and the Infiniti Defendants
9 equally.

10 **Preliminary & Final Approval Hearings**

11 73. Preliminary Approval Hearing. Plaintiffs shall request a hearing before the
12 Court to request Preliminary Approval of the Settlement Agreement. The Parties agree to use
13 their best efforts to schedule a Preliminary Approval hearing on the first available date after the
14 execution of this Settlement Agreement. At the Preliminary Approval hearing, the Parties shall
15 request the entry of a Preliminary Approval Order that: (i) conditionally certifies the Class for
16 settlement purposes only, (ii) preliminarily approves the proposed Settlement Agreement,
17 (iii) approves the Notice, and (iv) sets a date for a Final Approval/Settlement Fairness Hearing.
18 The Preliminary Approval Order shall provide for the Notice and Settlement Award Form to be
19 sent to all Class Members as specified herein. In conjunction with the Preliminary Approval
20 hearing, Class Counsel shall submit this Settlement Agreement and all exhibits for approval by
21 the Court, and prepare, file and serve a motion for preliminary approval of same.

22 74. Final Settlement Approval Hearing and Entry of Final Judgment and Notice to
23 the Class. Following the Response Deadline, and with the Court's permission, a Final
24 Approval/Settlement Fairness Hearing shall be conducted to determine final approval of the
25 Settlement Agreement along with the amounts properly payable for: (i) the Class Counsel
26 Award, (ii) the Class Representatives Enhancement Payments, (iii) the Claims Administration
Costs, and (iv) the PAGA allocation. The Final Approval/Settlement Fairness Hearing shall

1 not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel
2 shall be responsible for preparing, filing and serving a motion for final approval of the
3 Settlement and for approval of the fees and various payments provided therein. Class Counsel
4 shall file and serve on Defendants a Notice of Entry of Judgment. The Claims Administrator
5 shall provide notice of final approval of the Settlement and entry of judgment to the Class by
6 postcard.

7 75. Preliminary and Permanent Injunction. Except as to Settlement Class Members
8 who timely submit Requests for Exclusion, the Preliminary Approval Order and Final Judgment
9 will contain provisions enjoining Plaintiffs and the Class Members from prosecuting the claims
10 released herein and enjoining Plaintiffs and the Class Members from initiating or continuing
11 other proceedings regarding the claims released herein, including but not limited to filing any
12 claims before the Division of Labor Standards and Enforcement (“DLSE”) or in any forum
13 whatsoever. Inclusion of these provisions in the Order of Preliminary Approval Order and Final
14 Judgment and Order of Final Approval is a material part of the consideration for this Settlement.

15 76. Interim Stay of Proceedings. The Parties agree that the application of Code of
16 Civil Procedure § 583.310 is stayed from January 24, 2023 through the date of entry Final
17 Approval and Judgment or the date upon which this Settlement Agreement becomes null and
18 void. Accordingly, pursuant to Code of Civil Procedure § 583.330, the Parties stipulate that the
19 time within which this action must be brought to trial is stayed. Plaintiff and Defendants agree
20 to refrain from further litigation of this matter, except such proceedings necessary to implement
21 and obtain an Order granting Final Approval of the terms of the Settlement Agreement.
22 Plaintiffs and Defendants further agree that the mutual, voluntary cessation of litigation shall
23 terminate if the motion for final approval of the Settlement Agreement is denied by the Court.
24 If the Court does not grant final approval of the Settlement Agreement for any reason, Plaintiffs
25 and/or Defendants may give notice to the other that the discovery agreements shall terminate
26 ten (10) calendar days from the date of notice of termination of the discovery agreements.

1 **Final Judgement Ratifying the Settlement Agreement**

2 77. **Final Judgment and Continued Jurisdiction.** Upon final approval of the
3 Settlement by the Court, or after the Final Approval/Settlement Fairness Hearing, the Parties
4 shall present the Final Judgment to the Court for its approval. After entry of the Final Judgment,
5 the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the
6 interpretation and enforcement of the terms of the Settlement, (ii) settlement administration
7 matters, and (iii) such post-Final Judgment matters as may be appropriate under Court rules or
8 as set forth in this Agreement.

9 **Dispute Resolution Concerning the Terms of This Settlement Agreement**

10 78. **Dispute Resolution Involving Settlement Agreement.** Except as provided
11 herein, all disputes concerning the interpretation, calculation or payment of settlement claims,
12 or other disputes regarding compliance with this Settlement Agreement shall be resolved as
13 follows: if Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Class Member, or
14 Defendants at any time contend that the other party has breached or acted contrary to the
15 Settlement Agreement, that party shall notify the other parties in writing of the alleged violation.
16 Upon receiving notice of the alleged violation or dispute, the responding party shall have ten
17 (10) calendar days to correct the alleged violation and/or respond to the initiating party with the
18 reasons why the party disputes all or part of the allegation. If the response does not address the
19 alleged violation to the initiating party's satisfaction, the Parties shall negotiate in good faith
20 for up to ten (10) calendar days to resolve their differences. If Class Counsel and Defendants
21 are unable to resolve their differences within ten (10) calendar days after the writing which
22 notified them of the alleged violation, either Party may elect to file (1) an appropriate Code of
23 Civil Procedure § 664.6 motion for enforcement with the Court, or (2) take any other legal
24 action to enforce this Settlement Agreement. Reasonable attorney fees and costs, as fixed by
25 the Court, incurred to enforce this Settlement Agreement shall be awarded to the prevailing
26 party.

1 **Dismissal of Defendant Michael Reyes**

2 79. Plaintiffs will ask the Court to dismiss Defendant Michael Reyes without
3 prejudice as part of their motion for preliminary approval of the Settlement, and Plaintiffs
4 will ask the Court to dismiss Michael Reyes with prejudice upon the issuance of an order
5 granting final approval of the Settlement.

6 **General & Miscellaneous Provisions**

7 80. Exhibits Incorporated by Reference. The terms of this Agreement include the
8 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
9 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

10 81. Confidentiality. Parties and their respective counsel agree that the terms of this
11 Settlement (including, but not limited to, any settlement amounts), the negotiations leading to
12 this Settlement, and all documents related to the Settlement, shall not be discussed with,
13 publicized or promoted to the public prior to the Court's Preliminary Approval, except as
14 necessary in order to enforce its terms.

15 82. Entire Agreement. This Settlement Agreement, and the attached Exhibits
16 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
17 written or oral agreements may be deemed binding on the Parties.

18 83. Amendment or Modification. This Settlement Agreement may be amended or
19 modified only by a written instrument signed by counsel for all Parties or their successors-in-
20 interest.

21 84. Authorization to Enter into Settlement Agreement. Counsel for all Parties
22 warrant and represent they are expressly authorized by the Parties whom they represent to
23 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
24 be taken by such Parties pursuant to this Settlement Agreement in order to effectuate its terms,
25 and to execute any other documents that may be required to do the same. The Parties and their
26 counsel will cooperate with each other and use their best efforts to affect the implementation of
 the Settlement. If the Parties are unable to reach agreement on the form or content of any

1 document needed to implement the Settlement, or on any supplemental provisions which may
2 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
3 of the Court to resolve such disagreement.

4 85. Binding on Successors and Assigns. This Settlement Agreement shall be
5 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
6 previously defined.

7 86. California Law Governs. All terms of this Settlement Agreement and Exhibits
8 hereto shall be governed by and interpreted according to the laws of the State of California.

9 87. Counterparts. This Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them shall be deemed to be one and the
11 same instrument provided that counsel for the Parties shall exchange among themselves original
12 signed counterparts.

13 88. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
14 interpretation, implementation and enforcement of the terms of this Settlement Agreement, and
15 all related orders and judgments. The Parties and their counsel likewise submit to the Court's
16 jurisdiction for purposes of interpreting, implementing, and enforcing the terms embodied in
17 this Settlement Agreement and all related orders and judgments.

18 89. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Settlement Agreement valid and enforceable.

22 90. Plaintiffs' Waiver of Right to Be Excluded and to Object. Plaintiffs agree to
23 sign this Settlement Agreement. and by signing this Settlement Agreement will be bound by its
24 terms. For good and valuable consideration, Plaintiffs further agree that they shall not request
25 to be excluded from the Participating Class and agree not to object to any of the terms of this
26 Settlement Agreement. Any such request for exclusion or objection by Plaintiffs shall be void
and of no force or effect. Efforts by Plaintiffs to circumvent the terms of this paragraph shall

1 be void and of no force or effect. Plaintiffs shall be issued an Individual Settlement Payment
2 at the same time the Claims Administrator issues Individual Settlement Payments for other
3 Participating Class Members.

4 91. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
5 to class certification for purposes of this Settlement only; except, however, that Plaintiffs or
6 Class Counsel may appeal any reduction of the Class Counsel Award or of Class Counsel
7 Representatives Enhancement Payments below the amount provided for herein, and either Party
8 may appeal any Court order that materially alters the Settlement Agreement's terms which costs
9 will be borne solely by the appealing party.

10 92. Class Certification for Settlement Purposes Only. The Parties agree to stipulate
11 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not
12 approved, the stipulation to certification will be void. The Parties further agree that certification
13 for purposes of the Settlement is not an admission that class certification is proper under the
14 standard applied to contested certification motions and that this Settlement will not be
15 admissible in this or any other proceeding as evidence that (i) a class should be certified or
16 (ii) Defendants are liable to Plaintiffs or the Class Members.

17 93. No Admission of Liability. The Parties to the Action understand that the terms
18 of the Settlement Agreement do not in any way imply an admission of liability on the part of
19 Defendants, and that it is being agreed to as an efficient method and compromise in order to
20 resolve disputed claims. This Settlement Agreement may not be used in any proceeding and
21 for any purpose whatsoever as an admission of liability on behalf of Defendants.

22 94. All Terms Subject to Final Court Approval. All amounts and procedures
23 described in this Settlement Agreement herein shall be subject to final Court approval.

24 95. Execution of Necessary Documents. All Parties shall execute all documents
25 reasonably necessary to effectuate the terms of this Settlement Agreement.

26 96. Binding Agreement. The Parties intend that this Settlement shall be fully
enforceable and binding on all parties, and that it shall be admissible and subject to disclosure

1 in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
2 provisions that otherwise might apply under federal or state law.

3 **CLASS REPRESENTATIVES**

4 DATED: August 12/09/2023 __, 2023


Ildiko O'Connor

6 DATED: August __, 2023


Laura Raya

8 DATED: August __, 2023


Dina Shashua

10 **PLAINTIFFS' COUNSELS**

11 DATED: August __, 2023

KITCHIN LEGAL, APC

13 By: _____

PATRICK R. KITCHIN
Attorneys for Plaintiffs
ILDIKO O'CONNOR, LAURA RAYA
AND DINA SHASHUA

15 DATED: August __, 2023

TRIAL LAWYERS FOR JUSTICE

17 By: _____

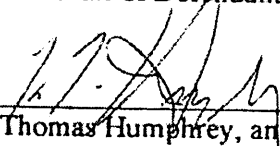
KELLY B. HANKER
Attorneys for Plaintiffs
ILDIKO O'CONNOR, LAURA RAYA
AND DINA SHASHUA

21 **FERGUSON DEFENDANTS**

22 DATED: August __, 2023

Sean Correa,
on behalf of Defendant Ferguson SM, Inc.

25 DATED: August 31, 2023


Thomas Humphrey, an individual

1 in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
2 provisions that otherwise might apply under federal or state law.

3 **CLASS REPRESENTATIVES**

4 DATED: August __, 2023

5 _____
Ildiko O'Connor

6 DATED: August __, 2023

7 _____
Laura Raya

8 DATED: August __, 2023

9 _____
Dina Shashua

10 **PLAINTIFFS' COUNSELS**

11 DATED: August __, 2023

KITCHIN LEGAL, APC

12 By: _____

13 PATRICK R. KITCHIN
14 Attorneys for Plaintiffs
15 ILDIKO O'CONNOR, LAURA RAYA
16 AND DINA SHASHUA

December 13, 2023

17 DATED: ~~August __, 2023~~

TRIAL LAWYERS FOR JUSTICE

18 By: _____

19 *Kelly B. Hanker*
20 KELLY B. HANKER
21 Attorneys for Plaintiffs
22 ILDIKO O'CONNOR, LAURA RAYA
23 AND DINA SHASHUA

24 **FERGUSON DEFENDANTS**

25 DATED: August __, 2023

26 _____
Sean Correa
on behalf of Defendant Ferguson SM, Inc.

DATED: August __, 2023

Thomas Humphrey, an individual

1 DATED: August __, 2023



Sean Correa, an individual

2
3 DATED: August __, 2023

Michael Reyes, an individual

4
5
6
7 **INFINITI DEFENDANTS**

8
9 DATED: August 21, 2023



JACK STRAUGHAN
on behalf of Infiniti HR West, LLC

10
11
12 DATED: August 21, 2023



JACK STRAUGHAN
on behalf of Infiniti HR Service Group LLC

13
14
15 **DEFENDANTS' COUNSELS**

16 DATED: ~~August~~ ^{September 1st} __, 2023

17 DUCKOR METZGER & WYNNE
A PROFESSIONAL LAW CORPORATION

18
19 By: 

TONY R. SKOGEN, JR.
Attorneys for Defendants Ferguson SM,
20 Inc., Sean Correa, Thomas Humphrey
21 and Michael Reyes

22 DATED: August 21, 2023

FISHER & PHILLIPS LLP

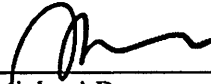
23
24 By: 

LONNIE D. GIAMELA
25 AREEN BABAJANIAN
Attorneys for Defendants Infiniti HR
26 West, LLC and HR Service Group, LLC

1 DATED: August __, 2023

Sean Correa, an individual

2
3 DATED: August 31, 2023


Michael Reyes, an individual

4
5
6
7 **INFINITI DEFENDANTS**

8
9 DATED: August 21, 2023

Jack Straughan
JACK STRAUGHAN
on behalf of Infiniti HR West, LLC

10
11
12 DATED: August 21, 2023

Jack Straughan
JACK STRAUGHAN
on behalf of Infiniti HR Service Group LLC

13
14
15 **DEFENDANTS' COUNSELS**

16 DATED: August __, 2023

DUCKOR METZGER & WYNNE
A PROFESSIONAL LAW CORPORATION

17
18
19 By: _____
TONY R. SKOGEN, JR.
Attorneys for Defendants Ferguson SM,
20 Inc., Sean Correa, Thomas Humphrey
21 and Michael Reyes

22 DATED: August 21, 2023

FISHER & PHILLIPS LLP

23
24 By: _____

LONNIE D. GIAMELA
AREEN BABAJANIAN
Attorneys for Defendants Infiniti HR
25 West, LLC and HR Service Group, LLC
26

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

THIS IS NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT

To All licensed cosmetologists who worked for Ferguson SM, Inc., Infiniti HR West, LLC or HR Service Group, LLC at any time in the state of California from May 1, 2018 through July 31, 2021.

OFFICIAL COURT NOTICE

IMPORTANT PLEASE READ CAREFULLY

**YOU DO NOT NEED TO TAKE ANY ACTION TO BE PAID AS PART OF THIS
SETTLEMENT AND YOU WILL BE PAID YOUR SETTLEMENT AMOUNT
UNLESS YOU EXCLUDE YOURSELF**

WHY IS THIS NOTICE BEING SENT TO YOU?
--

1. This notice is to inform you that a proposed Settlement in the class action lawsuit entitled *Ildiko O'Connor, et al., v. Ferguson SM, Inc., et al.*, Case No. 56-2020-00543357-CU-OE-VTA (the "Lawsuit") has been reached by the Parties and has been granted preliminary approval by the California Superior Court for the County of Ventura (the "Court"). This is **not** a notice of a lawsuit against you. **You are not being sued.**

2. The Court has ordered that this Notice be sent to you because records maintained by Ferguson SM, Inc., Infiniti HR West, LLC and/or HR Service Group, LLC (jointly, "Defendants") indicate that you are a Class Member. The purpose of this notice is to inform you of the proposed Settlement of the Lawsuit. The notice is also intended (1) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you, and (2) to advise you of your rights and options with respect to the settlement.

WHO IS ELIGIBLE TO RECEIVE MONEY FROM THIS SETTLEMENT?

3. The Settlement Class includes all "all licensed cosmetologists who worked for Ferguson SM, Inc., Infiniti HR West, LLC or HR Service Group, LLC, at any time in the state of California from May 1, 2018, through July 31, 2021." ("Class Period").

The Settlement Class will not include any person who previously settled or released any of the Claims covered by the Settlement or any person who was previously paid or received an award through civil or administrative action for any Claim covered by this Settlement.

WHY YOU SHOULD READ THIS NOTICE

4. You should read this Notice because you may be entitled to money under this Settlement and because you will release any claims under the Settlement unless you opt out as provided in this Notice.

WHAT IS A CLASS ACTION?

5. A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One representative plaintiff or multiple representative plaintiffs, also known as a “class representative” or “class representatives” can assert claims on behalf of an entire class or group of people.

SUMMARY OF THE CLAIMS AND ALLEGATIONS

6. On July 17, 2020, Plaintiff Ildiko O'Connor filed a putative class action lawsuit in which she alleged that Ferguson SM, Inc. owes wages, interest and other penalties to its employees, whom she alleged were employed by Defendants as California licensed cosmetologists and who were not paid in compliance with California law. Two amendments of the complaint were subsequently filed, adding two additional representative plaintiffs, Laura Raya and Dina Shashua. Plaintiff's Second Amended Complaint alleges causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Pay for Nonproductive Time and Rest/Recovery Periods for Piece Rate Workers; (4) Violations of Labor Code § 204.11; (5) Failure to Provide Meal Periods; (6) Failure to Provide Rest Periods; (7) Violations of Labor Code § 226; (8) Willful Failure to Pay All Wages Due Upon Termination; (9) Unfair Competition; (10) Declaratory Relief; and (11) Labor Code Private Attorneys General Act..

The Second Amended Complaint asserts that Defendant also violated California Labor Code sections §§ 201, 202, 203, 204, 208, 226(a), 226.7, 510, 558, 1194, 1197, 1197.1, 1199, and 2698 *et seq.*; California Industrial Welfare Commission Wage Order 5-2001; California Code of Regulations, Title 8, section 11000(2). Plaintiffs allege that as a result of the foregoing violations of law, Defendants violated Sections 17200 *et seq.* of the Business & Professions Code and violated the Labor Code Private Attorneys General Act (“PAGA”) under Labor Code §§ 2698 *et seq.* The Second Amended Complaint seeks declaratory relief, as well as recovery of compensatory damages, penalties, interest, and attorneys’ fees and costs.

Defendants deny the allegations in the Lawsuit but preliminarily settled the lawsuit due to the expense, time, and risk associated with protracted litigation and disruption to the Company.

7. On [date of preliminary approval], the Court gave preliminary approval to the settlement of the Lawsuit. The Court has made no opinion on the merits of the Lawsuit.

WHO REPRESENTS THE PARTIES?

8. The following attorneys represent the parties in this Lawsuit:

For the Class:	For Ferguson SM, Inc., Sean Correa, Thomas Humphrey and Michael Reyes ("Ferguson Defendants")
KITCHIN LEGAL, APC Patrick R. Kitchin, Esq. 1999 Harrison St., 18th Floor (#3535) Oakland, CA 94612-4700 Telephone: 415-677-9058 Email: prk@kitchenlegal.com	DUCKOR METZGER & WYNNE A Professional Law Corporation Tony R. Skogen, Jr., Esq. 101 West Broadway, Suite 1700 San Diego, CA 92101 Email: skogen@dmwplc.com
TRIAL LAWYERS FOR JUSTICE Kelly B. Hanker, Esq. 548 Market Street, PMB 66906 San Francisco, CA 94104-5401 Tel: 310-855-3727 Email: kelly@tl4j.com , TeamOjai@tl4j.com	For Infiniti HR, LLC and HR Services Group, LLC ("Infiniti Defendants")
	FISHER & PHILLIPS LLP Lonnie D. Giamela, Esq. Arcen Babajanian, Esq. 444 South Flower Street, Suite 1500 Los Angeles, California 90071 Email: lgiamela@fisherphillips.com Email: ababajanian@fisherphillips.com

The Claims Administrator is:

Phoenix Class Action Administration Solutions
[Address and Phone Number]

WHAT TO DO IF YOU WANT TO RECEIVE PART OF THE SETTLEMENT MONEY

9. You do not need to do anything to receive your payment except inform the Claims Administrator if your mailing address changes. If you move following receipt of this Notice, or if the address to which this Notice was sent is not correct, you must immediately contact the Administrator, whose address and contact information is as follows:

Phoenix Class Action Administration Solutions
[Address and Phone Number]

It is your responsibility to keep your current address on file with the Claims Administrator to ensure receipt of your settlement payment. The Settlement will be paid to Class Members in one payment. The final settlement payment will be made in approximately _____ 2023. Therefore, it is important to update the Claims Administrator with any new address you have, or if you move, so you can be mailed any payments that you are owed from the Settlement.

10. If you are a Class Member, you will be entitled to money from Settlement and, you will be bound by all of the provisions of the Settlement Agreement, including a release of claims that will prevent you from separately suing Defendants unless you timely file a request for exclusion.

WHAT SHOULD YOU DO IF YOU WANT TO PURSUE YOUR OWN CLAIMS SEPARATELY FROM THIS CLASS ACTION?

11. You may retain your right to pursue any claims you may have separately from this Class Action by requesting to be excluded from the Settlement. You may exclude yourself from the Settlement by mailing a letter to the Claims Administrator at the address above, on or before **[EXCLUSION DEADLINE DATE – 45 DAYS FROM DATE OF MAILING]**:

Such written letter requesting exclusion must contain your name, address, telephone number and the last four digits of your social security number, and clearly state that you wish to be excluded from the class. The request for exclusion must be returned by mail to the Settlement Administrator, and must be postmarked on or before **[EXCLUSION DEADLINE DATE – 45 DAYS FROM DATE OF MAILING OF NOTICE]**.

12. If you choose to exclude yourself, you will not receive any money from the settlement, and you will not have any right to object to the Settlement. Any request for exclusion submitted after **[DEADLINE]** will be disregarded, and if you submit a late request for exclusion, you will not be able to pursue any claims separately from the Class Action or as part of the Lawsuit.

IF YOU DO NOT AGREE WITH THE SETTLEMENT

13. **IF YOU DO NOT AGREE WITH THE SETTLEMENT**, you can submit an Objection to the Settlement. However, if the Court approves the Settlement, you will still be bound by the terms of the Settlement. You may both object to the settlement and participate in it.

14. To object, you must submit a written objection by **[INSERT DATE – 45 DAYS FROM DATE OF MAILING OF NOTICE]** by mailing it to Phoenix Class Action Administration Solutions at the address above. Your objection should clearly explain why you object to the Settlement, stating each specific reason in support of your objection and any legal support for each objection. Your objection must also state whether you (or someone on your behalf) intend to appear at the Final Approval Hearing. Your objection must state your full name, address and the dates and position of your work for Defendants. **DO NOT TELEPHONE THE COURT.**

15. To appear at the Final Approval Hearing in Court, you must first file a Notice of Intention to Appear at the Final Approval Hearing, with the Ventura County Superior Court.. You can enter an appearance in *propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you or your attorney must also file a Notice of Intention to Appear with the Clerk of the Court of the Ventura County Superior Court located at 800 South Victoria Avenue, Ventura, California 93009 and mail copies to each of the attorneys listed above in Paragraph 8. no later than **[DATE 45 DAYS FROM DATE OF MAILING]**. To ensure that your request to appear at the hearing is properly processed by the Court, the case name and case number stated in Paragraph 1 of this Notice must be on your notice of Intention to Appear at Final Approval Hearing.

16. If you object to the Settlement, you will remain a member of the Settlement Class and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Settlement Class Member who does not object. ANY MEMBER OF THE SETTLEMENT CLASS WHO DOES NOT OBJECT TO THE PROPOSED SETTLEMENT NEED NOT APPEAR AT THE SETTLEMENT HEARING.

SUMMARY OF THE SETTLEMENT AGREEMENT

17. The description below is a summary of the terms of the Settlement. You may obtain more information about the proposed Settlement by contacting any of the attorneys listed above in Paragraph 8 or by reviewing the Settlement Agreement that is on file with the Court and lodged on the case website at www._____. Please check the case website frequently for updates.

18. Settlement Fund, Net Settlement Amount, and General Terms. Defendants and the named Plaintiffs have agreed that, in order to resolve this action, the Ferguson Defendants will pay \$85,000.00 and the Infiniti Defendants will pay \$90,000.00 ("Settlement Fund") in exchange for the release of all claims against them. Subject to the Court's approval, this amount will be used to pay: (1) the awards to Class Members that do not choose to exclude themselves from the Lawsuit ("Participating Class Members"); (2) an amount not to exceed \$15,000 in total to the Named Plaintiffs for their services and in exchange for individual general releases; (3) class counsel's attorney's fees, up to a maximum amount of \$58,332.00; (4) class counsel's actual costs of approximately \$18,617.00; (4) a payment of \$5,625.00 to the Labor Workforce and Development Agency; (5) a payment of \$1,875.00 to the PAGA Aggrieved Employees; and (6) the costs of settlement administration (\$8,000.00).

Subject to the Court's approval, the estimated Net Settlement Amount, including civil penalties under the PAGA, is estimated to be \$67,551.00 [Gross Settlement Amount (\$175,000) – Claims Administration Costs (\$8,000.00) – Three Class Representative Enhancement Payments (\$15,000.00) – Class Counsel Award for Fees (\$58,332.00) – Class Counsel Award for Costs (\$18,617.00) – LWDA Payment (\$5,625.00) – PAGA Aggrieved Employees Payment (\$1,875.00)].

19. Payment Formula. Class Members who do not file a Request for Exclusion will be entitled to a gross award ("Individual Settlement Payment"). Each Individual Settlement Payment (before deduction for payroll taxes) shall be determined as follows:

Subject to Approval of the Court, Participating Class Members will be entitled to a proportional share of the Net Settlement Amount (estimated to be \$67,551.00), based on the estimated proportional number of weeks worked by each Class Member during the Class Period and whether the Class Member is also a PAGA Aggrieved Employee.

A. If you were a licensed cosmetologists who worked for Defendants during the Class Period, the estimated gross amount that you will receive is included in the attached Settlement Award Form. The gross amount on the Settlement Award form represents an estimate, is subject to Court approval and could change. The Gross share of the Net Settlement Amount for each Class Member is determined by multiplying the estimated

number of workweeks each Class Member worked while employed by Defendants during the Class Period times the Workweek Dollar Value. The Workweek Dollar Value will be determined by dividing the total amount available to be paid to the Class Members (excluding the \$1,875.00 available to PAGA Aggrieved Employees) by the total estimated number of workweeks worked by the Class Members (estimated to be _____). This amount is estimated to be \$_____ for each week worked. \$_____ ÷ _____ workweeks = \$_____ for each estimated workweek. If you do not agree with the number of workweeks noted on the enclosed Settlement Award Form, the Settlement Award Form contains instructions on how to contest any of the information provided.

B. Class Members who worked for Defendants between June 28, 2020, and July 31, 2021, also will be entitled to a pro rata share of the PAGA civil penalties allocated to the PAGA Aggrieved Employees based on the number of workweeks worked during this time period.

20. Payroll Tax Withholding. Twenty percent (20%) of each gross Individual Settlement Payment shall be comprised of wages subject to payroll taxes and eighty percent (80%) shall be comprised of non-wage income. The Claims Administrator shall withhold the employee's share of payroll taxes from the portions of the Individual Settlement Payments attributable to wage income. Defendants' share of payroll taxes owing on the portion of the Individual Payments that is allocated to wages shall be paid out of gross settlement.

21. Distribution Schedule. Subject to approval of the Court, the Settlement Awards will be made by check. The Settlement Fund will be funded by Defendants and all settlement payments shall be made as follows:

- A. No Later than 15 days after the Effective Date of the Settlement, the Infiniti Defendants will wire transfer their total portion of the Settlement Amount, equal to Ninety Thousand Dollars and No/Cents (\$90,000.00), to the Claims Administrator.
- B. No Later than 15 days after the Effective Date of the Settlement, the Ferguson Defendants will wire transfer one-half of their Settlement Amount, equal to Forty-Two Thousand and Five Hundred Dollars and No/Cents (\$42,500.00), to the Claims Administrator.
 - i. This initial portion of the Gross Settlement Amount (\$132,500.00) shall be distributed as follows: (1) 100% of the approved enhancement payments to the Named Plaintiffs (\$15,000.00); (2) 100% of the approved costs to Class Counsels (\$18,617.00); (3) \$23,832.00 out of \$58,332.00 (the total approved attorneys' fees); and (4) \$5,625.00 to the LWDA, with the remainder to be paid to the Settlement Class as the complete Class payment (\$69,426.00), including \$1,875.00 to be paid to the PAGA Aggrieved Employees).
- C. No later than six months after the Effective Date, the Ferguson Defendants' shall transfer the second and remaining settlement payment of Forty-Two Thousand and Five Hundred Dollars and No/Cents (\$42,500.00) to the Claims Administrator.

This portion of the Gross Settlement Amount shall be distributed as follows: remaining approved attorneys' fees (\$34,500.00), and 100% of the approved Claims Administrator fees (\$8,000.00).

22. Payment of Attorneys' Fees and Costs for Class Counsel. Class Counsel will ask for fees of no more than one-third of the Gross Settlement Amount (\$58,332.00) and actual costs incurred: approximately \$18,617.00. The actual amounts awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable. This means that Class Counsel's fees and costs will be paid out of the settlement, and Class members will not have to make any individual payments to the lawyers.

EFFECT OF THE SETTLEMENT-RELEASE OF ALL CLAIMS

23. Release of Claims for Class Members. Aside from those who submit a valid and timely request for exclusion from the settlement, Plaintiffs and each member of the Settlement Class will release Defendants and any past, present or future parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, owners, shareholders, insurers, reinsurers, assigns, officers, directors and attorneys thereof (collectively the "Released Parties"), from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action arising out of the allegations and claims asserted in the operative Complaint, including without limitation to, any and all claims for alleged unpaid wages (including but not limited to minimum, overtime, final pay upon termination), alleged unpaid meal and rest period premiums, failure to pay timely wages, failure to maintain required records, itemized wage statements, failure to pay sick leave; and penalties arising under the California Labor Code (including PAGA), California Civil Code, or Business & Professions Code Section 17200, and claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit claimed on account of the allegations asserted in the operative Complaint. Released Claims include all claims arising under the California Labor Code sections 201, 202, 203, 204, 204.11, 208, 226, 226(a), 226.2, 226.7, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2698, 2699, 2699.5, 2802, and 2810.5; the Wage Orders of the California Industrial Welfare Commission ("IWC") Wage Orders 5-2001. This release shall apply to all claims arising at any point during the Class Period.

24. PAGA Aggrieved Employees Released Claims. Plaintiffs and each member of the PAGA Aggrieved Employees will release Defendants and any past, present or future parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, owners, shareholders, insurers, reinsurers, assigns, officers, directors and attorneys thereof (collectively the "Released Parties"), from any and all claims for civil penalties arising out of the allegations and claims asserted in the operative Complaint and LWDA letters submitted on July 29, 2020 and September 25, 2020 (PAGA claim number LWDA-CM-800523-20), including without limitation to, any and all underlying claims for alleged unpaid wages (including but not limited to minimum, overtime, final pay upon termination), alleged unpaid meal and rest period premiums, failure to pay timely wages, failure to maintain required records, itemized wage statements, failure to pay sick leave. Released Claims under PAGA include all claims arising under the California Labor Code sections 201, 202, 203, 204, 204.11, 208, 226, 226(a), 226.2, 226.7, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2698, 2699, 2699.5, 2802, and 2810.5; the Wage Orders of the California Industrial Welfare Commission ("IWC") Wage Orders 5-2001. This release, subject to the Court's final approval of

the Class Settlement and full payment of all settlement funds, shall apply to all claims arising at any point during the PAGA Aggrieved Employee period..

25. Conditions of the Settlement. This Settlement is conditioned upon the Court entering a judgment and order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class and that judgment and order having become final.

FINAL SETTLEMENT APPROVAL HEARING

26. The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held on _____, 2023, at _____ in Department ____ of the Ventura County Superior, Civic Center Courthouse, 800 South Victoria Avenue, Ventura, California 93009 . The Settlement Hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, but you may if you choose.** You may also enter an appearance in through your own attorney, if you desire, as explained in Paragraph 15.

27. Any Class Member who does not object in the manner provided in Paragraph 14 above shall be deemed to have approved the Settlement and to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

NO RETALIATION

28. Applicable law prohibits Defendants from retaliating against employees who exclude themselves or object to this Settlement.

WHAT TO DO IF YOU NEED ADDITIONAL INFORMATION

29. This notice only summarizes this Lawsuit, the settlement, and related matters. For more information about the Settlement or if you have any questions regarding the Settlement, you may contact Counsel for either party at the following addresses and telephone numbers:

For the Class:	For Ferguson SM, Inc., Sean Correa, Thomas Humphrey and Michael Reyes ("Ferguson Defendants")
KITCHIN LEGAL, APC Patrick R. Kitchin, Esq. 1999 Harrison St., 18th Floor (#3535) Oakland, CA 94612-4700 Telephone: 415-677-9058 Email: prk@kitchenlegal.com	DUCKOR METZGER & WYNNE A Professional Law Corporation Tony R. Skogen, Jr., Esq. 101 West Broadway, Suite 1700 San Diego, CA 92101 Email: skogen@dmwplc.com
TRIAL LAWYERS FOR JUSTICE Kelly B. Hanker, Esq. 548 Market Street, PMB 66906 San Francisco, CA 94104-5401 Tel: 310-855-3727 Email: kelly@tl4j.com , TeamOjai@tl4j.com	For Infiniti HR, LLC and HR Services Group, LLC ("Infiniti Defendants")
	FISHER & PHILLIPS LLP Lonnie D. Giamela, Esq. Areen Babajanian, Esq. 444 South Flower Street, Suite 1500 Los Angeles, California 90071 Email: lgiamela@fisherphillips.com Email: ababajanian@fisherphillips.com

You may also contact the Settlement Administrator at:

Phoenix Claims Administration Solutions
[Address Phone Number]

Do not contact the Court about this matter.

EXHIBIT B

SETTLEMENT AWARD FORM

**YOU DO NOT HAVE TO SUBMIT A RESPONSE TO THIS FORM TO SHARE
IN THE SETTLEMENT.**

Name & Address of Class Member

The records of Defendants Ferguson SM, Inc., Infiniti HR West, LLC and/or HR Services Group, LLC ("Defendants") reflect the following:

During the Class Period (defined as May 1, 2018 through July 31, 2021), you worked for one or more of the Defendants in California as a licensed cosmetologist. Defendants' records indicate that you worked ____ weeks as a cosmetologist. Based on the foregoing information, you are estimated to receive a gross award of \$_____ from this Settlement from which some payroll taxes will be withheld. The foregoing amount is an estimated amount based on current projections and is subject to Court approval and subject to revision.

Procedure for Disputing Information

If you dispute the number of hours that you worked as a cosmetologist for one or more of the Defendants in the State of California between May 1, 2018 and July 31, 2021, you must send a letter to the Claims Administrator on or before [Response Deadline] stating the reasons why you dispute the number of workweeks reflected in Defendants' records and provide any supporting documentation that you have (*e.g.* any paystubs). The information you provide should include the number of workweeks you claim you performed work as a cosmetologist in the State of California between May 1, 2018 through July 31, 2021. If you fail to dispute the above information by [Response Deadline], you will be foreclosed from disputing the foregoing information provided by Defendants.

Any disputes and supporting documentation must be postmarked by [Response Deadline] and should be sent to the Claims Administrator at the following address:

The Claims Administrator is:
Phoenix Class Action Administration Solutions
[Address and Phone Number]

The Claims Administrator will review your dispute and all supporting documentation that you provide. After carefully considering the information you submit, and the information from Defendants' records, the Settlement Administrator will make a determination about your dispute and determine how many workweeks you worked for one or more of the Defendants during the Class Period, which resolution shall be conclusive, final and binding.

EXHIBIT 2

1 Patrick R. Kitchin, Esq. (State Bar No. 162965)

2 **KITCHIN LEGAL, APC**

3 1999 Harrison Street, 18th Floor, #3535

4 Oakland, CA 94612

5 Telephone: (415) 677-9058

6 Email: prk@kitchinlegal.com

7 Kelly B. Hanker, Esq. (State Bar No. 257596)

8 **TRIAL LAWYERS FOR JUSTICE**

9 877 S. Victoria Ave., Suite 201

10 Ventura, CA 93003

11 Tel: 310-855-3727

12 Fax: 310-855-3595

13 Email: KELLY@TL4J.COM, TEAMOJAI@TL4J.COM

14 Attorneys for Plaintiffs

15 ILDIKO O'CONNOR, LAURA RAYA,

16 and DINA SHASHUA

17
18 SUPERIOR COURT OF CALIFORNIA
19 FOR THE COUNTY OF VENTURA

20 ILDIKO O'CONNOR, an individual and on
21 behalf of all others similarly situated,
22 LAURA RAYA, an individual and on
23 behalf of all others similarly situated, and
24 DINA SHASHUA, an individual and on
25 behalf of all others similarly situated,
26 Plaintiffs,

27 v.

28 FERGUSON SM, INC., a California
29 Corporation; SEAN CORREA, an
30 individual; THOMAS HUMPHREY, an
31 individual; MICHAEL REYES, an
32 individual; INFINITI HR WEST, LLC, an
33 Arizona Limited Liability Company, HR
34 SERVICE GROUP, LLC, a Maryland
35 Limited Liability Company, and DOES 3-
36 50, inclusive,
37 Defendants.

CASE NO.: 56-2020-00543357-CU-OE-VTA

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

Date: 1/16/2024

Time: 8:30 a.m.

Dept.: 40

Hon. Judge: Judge Mark S. Borrell

Complaint Filed: July 17, 2020

SAC Filed: Nov. 24, 2020

Trial Date: None set

38
39 **ORDER**

40 On [date of preliminary approval], this Court conducted a hearing on the Motion for
41 Preliminary Approval of Class Action Settlement. Patrick R. Kitchin, Esq., of Kitchin Legal, APC,
42 and Kelly B. Hanker, Esq. of Trial Lawyers for Justice appeared on behalf of Plaintiffs Ildiko
43 O'Connor, Laura Raya And Dina Shashua ("Plaintiffs"). Tony S. Skogen, Esq., of Duckor Metzger
44 & Wynne, appeared on behalf of Defendants Ferguson SM, Inc., Sean Correa, Thomas

1
2 Humphrey and Michael Reyes ("Ferguson Defendants"). Lonnie D. Giamela, Esq., and Areen
3 Babajanian, Esq., of Fisher Philips, appeared on behalf of Infiniti HR West, LLC, and HR Service
4 Group, LLC ("Infiniti Defendants").

5 Having considered the Joint Stipulation of Class Action Settlement and Release
6 ("Settlement Agreement" or "Settlement"), the Motion for Preliminary Approval of Class Action
7 Settlement and all of the legal authorities and documents submitted in support thereof and **GOOD**
8 **CAUSE** appearing, **IT IS HEREBY ORDERED** that the Motion for Preliminary Approval of
9 Class Action Settlement is **GRANTED**, subject to the following findings and orders:

10 1. This Order incorporates by reference the definitions in the Settlement Agreement,
11 and all terms defined therein shall have the same meaning as set forth in the Settlement Agreement.

12 2. The Settlement Class shall conditionally be certified for settlement purposes only
13 and shall include "all licensed cosmetologists who worked for the Ferguson Defendants or the
14 Infiniti Defendants at any time in the state of California from May 1, 2018, through July 31, 2021
15 ("Class Period"), except that the Settlement Class will not include any person who previously
16 settled or released any of the Claims covered by this Settlement or any person who was previously
17 paid or received an award through any civil or administrative action for any Claim covered by this
18 Settlement.

19 3. PAGA Aggrieved Employees include all licensed cosmetologists who worked for
20 the Ferguson Defendants or the Infiniti Defendants, at any time in the state of California from June
21 28, 2019 through July 31, 2021.

22 4. The class action settlement set forth in the Settlement Agreement, entered into
23 among the parties and their counsel, is preliminarily approved as it appears to be proper, to fall
24 within the range of reasonableness, to be the product of arm's-length and informed negotiations, to
25 treat all Class Members fairly, and to be presumptively valid, subject only to any objections that
26 may be raised at the Final Approval Hearing.

27 5. The Court approves, as to form and content, the proposed Notice of Class Action
Settlement ("Notice") and Settlement Award Form. The Notice and Settlement Award Form shall

1 be sent in English. The Court directs the mailing, by First-Class U.S. mail, and by email of the
2 Notice and Settlement Award Form to Class Members, in accordance with the schedule set forth
3 below. The Court finds that the method selected for communicating the Settlement to Class
4 Members is the best notice practicable under the circumstances, constitutes due and sufficient
5 notice to all persons entitled to notice, and thereby satisfies due process.

6 6. The named Plaintiffs are suitable class representatives and are appointed Class
7 Representatives for the Settlement Class.

8 7. Patrick R. Kitchin, of Kitchin Legal, APC, and Kelly B. Hanker, of Trial Lawyers
9 for Justice, have demonstrated to the Court's satisfaction that they are experienced in class action
10 litigation and will adequately represent the interests of all Class Members. Accordingly, the Court
11 appoints Kitchin Legal, APC and Trial Lawyers for Justice as Class Counsel.

12 8. The Court approves Phoenix Class Administration Solutions as the Claims
13 Administrator.

14 9. Through and including the date set for final approval to facilitate the administration
15 of this Settlement, the Court hereby enjoins Plaintiffs and all Class Members from filing or
16 prosecuting any claims, suits or administrative proceedings (including filing claims with the
17 California Division of Labor Standards Enforcement) regarding claims released by the Settlement
18 unless such individual Class Members have filed valid exclusion requests with the claims
19 administrator.

20 10. The Court grants the dismissal of Michael Reyes, without prejudice.

21 11. The following dates shall govern for the purposes of this Settlement:

22 23 24 25 26 27	/date/ (or not more than fourteen calendar days after preliminary approval)	Defendants shall provide to the Claims Administrator a list, formatted in Microsoft Office Excel, of each Class Member's full name; most recent mailing address, email address and telephone number; social security number; dates of employment in
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	California during the Class Period and number of workweeks worked by Class Members; and any other relevant information needed to calculate settlement payments. This list shall be confidential and not shared with Plaintiffs or their counsels.
<i>/date/</i> (or not more than twenty calendar days after receipt of the Class List)	Last day for Claims Administrator to mail Notice to Class Members and to establish a case website.
<i>/date/</i> (or not more than forty-five calendar days after Claims Administrator mails the Notice)	Last day for Class Members to opt out and to serve objections to the Settlement.
<i>/date/</i>	Plaintiff files Motion for Final Approval of Class Action Settlement and Motion for a Class Representative Enhancement Payment and an Award or Attorneys' Fees and Costs.
<i>/date/</i> , <i>/time/</i> (not less than thirty days after response deadline)	Hearing on Motion for Final Approval of Class Action Settlement and Motion for a Class Representative Enhancement Payments and an Award or Attorneys' Fees and Costs.

IT IS SO ORDERED.

Dated: _____

Ventura County Superior Court Judge