

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BRANDEN BAGGOT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

FOTO-KEM INDUSTRIES, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV31051

[Hon. William F. Highberger]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement; Memorandum of Points and
Authorities; Declaration of Larry W. Lee;
Declaration of William L. Marder; Declaration
of Branden Baggot; [Proposed] Order]*

Date: June 4, 2021
Time: 1:30 p.m.
Department: 10

Complaint Filed: January 25, 2021

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff, Branden Baggot. I make this declaration
4 on the basis of my own personal knowledge, except as to those matters stated on information and belief
5 and, as to those matters, I believe them to be true. If called as a witness, I could testify competently as to
6 the facts stated in this declaration.

7 2. On August 17, 2020, Plaintiff initiated a class action against Defendant, Foto-Kem
8 Industries, Inc., by filing the Complaint in the Superior Court of the State of California for the County of
9 Los Angeles. On behalf of all current and former non-exempt employees in California since April 6,
10 2016, who earned non-discretionary incentive wages like shift premiums in workweeks that they took
11 paid sick leave, Plaintiff sued to remedy Defendant's failure to pay sick pay wages at the regular rate of
12 pay. In the Complaint, Plaintiff also alleged representative claims pursuant to the Labor Code Private
13 Attorneys General Act of 2004 ("PAGA"). As a proxy for the State of California, Plaintiff sued to
14 penalize the Labor Code violations resulting from Defendant's underpayment of sick pay wages since
15 April 6, 2019.

16 3. The Complaint alleges that Defendant violated the Labor Code by failing to pay sick pay
17 wages at the regular rate of pay by no later than the payday for the next regular payroll period after sick
18 leave was taken or upon termination of employment. Specifically, the Complaint alleges that Plaintiff
19 and other employees routinely earned shift premium wages, thus increasing employees' regular rate of
20 pay. It alleges that when sick leave was taken in workweeks that employees earned shift premium
21 wages, sick pay wages were paid at employees' base rate of pay rather than the regular rate of pay. The
22 Complaint also alleges that Plaintiff and other employees were not paid their underpaid sick pay wages
23 at the ends of their employments. On that basis, it alleges that Defendant violates Labor Code sections
24 201-204 and 246.

25 4. After Plaintiff filed the Complaint, the Parties agreed to attempt to resolve this matter at
26 private mediation. In connection therewith, Defendant produced data relating to the number of
27 individuals that earned shift premium wages in workweeks that they also took paid sick leave, the
28 number of pay periods impacted, the number of hours of PTO the individuals used, and the average

1 earnings for such individuals, among other things, which allowed Plaintiff to conduct a full damage
2 analysis.

3 5. Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
4 face potential liability for underpaid sick pay wages and penalties in the amount of approximately
5 \$1,640,372.80. Approximately \$1,459,995.11 of the potential liability resulted from waiting time
6 penalties.¹ Approximately \$38,177.69 of the potential liability resulted from damages or restitution for
7 underpaid sick pay wages, and approximately \$142,200 of the potential liability resulted from either
8 statutory or civil penalties. Defendant contended that all potential liability was subject to defenses and
9 that potential liability for waiting-time penalties was subject to additional defenses based on the facts
10 (i.e., furloughs) or law (i.e., good faith defenses).

11 6. On January 18, 2021, the Parties attended mediation with Gig Kyriacou, an experienced
12 mediator for labor and employment matters, including class and representative wage-hour matters.
13 While the Parties disagree on the law, each Party recognized in negotiations that, if taken to trial, the
14 other Party would at least have reasonable arguments, such that the Gross Settlement Value to which the
15 Parties ultimately agreed at mediation was reasonable. As a result of the mediation, the Parties were
16 ultimately able to agree to the settlement terms in the Joint Stipulation of Class Action and PAGA
17 Settlement (“Agreement”). Attached as **Exhibit A** is a true and correct copy of the Agreement.

18 7. The Agreement provides for \$350,000 as the Gross Settlement Amount. Plaintiff’s
19 counsel’s costs will be no more than \$15,000, although the final amount is still being calculated. I
20 requested a quote from Phoenix Settlement Administrators for administration of this settlement. Based
21 on the information in the Agreement, the quote was \$9,000. Pursuant to the terms of the Agreement, it is
22 estimated that no less than approximately \$192,000 will be available to be distributed to Settlement
23 Class Members and PAGA Employees. Pursuant to the terms of the Agreement, each Class Member, on
24 average, is estimated to receive approximately \$457.84 per person. The amount paid on average to each
25 Class Member may increase, depending on how many Class Members opt out of the settlement. The
26 amount actually paid to any Class Member may increase or decrease depending on the number of pay
27

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 periods during the Class Period that each Settlement Class Member was paid shift premium wages and
2 took paid time off during the same pay period.

3 8. I believe that a class can be certified. I also believe that the terms of the Agreement are
4 fair, reasonable, and adequate and in the best interests of the Class and Defendant in light of all known
5 facts and circumstances and the expenses and risks inherent in litigation, including the uncertainty and
6 risks to the Class from the possibility of not prevailing on one or more of the causes of action or theories
7 alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals.

8 9. The Gross Settlement Amount secures almost two times Defendant's potential non-
9 waiting time penalty liability. Even when factoring in waiting time penalties, the Gross Settlement
10 Amount secures more than 21% of Defendant's potential liability for the class. When considering
11 disputed factual and legal issues involved, the risks attending further prosecution, and the substantial
12 benefits to be received pursuant to the compromise and settlement of the litigation, I believe that
13 settlement on the terms in the Agreement is appropriate and in the best interests of the Parties and that it
14 is fair and reasonable.

15 10. I am one of the primary attorneys on this matter. My qualifications are as follows: After
16 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
17 2004 with concentrations in Management and Human Resources, I continued studying labor and
18 employment issues by enrolling in post-graduate education at the School of Labor and Employment
19 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
20 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
21 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
22 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

23 11. Upon graduating from law school in 2008, I practiced labor and employment law at
24 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
25 practice focused on wage and hour class, collective, and representative actions, with a particular
26 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 ("PAGA").
27 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
28 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*

1 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
2 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
3 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.
4 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
5 also able to obtain experience litigating representative claims or wage and hour matters through trial and
6 appeal. *E.g., Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
7 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
8 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014)
9 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
10 collective action with involving deductions from final paychecks). I also litigated class certification on
11 numerous matters, including matters before this court. *E.g., Martinez v. Guess?, Inc.*, Los Angeles
12 Superior Court Case No. BC 498326 (denial of class certification on behalf of retail employees alleging
13 off-the-clock work).

14 12. Based on my experience in wage and hour class, collective, and representative actions, I
15 have been interviewed and quoted in articles published in the Northern California Record about
16 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
17 hour class and representative action litigation, including articles on California kin care requirements in
18 *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of California
19 employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break laws in
20 *California Transportation News*, a publication of the California Construction Trucking Association.

21 13. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
22 which also focuses primarily on employment law. I have handled a number of wage and hour class and
23 representative actions and continue litigating such matters in numerous Superior Courts and District
24 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
25 mediated the resolution of dozens of wage and hour class, collective, and representative actions.

26 14. My co-counsel and I will adequately represent the Class Members in this action.
27 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
28 conclusion.

15. I understand that the attorneys' fees awarded in this action will be split 65% to Diversity Law Group, P.C. and 35% to Polaris Law Group.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of May 2021, at Hillsborough, California.


Simon L. Yang

EXHIBIT A

DIVERSITY LAW GROUP, P.C.
 Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
 Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
 515 South Figueroa Street, Suite 1250
 Los Angeles, California 90071
 Telephone: (213) 488-6555
 Facsimile: (213) 488-6554

POLARIS LAW GROUP
 William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
 501 San Benito Street, Suite 200
 Hollister, California 95023
 Telephone: (831) 531-4214
 Facsimile (831) 634-0333

Attorneys for Plaintiff and Proposed Class

LANDEGGER BARON LAW GROUP
 Alfred E. Landegger (State Bar No. 84419)
alfred@landeggeresq.com
 Roxana E. Verano, Esq. (State Bar No. 186837)
roxana@landeggeresq.com
 Evelyn Zarraga, Esq. (State Bar No. 296835)
evelyn@landeggeresq.com
 15760 Ventura Blvd., Suite 1200
 Encino, California 91436
 Telephone: (818) 986-7561
 Facsimile: (818) 986-5147

Attorneys for Defendant

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

BRANDEN BAGGOT, as a private attorney
 general and as an individual and on behalf of all
 others similarly situated,

Plaintiff,

vs.

FOTO-KEM INDUSTRIES, INC., a California
 corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV31051

[Hon. William F. Highberger, Department 10]

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

Complaint Filed: August 17, 2020

Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff, Branden Baggot, on the one hand, and Defendant, Foto-Kem Industries, Inc., on the other hand.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” (or “Class Action” or “Lawsuit”) means the civil lawsuit originally entitled *Branden Baggot v. Foto-Kem Industries, Inc.*, filed on or about August 17, 2020, in the Superior Court of the State of California for the County of Los Angeles designated as Case No. 20STCV31051 and the July 24, 2020 notice of Labor Code violations (“Notice to the LWDA”) sent by Plaintiff to the Labor & Workforce Development Agency (“LWDA”).

1.2. Agreement. “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

1.3. Attorneys’ Fees and Costs Award. “Attorneys’ Fees and Costs Award” means the Court approved attorneys’ fees and costs payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and costs associated with the litigation and resolution of the Action (excluding third-party Settlement Administration Costs which are separately identified and defined below).

1.4. Class Counsel. “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

1.5. Class Member. “Class Member” means any person whom Defendant employed in California as a non-exempt employee who earned shift premium wages in the same workweek he/she took paid time off (“PTO”) at any time during the Class Period and did not execute a severance agreement at any time during the Class Period. Based on data available at mediation, Defendant represents that there are 419 Class Members.

1.6. Class Notice. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.7. Class Period. “Class Period” means April 6, 2016, through January 18, 2021.

1 **1.8. Class Representative Award.** “Class Representative Award” means the Court approved
2 payment to Plaintiff from the Gross Settlement Amount in recognition of his efforts and work in
3 prosecuting the Action on behalf of Class Members and additional general release.

4 **1.9. Court.** “Court” means the Superior Court of California for the County of Los Angeles,
5 the Honorable William F. Highberger presiding. Court shall also mean any other Court that acquires
6 proper jurisdiction of this Action.

7 **1.10. Defendant.** “Defendant” means Foto-Kem Industries, Inc.

8 **1.11. Defendant’s Counsel.** “Defendant’s Counsel” means Alfred J. Landegger, Roxana E.
9 Verano, and Evelyn Zarraga of Landegger Rivas Verano & Davis, ALC.

10 **1.12. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
11 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the
12 day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if
13 any appeals of the Final Approval Order are filed, the day following the expiration of time to further
14 appeal an order affirming the Final Approval Order.

15 **1.13. Final Approval Order.** “Final Approval Order” means an order granting final approval
16 of a class action and PAGA settlement.

17 **1.14. Individual Settlement Payment.** “Individual Settlement Payment” means each
18 Settlement Class Member’s potential payment from the Net Settlement Amount.

19 **1.15. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
20 settlement amount—inclusive of any Attorneys’ Fees and Costs Award, Class Representative Award,
21 Settlement Administration Costs, PAGA Payment, and allocations for Individual Settlement Payments—
22 that Defendant may be required to pay in connection with a Final Approval Order (but not including the
23 employer’s shares of payroll taxes to be paid on any payments characterized as wages).

24 **1.16. Net Settlement Amount.** “Net Settlement Amount” means the portion of the Gross
25 Settlement Amount available for allocation to Settlement Class Members for Individual Settlement
26 Payments and employees’ share of payroll taxes, after deductions for the Attorneys’ Fees and Costs
27 Award, Class Representative Award, Settlement Administration Costs, and PAGA Payment.
28

1 **1.17. PAGA Employee.** “PAGA Employee” means any Class Member employed at any time
2 during the period from April 6, 2019 through January 18, 2021 (the “PAGA Period”) and who earned
3 shift premium wages in the same workweek he/she took PTO at any time during the PAGA Period.

4 **1.18. PAGA Payment.** “PAGA Payment” means the Court approved payment to the Labor &
5 Workforce Development Agency of 75% of the PAGA Penalty Fund.

6 **1.19. PAGA Penalty Fund.** “PAGA Penalty Fund” means the portion of the Gross Settlement
7 Amount allocated to PAGA penalties.

8 **1.20. Parties.** “Parties” means Plaintiff and Defendant, and each may be individually referred
9 to as “Party”.

10 **1.21. Plaintiff.** “Plaintiff” means Branden Baggot.

11 **1.22. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
12 preliminary approval of a class action and PAGA settlement.

13 **1.23. Released Party.** “Released Party” means Defendant and any of its respective present and
14 former owners, officers, directors, employees, shareholders, managing agents, trustees, representatives,
15 attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors,
16 assigns, and any individual or entity that could be jointly liable with Defendant.

17 **1.24. Settlement Administrator.** “Settlement Administrator” means the third-party settlement
18 administrator approved by the Court to administer the settlement.

19 **1.25. Settlement Administration Costs.** “Settlement Administration Costs” means the Court
20 approved payment from the Gross Settlement Amount to the Settlement Administrator for administering
21 the settlement, which includes but is not limited to printing, distributing, or tracking Class Notices,
22 processing any required tax payments or reportings, providing any required tax forms, distributing
23 payments pursuant to a Final Approval Order, and providing necessary reports or declarations, as
24 requested by the Court or Class Counsel and Defendant’s Counsel.

25 **1.26. Settlement Class Member.** “Settlement Class Members” means any and all Class
26 Members who do not exclude themselves from the settlement by complying with the procedures set
27 forth in the Class Notice to opt out of the settlement.
28

1 **2. RECITALS**

2 **2.1. Initiation of Action.** On or about August 17, 2020, Plaintiff filed the original complaint
3 initiating the Action on behalf of a putative class of “all current and former non-exempt employees of
4 Defendants in the State of California since April 6, 2016, who earned non-discretionary incentive wages,
5 including, but not limited to, shift premium wages, in workweeks that they took paid sick leave.” The
6 Action pursued class action and representative action claims under the Labor Code Private Attorneys
7 General Act of 2004 (“PAGA”) for Defendant’s alleged failure to pay sick pay at the regular rate of pay
8 by no later than the payday for the next regular payroll period after sick leave was taken or upon
9 termination of employment.

10 **2.2. Class Counsel’s Investigation.** On or about September 3, 2020, the Court stayed the
11 Action. Thereafter, the Parties met and conferred about Plaintiff’s allegations and Defendant’s defenses.
12 Plaintiff and Defendant met and conferred on numerous occasions, discussed Plaintiff’s claims
13 described above, discussed Defendant’s defenses, and requested and exchanged informal discovery to
14 assist the Parties explore the possibility of a mediated resolution. In addition to the exchange of
15 information and documentation pursuant to informal discovery from Defendant, Class Counsel
16 continued investigating the claims against Defendant in the Action. Class Counsel also analyzed any and
17 all applicable defenses raised by Defendant. On October 14, 2020, the Parties submitted a Joint Initial
18 Status Conference Class Action Response Statement, which described informal discovery the Parties
19 would conduct in preparation for an early mediation on January 18, 2021.

20 **2.3. Mediation and Settlement.** On or about January 18, 2021, the Parties attended a
21 mediation before Gig Kyriacou, an experienced mediator knowledgeable of both the wage and hour laws
22 and class and representative claims at issue in the Action. With the mediator’s assistance and based upon
23 the mediator’s proposal, the Parties agreed to a settlement, which was negotiated in light of all known
24 facts and circumstances—including the uncertainty associated with litigation, the risks of significant
25 delay, and numerous potential appellate issues—and was reached after extensive arm’s-length
26 negotiations both during and in the weeks leading up to the mediation.

1 **2.4. No Admission of Liability.** Defendant denied and continues to deny all of the allegations
2 made by Plaintiff in the Action. Although Defendant denied and continues to deny all of the allegations
3 made by Plaintiff in the Action, Defendant—without admitting or conceding any liability or wrongdoing
4 whatsoever—has agreed to settle the Action on the terms and conditions set forth in this Agreement for
5 the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Action.

6 **2.5. Class Counsel's Evaluation.** Based on Class Counsel's ongoing investigation and
7 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
8 adequate, and in the best interests of Class Members.

9 **2.6. Certification of Settlement Class.** This Agreement is contingent upon the approval and
10 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
11 all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a Preliminary
12 Approval Order, and Final Approval Order.

13 **3. NOTICE TO CLASS MEMBERS**

14 **3.1. Settlement Administrator.** Plaintiff and Class Counsel shall request that the Court
15 appoint a Settlement Administrator for purposes of sending notice of the settlement to Class Members.
16 The Parties agree that Settlement Administration Costs should not exceed \$9,000.00.

17 **3.2. Class Data for Settlement Administrator.** Within seven calendar days of the
18 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator each Class
19 Member's name, last known mailing address, as well as data sufficient for the Settlement Administrator
20 to perform all necessary responsibilities pursuant to this Agreement.

21 **3.3. Class Notice of Settlement.** The Settlement Administrator shall send Class Notice to
22 Class Members in English (in the form attached as Exhibit A to this Agreement) to provide notice of
23 settlement within 14 calendar days of the Preliminary Approval Order, pursuant to the procedures
24 below. The Class Member are proficient in English and there is not a significant number of non-English
25 speaking Class Members. This shall be the sole means of notice to Class Members.

26 **3.4. Mailing of Notice.** The Settlement Administrator shall send Class Notice to each Class
27 Member via First Class U.S. Mail, using the last known mailing address for each Class Member, based
28 on class data provided by Defendant or the most recent address known for each Class Member as

determined by the Settlement Administrator. Before mailing the Class Notice, the Settlement Administrator shall review the national change of address registry for all Class Members and/or skip trace to determine the most up-to-date addresses of all Class Members. Any Class Notice returned to the Settlement Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a single skip-trace search and shall then promptly send a single re-mailing.

3.5. Proof of Mailing. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.

4. CLASS MEMBERS' RESPONSE OPTIONS

4.1. Consideration Period. Class Members shall be provided 45 calendar days after the postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the settlement. Except as provided herein, no Class Member responses that are postmarked more than 45 calendar days after the initial mailing of Class Notice shall be considered. The Parties shall do nothing to encourage or solicit Class Members to opt out or object to the settlement.

4.2. Objection Right and Effect. Settlement Class Members shall be given the opportunity to object to the terms of the settlement. Settlement Class Members may object to the settlement by mailing to the Settlement Administrator an Objection postmarked no later than 45 calendar days after the postmark date of the initial mailing of Class Notice, which describes the objection and states any intention to appear at the final approval hearing. Alternatively, the Settlement Class Member may appear at the final approval hearing to object to the settlement. Any Settlement Class Member who does not comply with the Objection procedures in the Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to the settlement. Settlement Class Members who object to the settlement pursuant to the terms of the Class Notice shall remain subject to being bound by the release provisions in the Agreement pursuant to a Final Approval Order and shall remain eligible to receive an Individual Settlement Payment.

1 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
2 the settlement. Class Members may opt out of the settlement by mailing to the Settlement Administrator
3 a Request for Exclusion, which expresses their desire to be excluded from the Settlement Class. Any
4 Request for Exclusion that does not comply with the procedures in the Class Notice shall be deemed
5 void and ineffective. Class Members who opt out of the settlement pursuant to the terms of the Class
6 Notice shall not receive any Individual Settlement Payments (except for PAGA Employees who retain a
7 right to receive a pro-rata share of the portion of the PAGA Penalty Fund allocated to the PAGA
8 Employees), shall not be bound by the release provisions in the Agreement and Final Approval Order
9 (other than as it applies to the PAGA claim with respect to the PAGA Employees), and shall not be
10 permitted to object to the settlement or appeal. Each Class Member who does not opt out of the
11 settlement shall be a Settlement Class Member eligible to receive an Individual Settlement Payment and
12 be bound by the release provisions in the Agreement pursuant to a Final Approval Order. If a Class
13 Member submits both a Request for Exclusion and an Objection, the Settlement Administrator shall
14 attempt to determine whether the Class Member would like to withdraw either the Request for Exclusion
15 or the Objection. If the Class Member does not withdraw the Request for Exclusion or if the Settlement
16 Administrator cannot contact a Class Member who submits both a Request for Exclusion and an
17 Objection, the Request for Exclusion shall be deemed valid and shall be deemed to invalidate the
18 Objection.

19 **4.4. Dispute as to Pay Periods and Effect.** Settlement Class Members shall be given the
20 opportunity to dispute the number of relevant pay periods allocated to them in their Class Notice.
21 Settlement Class Members may challenge the number of relevant pay periods allocated to them by
22 mailing to the Settlement Administrator a written, signed dispute challenging the information along with
23 supporting documents postmarked no later than 45 calendar days after the postmark date of the initial
24 mailing of Class Notice. If Settlement Class Member does not provide any documents or other evidence
25 to support the challenge, the Settlement Administrator may reject the dispute. The Settlement
26 Administrator will evaluate the evidence submit and, the Settlement Administrator, together with the
27 Parties' counsel, will attempt to informally resolve any timely submitted disputes. Unresolved disputes
28 will be decided by the Settlement Administrator. The Settlement Administrator's decision on all disputes

will be final and binding, subject to final approval by the Court. Settlement Class Members who submit a dispute to the number of relevant pay periods allocated to them shall remain subject to being bound by the release provisions in the Agreement pursuant to a Final Approval Order and shall remain eligible to receive an Individual Settlement Payment.

4.5. Objection Response. The Settlement Administrator must provide a copy of any objection received to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file a response to any written objection no later than five court days before the final approval hearing.

4.6. Proof of Class Members' Responses. As soon as practicable after the end of the Class Member response deadline, the Settlement Administrator shall prepare and submit a declaration attesting to (by number of relevant individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses, and its receipt of valid Requests for Exclusion or Objections. Prior to the hearing on a motion seeking a Final Approval Order, the Settlement Administrator shall prepare any supplemental declarations regarding the administration of the settlement, as necessary or as jointly requested by the Parties or the Court.

5. SETTLEMENT PROCEEDS

5.1. Gross Settlement Amount. Defendant agrees to pay a non-reversionary potential Gross Settlement Amount of \$350,000. To the extent that there are more than 419 Class Members, and the number of Class Members increases by more than 7.5% (i.e., by more than 31 Class Members), the Gross Settlement Amount shall increase on a pro rata basis equal to the percentage increase in the number of Class Members above 7.5% ("Escalator Clause").

5.1.1. Attorneys' Fees and Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$116,666.67) and (b) litigation costs (not to exceed \$15,000.00).

5.1.2. Class Representative Award. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve a Class Representative Award of \$10,000. Any Class Representative Award is supplemental to Plaintiff's Individual Settlement Payment.

1 **5.1.3. Settlement Administration Costs.** Class Counsel intends to request—and
2 Defendant agrees not to oppose—that the Court approve Settlement Administration Costs of up to
3 \$9,000.00. The Parties agree to cooperate in the settlement administration process and to make all
4 reasonable efforts to control and minimize Settlement Administration Costs.

5 **5.1.4. PAGA Penalty Fund and LWDA Payment.** Class Counsel intends to request—
6 and Defendant agrees not to oppose—that the Court approve allocation of \$10,000 to the PAGA Penalty
7 Fund, to be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA
8 Payment. The remaining 25% of the PAGA Penalty Fund is to remain allocated to the Net Settlement
9 Amount to be distributed to the PAGA Employees.

10 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
11 approve the requested Attorneys' Fees and Costs Award, Class Representative Award, or Settlement
12 Administration Costs, any amounts of the requested but unapproved allocations shall be allocated to the
13 Net Settlement Amount. If the Court does not approve the requested PAGA Penalty Fund, any
14 difference in the requested and approved allocation shall be allocated to the Net Settlement Amount or
15 from the Gross Settlement Amount.

16 **5.2. Individual Settlement Payments.** Individual Settlement Payments shall be distributed to
17 those Class Members who are Settlement Class Members and/or PAGA Employees in separate checks,
18 without the need to submit a claim form.

19 **5.2.1.** The Net Settlement Amount less \$2,500 (or the Court approved amount from the
20 PAGA Penalty Fund allocated for PAGA penalties to PAGA Employees) shall be allocated among
21 Settlement Class Members on a pro rata basis based on the number of pay periods during the Class
22 Period that each Settlement Class Member was paid shift premium wages and took paid time off during
23 the same pay period. Ninety percent (90%) of this portion each Settlement Class Member's Individual
24 Settlement Payment shall be characterized as penalties and interest, and ten percent (10%) shall be
25 characterized as wages.

26 **5.2.2.** In addition, the Individual Settlement Payment of each PAGA Employee will
27 include a pro rata share of the \$2,500 (or the Court approved amount from the PAGA Penalty Fund
28 allocated for PAGA penalties to PAGA Employees) allocated for PAGA penalties to PAGA Employees

1 based on the number of pay periods during the PAGA Period that each PAGA Employee was paid shift
2 premium wages and took paid time off during the same pay period.

3 **5.2.3.** Class Members who are PAGA Employees will not be permitted to exclude
4 themselves from the PAGA claim portion of the settlement. PAGA penalty settlement payments in the
5 appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA
6 Employees including to those Class Members who are PAGA Employees who submitted a Request for
7 Exclusion. One hundred percent (100%) of this portion of each PAGA Employees' Individual
8 Settlement Payment shall be characterized as penalties.

9 **5.2.4.** In accordance with applicable tax laws, required tax withholdings for the
10 employee share of payroll taxes will be taken from each Individual Settlement Payment for the portion
11 characterized as wages and remitted to the appropriate taxing authorities. The Settlement Administrator
12 shall issue any necessary Internal Revenue Service ("IRS") Form W-2 to Settlement Class Members for
13 the portion characterized as wages. The Settlement Administrator shall issue an IRS Form 1099 for
14 those portions of Individual Settlement Payments attributable to penalties and interest, and Settlement
15 Class Members and PAGA Employees will be responsible for correctly characterizing this compensation
16 for tax purposes and to pay any taxes owing.

17 **5.3. Payroll Taxes and Required Withholdings.** To the extent that any portions of the
18 Settlement Class Members' settlement proceeds constitute wages, Defendant will be separately
19 responsible for any employer share of payroll taxes and other required withholdings. Except for any
20 employer payroll taxes and withholdings, and as provided in the Escalator Clause, under no
21 circumstances shall Defendant be required to pay more than the Gross Settlement Amount. The
22 Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes and
23 withholdings after advising Defendant of the total amount owed, in aggregate, as employer-side payroll
24 taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement
25 Amount is delivered to the Settlement Administrator.

26 **5.4. Funding and Distribution.** By seven days after the Final Approval Order, or October 1,
27 2021, whichever is later, Defendant shall deposit the Gross Settlement Amount with the Settlement
28 Administrator. By seven days after the Effective Date, or seven days after October 1, 2021, whichever is

1 later, the Settlement Administrator shall distribute all amounts to be paid pursuant to the Final Approval
2 Order. Upon completion of administration of the settlement, the Settlement Administrator shall provide
3 written certification of such completion to Class Counsel and Defendant's Counsel.

4 **5.5. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
5 will expire after 180 calendar days after the postmarked date of their initial mailing. After 180 calendar
6 days, the sum value of all expired checks will be tallied by the Settlement Administrator. The Settlement
7 Administrator shall direct the principal for any expired checks in accordance with the Final Approval
8 Order. The Parties shall request that the Court order that the principal for any expired checks be
9 distributed to the State Controller Unclaimed Property Fund in the name of the Settlement Class
10 Member.

11 **5.6. Payment Considerations.** Except as described in Section 5.2.4, all other payments shall
12 be characterized as IRS Form 1099 payments. The Settlement Administrator shall issue an IRS Form
13 1099 to Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and
14 Costs Award, to the LWDA for any LWDA Payment, and to the Settlement Administrator for any
15 Settlement Administration Costs.

16 **5.6.1. No Tax Advice or Liability.** The Parties have had an opportunity to consult with
17 independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or
18 any payments to be made pursuant to the Agreement. The Parties do not intend anything contained in
19 this Agreement, or any written communication or disclosure between or among the parties or their
20 attorneys and other advisers, to constitute legal advice regarding the taxability of any amount paid
21 hereunder, nor shall anything in this Agreement, nor any written communication or disclosure between
22 or among the parties or their attorneys and other advisers, constitute or be relied upon as such. By
23 participating in the settlement, each Settlement Class Member shall agree to be solely and legally
24 responsible for paying all other applicable taxes on their respective Individual Settlement Payments and
25 shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest
26 arising as a result of the payments.

27 **5.6.2. No ERISA Impact.** Payments made under the Agreement shall not have any
28 effect on the eligibility for—or calculation of—any employee benefit (e.g., vacations, holiday pay,

retirement plans, etc.) provided by Defendant. The Parties agree these payments do not represent any modification of any employee's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. None of the payments made pursuant to the settlement and this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("ERISA").

6. RELEASES

6.1. Releases by Settlement Class Members and PAGA Employees. By operation of the entry of the Final Approval Order and upon full funding of the Gross Settlement Amount, and except as to such rights or claims as may be created by this Agreement, all Settlement Class Members hereby fully release Defendant, and each Released Party from any and all claims or causes of action during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, including claims for failures to pay sick pay at the regular rate of pay and all penalties related thereto, violations of California Labor Code §§ 201, 202, 203, 204, 246, and Business and Professions Code § 17200, *et seq.*, including all attorneys' fees and costs related thereto. All PAGA Employees, whether requesting exclusion from the settlement or not, fully release and discharge Defendant, and each Released Party from any and all claims for civil penalties under PAGA [Cal. Lab. Code §§ 2699, *et seq.*] that are based on the facts alleged in the Action and/or Notice to the LWDA, arising during and/or with respect to the PAGA Period, including all attorneys' fees and costs related thereto.

6.2. Additional Release by Plaintiff. In addition to the above release applicable to Plaintiff as a Settlement Class Member, Plaintiff also irrevocably and unconditionally generally releases all claims, known or unknown, in favor of each Released Party, including a waiver of Civil Code section 1542. Plaintiff expressly waives all rights provided by Civil Code section 1542 that Plaintiff may have against each Released Party. Civil Code section 1542 states:

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

settlement with the debtor or released party.

Plaintiff acknowledges that he has read the entirety of the Agreement, including the above language from the Civil Code, and that he fully understands both the Agreement and Civil Code section 1542. By executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

7. COURT APPROVAL

7.1. Preliminary Approval. Plaintiff shall submit a motion seeking a Preliminary Approval Order, which would, among other things: (i) preliminarily approve the proposed settlement according to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice to be sent to Class Members as specified herein. On the same day that Plaintiff applies to the Court for approval of the settlement, Class Counsel shall submit the Agreement to the LWDA in conformity with California Labor Code § 2699(1)(2).

7.2. Final Approval. Not later than 16 court days before the date set by the Court for a final approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms to be fair, reasonable, and adequate, (iii) approve the release, (iv) direct that the settlement's terms and provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's orders. Upon entry of the Final Approval Order by the Court, Class Counsel shall submit the Final Approval Order to the LWDA in conformity with California Labor Code § 2699(1)(2).

7.3. Effect of Failure to Obtain Final Approval. In the event the Court effects a material change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final Approval Order is vacated, then this entire Agreement shall be void and unenforceable, subject to the Parties' agreement to the contrary, and the costs of administration shall be split equally between the Parties. The Action shall proceed as if no settlement has been attempted, unless the Parties jointly agree to seek reconsideration or appellate review or to seek Court approval of a renegotiated settlement.

Moreover, in the event the Court does not approve this Agreement, Defendant will not be deemed to have waived, limited, or affected in any way any of its objections, or defenses in this Action.

8. MISCELLANEOUS

8.1. Entire Agreement. This Agreement, along with any exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties, oral or written, express or implied, shall be deemed merged into this Agreement. The signatories represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein.

8.1.1. Counterparts and Signatures. This Agreement may be executed in counterparts, and when all signatories have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via e-mail to counsel for the other party. Any signature transmitted via e-mail shall be deemed an original signature and shall be binding upon the party who transmits the signature page.

8.1.2. Waivers, Modifications, Etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

8.1.3. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,

1 construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement
2 have been inserted for convenience of reference only and shall have no effect upon the construction or
3 interpretation of any part of this Agreement.

4 **8.1.4. Invalidity of Any Provision.** Before declaring any provision of this Agreement
5 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to
6 render all provisions of this Agreement valid and enforceable.

7 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
8 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
9 upon the request of another, agrees to perform such further acts and to execute and deliver such other
10 documents as are reasonably necessary to carry out the provisions of this Agreement.

11 **8.3. Right to Withdraw.** Notwithstanding any other provision contained in this Agreement, if
12 more than Ten Percent (10%) of the Class Members submit timely and valid Requests for Exclusion
13 from the Settlement during the Opt-Out Period outlined herein, Defendant shall have the option but not
14 the obligation, in its sole discretion, to withdraw from this Agreement ("Right to Withdraw"),
15 whereupon the Agreement shall be null and void for any and all purposes and may not be used or
16 introduced in the Action or any other proceeding. The Parties will be restored to their respective
17 positions in the litigation as if this Agreement was never negotiated, drafted or agreed upon. However,
18 if Defendant exercises its Right to Withdraw, Defendant will be responsible for all Settlement
19 Administration Costs incurred up to the date when the Defendant exercises its Right to Withdraw. The
20 Settlement Administrator shall notify Class Counsel and Defendant's Counsel of the number of timely
21 opt-outs within five (5) calendar days after the period to file an Opt-Out has expired. If Defendant elects
22 to exercise its Right to Withdraw under this provision, Defendant will so notify Class Counsel and the
23 Court no later than five (5) calendar days after receiving notice of the number of opt-outs and/or value of
24 the valid claims made by the Authorized Claimants.

25 **8.4. Non-Evidentiary Use.** Neither this Agreement nor any of its terms, nor any statements or
26 conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class
27 Member (including any individual who requested to be excluded from the Class), Defendant, or its or
28 their respective counsel, in the Action or any other proceeding, except as is reasonably necessary to

1 effectuate its purpose and terms. This Agreement may be used by Defendant and/or any Released Party
2 to prove or defend against any claim released herein by any Class Member in any judicial, quasi-
3 judicial, administrative, or governmental proceeding. Nothing in this Agreement abridges a Class
4 Member's right to file a charge or participate in any manner in an investigation, hearing, or proceeding
5 under the laws enforced by Equal Employment Opportunity Commission.

6 **8.5. No Publicity.** Plaintiff and Class Counsel agree not to disclose or publicize the
7 settlement, including the fact of this Agreement, its terms or contents, and the negotiations underlying
8 the settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be
9 strictly required to effectuate the terms of the settlement. For the avoidance of doubt, this section means
10 Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media
11 or publication entities, publish information in manner or form, whether printed or electronic, on any
12 medium or otherwise communicate, whether by print, video, recording or any other medium, with any
13 person or entity, including the general public, concerning the settlement, its terms or contents and the
14 negotiations underlying this Agreement, or identify Defendant or its principals owners as associated
15 with the underlying lawsuit, except as shall be contractually required to effectuate the terms of this
16 Agreement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class
17 counsel in other actions for purposes of seeking approval of an unrelated settlement, Class Counsel may
18 refer to any information in the public record for such purposes.

19 **8.6. No Inducement.** Plaintiff and Defendant acknowledge that they are entering into this
20 Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or
21 nature whatsoever and that neither Plaintiffs nor Defendant have relied on any promises, representations,
22 or warranties regarding the subject matter hereof other than as set forth in this Agreement.

23 **8.7. No Prior Assignment.** The Parties hereto represent, covenant, and warrant that they
24 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
26 rights herein released and discharged except as set forth herein. If any claims are made by any Class
27 Member between the start of the Class Period and the date in which the Court approves the settlement
28 outlined in this Agreement as final, such a claim will be deemed covered and released by the individual

1 Class Member making the claim unless such Class Member has timely exercised the right to be excluded
2 from this Agreement under the terms set forth herein. Any Class Member covered by this Agreement
3 will be barred from proceeding with any such claim.

4 **8.8. Review of Noticed Motions And/Or Other Pleadings.** Class Counsel expressly agrees
5 that prior to any filing concerning the terms herein, including but not limited to the Motion for
6 Preliminary Approval and the Motion for Final Approval, it shall e-mail a draft of said motion and/or
7 pleading to Defendant's Counsel at least 7 calendar days prior to its filing.

8 **8.9. Destruction of Informal Discovery.** Plaintiff and Class Counsel agree to treat and
9 maintain all informally disclosed documents and information confidential, protect it, and take any and
10 all reasonable steps to maintain it confidentially and treat it as a trade secret. However, the Parties
11 expressly agree that Class Counsel may disclose such information to the Court as is necessary to
12 consummate and finalize the approval process of the settlement by the Court.

13 **8.9.1.** The Parties agree that in the event the Court does not approve the settlement for
14 any reason, or if the settlement cannot be consummated for any reason, Class Counsel expressly agrees
15 to either: (1) return all informally produced discovery by Defendant to Defendant or Defendant's
16 Counsel; or (2) immediately destroy all informal discovery, and provide sufficient proof (such as a
17 declaration under oath by Class Counsel) that the information was destroyed within 10 calendar days
18 after becoming aware that the settlement has failed to become final. Retaining any copy of direct or
19 derivative information shall be a violation of this provision. Such informal discovery shall include, but is
20 not limited to: (1) Class Members' time and payroll records; (2) written policies and procedures; and (3)
21 information disclosed pursuant to the mediation and/or settlement privilege. If Class Counsel fails to
22 either destroy or return such information within a reasonable time, the Parties expressly agree that
23 Defense Counsel may apply to the Court to seek enforcement of this specific provision (including any
24 and all reasonable attorney's fees and costs in seeking such enforcement).

25 **8.9.2.** If the Court approves the settlement, Plaintiffs and Class Counsel agree to
26 maintain the information provided by Defendant only for as long as it is necessary to consummate and
27 finalize the approval process of the settlement by the Court, up to and including the Effective Date.
28 After such time, the Parties agree that Class Counsel will return the information to Defendant or

Defendant's Counsel, or destroy the information (including any derivative information) as provided herein, except as provided in Plaintiffs' personnel file.

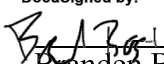
8.10. Continuing Jurisdiction. The Court shall retain jurisdiction over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and of the settlement contemplated thereby. The Court will retain jurisdiction to enforce the terms of this Agreement following the entry of the Final Approval Order pursuant to California Code of Civil Procedure section 664.6. The Parties agree to the exclusive jurisdiction of the Court to enforce the terms and conditions contained herein.

8.11. Disputes. If the Parties have a dispute with regard to the language of this Agreement, they agree to engage mediator Gig Kyriacou to mediate any such dispute. The Parties will split the costs of the mediator, and the Parties will bear their own fees and costs.

8.12. Governing Law and Enforcement Actions. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of California. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement, or to declare rights or obligations under this Agreement, the prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

PLAINTIFF

Dated: April ¹⁹, 2021

DocuSigned by:

 Brandon Baggot
 9AABFD15972D451...

COUNSEL FOR PLAINTIFF AND CLASS

Dated: April ²⁰, 2021


 Larry W. Lee
 Simon L. Yang
 DIVERSITY LAW GROUP, P.C.

DEFENDANT

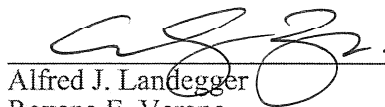
Dated: April 16, 2021



William F. Brodersen, President
FOTO-KEM INDUSTRIES, INC.

COUNSEL FOR DEFENDANT

Dated: April 16, 2021



Alfred J. Landegger
Roxana E. Verano
Evelyn Zarraga
LANDEGGER RIVAS VERANO & DAVIS, ALC

EXHIBIT A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF PENDING CLASS ACTION SETTLEMENT

Branden Baggot v. Foto-Kem Industries, Inc.,
Superior Court of the State of California for the County of Los Angeles Case No. 20STCV31051

If you were employed by Foto-Kem Industries, Inc. in California as a non-exempt employee and earned shift premium wages between April 6, 2016, and January 18, 2021, in a workweek in which you also took paid time off, you could receive a payment from a class action settlement.

You are not being sued. Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Los Angeles (the “Court”) has preliminarily approved a class action settlement that may affect your legal rights. The proposed settlement resolves a class and representative action lawsuit filed by Branden Baggot (“Plaintiff”) against Foto-Kem Industries, Inc. (“Foto-Kem”)— *Branden Baggot v. Foto-Kem Industries, Inc.*, Superior Court of the State of California for the County of Los Angeles Case No. 20STCV31051 (the “Lawsuit”).

- This Lawsuit alleges Foto-Kem failed to pay all sick pay wages at the regular rate of pay. On that basis, the Lawsuit pursues class action claims as well as representative action claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Specifically, the Lawsuit seeks underpaid sick pay wages and all applicable penalties for Foto-Kem’s alleged failure to pay or timely pay sick pay wages at the regular rate of pay.
- Foto-Kem denies Plaintiff’s allegations and maintains it has fully complied with the law. By entering into this settlement, Foto-Kem in no way admits any violation of law or any liability whatsoever to Plaintiff or Class Members, individually or collectively, and expressly denies all such liability.
- Plaintiff and Foto-Kem have reached this settlement in light of all known facts and circumstances—including the risks of significant delay and uncertainty associated with litigation, various defenses asserted by Foto-Kem, and numerous potential appellate issues—with the assistance of an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue.
- The settlement provides cash payments to Settlement Class Members, based on the number of pay periods from April 6, 2016, through January 18, 2021 (the “Class Period”), that they were paid shift premium wages and took paid time off during the same pay period. The settlement also provides additional cash payments to those Class Members who worked at any time during the period from April 6, 2019, through January 18, 2021 (the “PAGA Period”) and who were paid shift premium wages and took paid time off during the same pay period they took PTO at any time during the PAGA Period (the “PAGA Employees”). These additional payments to PAGA Employees are based on the number of pay periods during the PAGA Period that they were paid shift premium wages and took paid time off during the same pay period.
- Based on Foto-Kem’s records, you worked **XXX** relevant pay periods, and an *estimate* of the amount that could be allocated to you is **\$XXX**. Whether you receive a payment depends on whether the Court grants final approval, and the actual amount you would be allocated depends on the terms the Court finally approves.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF THE CLAIMS ASSERTED BY PLAINTIFF OR DEFENSES ASSERTED BY FOTO-KEM.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at (xxx) xxx-xxxx.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Settlement Payment if the Court grants final approval of the settlement and will be bound by the release provisions of the settlement.
OPT OUT	You may opt out of the settlement by submitting a Request for Exclusion. If you opt out, you may not object to the settlement, will not be eligible to receive an Individual Settlement Payment, and will not be bound by the release provisions of the settlement. However, if the Court grants final approval of the settlement, all PAGA Employees, whether they submit a Request for Exclusion, will still receive their share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement.
OBJECT	You may object to the settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Settlement Payment and will be bound by the release provisions of the settlement.
SUBMIT A DATA DISPUTE	You may challenge the number of relevant pay periods allocated to you by submitting a written dispute. The Settlement Administrator will evaluate your dispute along with the evidence you submit and make a determination as to your correct number of relevant pay periods. If the Court grants final approval of the settlement, you will remain eligible to automatically receive an Individual Settlement Payment and will be bound by the release provisions of the settlement.

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Foto-Kem’s records show that you were employed by Foto-Kem in California as a non-exempt employee and earned shift premium wages between April 6, 2016, and January 18, 2021, in a workweek in which you also took paid time off (and did not execute a severance agreement at any time during the Class Period) (a “Class Member”). As a Class Member, you may be entitled to share in the funds to be made available for settlement of the Lawsuit.

Because the settlement preliminarily approved by the Court would affect Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Lawsuit, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the settlement. If finally approved by the Court, the settlement will fully resolve the Lawsuit and your legal rights may be affected by the settlement.

The terms of the settlement are set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”). You may obtain a copy of the Agreement from the neutral third-party appointed by the Court to administer the settlement (the “Settlement Administrator”). Details about how to get additional information about the Agreement are provided at the end of this Notice.

2. What Is the Lawsuit About?

On August 17, 2020, Plaintiff, on behalf of himself and all others similarly situated, and as a proxy for the State of California, filed a complaint in the Superior Court of the State of California for the County of Los Angeles. The complaint alleges three causes of action based on the alleged failure to pay all sick pay wages under Labor Code sections 201-204 and 246, the Unfair Competition Law under Business & Professions Code sections 17200 et seq., and PAGA under Labor Code sections 2698 et seq.

Foto-Kem denied and continues to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Lawsuit. Nonetheless, without admitting or conceding

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at (xxx) xxx-xxxx.

any liability or wrongdoing whatsoever, Foto-Kem has agreed to settle the Lawsuit, to avoid the burden, expense, and uncertainty of continuing the Lawsuit.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of settlement are fair, reasonable, adequate, and in the best interests of Class Members.

3. What Are the Payments Under the Settlement?

Foto-Kem agrees to pay a settlement amount of \$350,000 (the “Gross Settlement Amount”). The Gross Settlement Amount is inclusive of (i) any award by the Court to Class Counsel for attorneys’ fees and costs associated with the litigation and resolution of the Lawsuit (the “Attorneys’ Fees and Costs Award”), (ii) any award by the Court to Plaintiff in recognition of his effort and work in prosecuting the Lawsuit on behalf of Class Members (the “Class Representative Award”), (iii) any costs of settlement administration approved by the Court for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, processing any required tax payments or reportings, providing any required tax forms, depositing settlement funds in an interest bearing account, distributing the settlement payments, or providing necessary reports and declarations (“Settlement Administration Costs”), and (iv) any payment approved by the Court to the State of California Labor & Workforce Development Agency (the “PAGA Payment”).

The remaining portion of the Gross Settlement Amount available for allocation to Class Members is the Net Settlement Amount.

a. Individual Settlement Payments

The Net Settlement Amount (minus \$2,500 allocated to the PAGA Employees) shall be distributed in separate checks to each Settlement Class Member (“Individual Settlement Payments”). The Net Settlement Amount (minus \$2,500) shall be allocated among Settlement Class Members on a pro rata basis based on the number of pay periods during the Class Period that each Settlement Class Member was paid shift premium wages and took paid time off during the same pay period. This portion of the settlement payments is referred to as the “Class Settlement Portion.”

In addition, the Individual Settlement Payment of each Class Member who is also a PAGA Employee will include a pro rata share of the \$2,500 allocated for PAGA penalties to PAGA Employees based on the number of pay periods during the PAGA Period that each PAGA Employee was paid shift premium wages and took paid time off during the same pay period. This portion of the settlement payments is referred to as the “PAGA Settlement Portion.”

PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees including to those Class Members who are PAGA Employees who submitted a Request for Exclusion.

1. Applicable Tax Withholding and Responsibility for Taxes

90% of the Class Settlement Portion of each Settlement Class Member’s Individual Settlement Payment shall be characterized as penalties and interest, 10% of the Class Settlement Portion of each Settlement Class Member’s Individual Settlement Payment shall be characterized as wages, and 100% of the PAGA Settlement Portion of each PAGA Employee’s Individual Settlement Payment shall be characterized as penalties. In accordance with applicable tax laws, required tax withholdings for the employee share of payroll taxes will be taken from each Individual Settlement Payment for the portion characterized as wages and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary Internal Revenue Service (“IRS”) Form W-2 to Settlement Class Members for the portion characterized as wages, and shall issue an IRS Form 1099 for those portions of Individual Settlement Payments attributable to penalties and interest. By participating in the settlement, each Settlement Class Member and PAGA Employee shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at (xxx) xxx-xxxx.

2. Undeliverable or Uncashed Checks

All uncashed or undeliverable settlement checks will expire after 180 calendar days after the postmarked date of their initial mailing. After 180 calendar days, the sum value of all expired checks will be tallied by the Settlement Administrator. The Settlement Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks be distributed to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member/PAGA Employee.

b. Attorneys' Fees and Costs Award

You do not need to pay individually any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be deducted from the Gross Settlement Amount. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$116,666.67) and (b) litigation costs (not to exceed \$15,000.00).

c. Class Representative Award

Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000. Any Class Representative Award is supplemental to Plaintiff's Individual Settlement Payment.

d. Settlement Administration Costs

Class Counsel intends to request that the Court approve Settlement Administration Costs of up to \$9,000, payable to the Settlement Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing Individual Settlement Payments.

e. LWDA Payment

Class Counsel intends to request that the Court approve allocation of \$10,000 to the PAGA Penalty Fund, to be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining 25% of the PAGA Penalty Fund is to remain allocated to the Net Settlement Amount to be distributed to the PAGA Employees.

f. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval of the settlement and concludes it is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendant and any of its respective present and former owners, officers, directors, employees, shareholders, managing agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and any individual or entity that could be jointly liable with Defendant (a "Released Party") from any and all claims or causes of action during the Class Period that were alleged in the Lawsuit or that reasonably could have been alleged based on the facts alleged in the Lawsuit, including claims for failures to pay sick pay at the regular rate of pay and all penalties related thereto, violations of California Labor Code §§ 201, 202, 203, 204, 246, and Business and Professions Code § 17200, et seq., including all attorneys' fees and costs related thereto.

All PAGA Employees, whether requesting exclusion from the settlement or not, would fully release and discharge Defendant, and each Released Party from any and all claims for civil penalties under PAGA that are based on the facts alleged in the Lawsuit and/or Plaintiff's claim notice submitted to the LWDA, arising during and/or with respect to the PAGA Period, including all attorneys' fees and costs related thereto.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at (xxx) xxx-xxxx.

5. How Do I Object to the Settlement?

If you want to participate in the settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will receive your Individual Settlement Payment automatically if the Court grants final approval of the settlement.

However, if you want to object to the settlement, you must take the steps below:

- (1) You must mail a written statement to the Settlement Administrator listed below.
- (2) The written statement must include: your name, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by [45 calendar days after the initial mailing of Class Notice].

Alternatively, you may appear at the final approval hearing to object to the settlement.

If you submit an objection, you will remain bound by the settlement if finally approved. If you do not want to be bound by the settlement if finally approved, you must opt out of the settlement.

6. How Do I Opt Out of the Settlement?

If you do not want to participate in the settlement, you may opt out of the settlement. If you opt out of the settlement, you may not object to the settlement, shall not receive any Individual Settlement Payments, and shall not be bound by the release provisions of the settlement. If you are PAGA Employee, however, you will not be permitted to exclude yourself from the PAGA Settlement Portion of the settlement. If you are a PAGA Employee, you will still receive a pro-rata share of the \$2,500 allocated to the PAGA Employees and be bound by the release of civil penalties under PAGA as described in section 4 of this Notice.

In order to opt out, you MUST express your desire to be excluded from the settlement by mailing to the Settlement Administrator a "Request for Exclusion," which must state "Request for Exclusion," include your name, current address, current telephone number, and last four digits of your social security number. Any such Request for Exclusion must be postmarked by [45 calendar days after the initial mailing of Class Notice].

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. How Do I Dispute the Settlement Calculation?

If you wish to challenge the number of relevant pay periods allocated to you, then you must submit a written, signed dispute challenging the information along with supporting documents to the Settlement Administrator. Any such written dispute must be postmarked by [45 calendar days after the initial mailing of Class Notice]. If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator may reject your challenge. The Settlement Administrator will evaluate the evidence you submit and, the Settlement Administrator, together with the parties' counsel, will attempt to informally resolve the dispute as to your correct number of relevant pay periods. Unresolved disputes will be decided by the Settlement Administrator. The Settlement Administrator's decision on all disputes regarding the allocation of relevant pay periods will be final and binding. If the Court grants final approval of the settlement, you will remain eligible to automatically receive an Individual Settlement Payment and will be bound by the release provisions of the settlement.

8. Where Can I Get Additional Information?

This notice summarizes the Lawsuit, settlement, and related matters. For more information, you may contact the Settlement Administrator or Class Counsel:

Settlement Administrator:

xxx
xxx
xxx, California xxx
Telephone: (xxx) xxx-xxxx

Class Counsel:

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT