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Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

SAUL ELIZARRARAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FUTURE FOAM, INC., a Nebraska
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2020-01152286-CU-OE-CXC
[Assigned to Hon. Glenda Sanders, CX101]

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: August 5, 2022

Time: 9:30

Dept: CX101

Complaint filed: May 8, 2019

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

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8. As set forth in the Declaration of Lluvia Islas on behalf of the Settlement Administrator, ILYM Group, the Net Settlement Amount is \$722,947.12, after the deductions set forth in the chart here:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 1,200,000.00
Attorneys' Fees (1/3)	\$ 400,000.00
Actual Litigation Costs	\$ 11,052.88
Administrator Costs	\$ 6,000.00
PAGA Penalties (75% to LWDA; 25% to AEs)	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 722,947.12

10. The response by the Class Members to this settlement was overwhelmingly positive, as 98.69% of the Class participated in the Settlement thus far.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by an experienced wage and hour mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the fact that 98.69% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the settlement is fair, reasonable, and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations

submitted in support thereof, Defendant vigorously challenged Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties considered the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL

AND REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled over 250 class and representative actions. I have been appointed as class counsel and have successfully resolved approximately half of those cases (while many are ongoing and will successfully resolve in the future) while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
2 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

3 16. It has been my experience that the benchmark for attorney fee awards in
4 California state cases is one-third of a common settlement fund, which the CA Supreme Court
5 upheld in the Robert Half case. Here, in accordance with the Settlement Agreement, Class
6 Counsel is seeking a fee of \$400,000, which is one-third of the Settlement Amount.

7 17. There are several additional factors why I believe that the Court should award
8 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
9 resulted in a common fund settlement amount of \$1,200,000, whereby the Class Members will
10 receive more than \$4,700 on average and up to a maximum of over \$8,900 for those employees
11 that worked the longest during the Class Period. This is a very good result in light of the
12 disputed nature of the claims alleged. This result was achieved by the work and success of my
13 office, who negotiated the settlement after extensive preparation, investigation, mediation, and
14 substantial work thereafter.

15 18. Second, Plaintiff faced significant risks going forward with the litigation. As
16 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
17 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
18 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
19 going forward with this litigation, and it would have taken several more years to realize any
20 recovery in this action along with the possibility of post-trial appeals

21 19. Third, Class Counsel are experienced class action litigators. This experience and
22 expertise, combined with the high quality of work performed in this case, resulted in the
23 settlement achieved in this case.

24 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
25 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
26 substantial amount of time, money, and resources, and have done so since the inception of this
27 case without any payment or compensation. If Plaintiff had lost this case, we would have
28 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for

1 my office, which is a small firm. If, despite these hardships and risks, the best my office could
2 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
3 the hardships and serious risks we faced litigating this contingency case, and would not be
4 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
5 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
6 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
7 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
8 only one-third of class actions are successful, compared to two-thirds that are defeated and result
9 in no payment to the class members.

10 21. Fifth, the request for attorney's fees in the amount of one-third of the common
11 fund falls well within the norms accepted by state and federal courts in California in comparable
12 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
13 recovery under the common fund doctrine was approved by the California Supreme Court in
14 *Laffitte, supra*, 1 Cal.5th 480, 503.

15 22. For all of the above reasons, a common fund fee award here in the amount of one-
16 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

17 23. At my office, this case was primarily handled by my senior associate attorney,
18 Peter Carlson, while I performed the role of the supervising attorney. Mr. Carlson works
19 exclusively with me on employment law matters and has been in practice for 8 years. He bills at
20 the hourly rate of \$575/hour. I have been in practice for 21 years, with most of those years
21 handling complex litigation and for over the last 15 years, my practice has almost entirely
22 consisted of handling class action wage and hour matters. My billing rate is \$775/hour. I
23 believe these rates are consistent with Plaintiff and Defense attorneys who handle complex class
24 action litigation, if not somewhat lower.

25 24. The hourly rates above are comparable to those of other attorneys with equal or
26 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
27 indicates that the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-
28 19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer Real

Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data. For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. In 2018, for the southern California area, which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked, plus additional hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel to issue checks, respond to class members and finalize this matter. Our aggregated lodestar between the attorneys that have worked on this case is approximately \$241,852.50, resulting in a multiplier of only 1.65, as follows:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner)	Trial Counsel	21	\$775	155²	\$120,125.00
Peter Carlson (Senior Associate)	Handling Attorney	8	\$575	211.7	\$121,727.50
Grand Total for All Attorneys				366.7	\$241,852.50

² Includes an estimated 35 hours that will be expended in finalizing the motion, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

1 26. The fee is warranted because of the results achieved for the Class Members, both
2 in terms of the immediate cash settlement, as well as the fact that the Class Members
3 resoundingly supported the Settlement. Defendant does not oppose this fee request.

4 27. In the course of prosecuting this action, Class counsel have incurred expenses that
5 were incidental and necessary to the effective representation of the Class. These expenses
6 included but were not limited to: court filings, copying and management of documents, on-line
7 Lexis research, messenger services, postage, fax transmission expenses, transportation,
8 mediation fees, and other incidental expenses directly related to this action. My firm's expenses
9 through the final approval hearing are estimated to be \$11,052.88, which includes filing this
10 motion, process/server costs, overnight service and travel/parking expenses to the hearing (see
11 the itemized statement of these costs attached hereto as **Exhibit C**). Since these actual costs are
12 lower than the \$20,000 allowed under the settlement, the savings will be placed in the Net
13 Settlement Amount for distribution to the Class Members. Defendant does not oppose this
14 request for costs.

15 **REASONABLENESS OF REQUESTED SERVICE AWARD**

16 28. I also believe that the service award of \$10,000 to the Class Representative is fair
17 and warranted. Mr. Elizarraras came forward and worked directly with my office in analyzing
18 the claims and documents, providing valuable information and insights that benefitted the class
19 (see his declaration for supporting information). Then, during the settlement process, he agreed
20 to a much broader release than any class member, as he released all claims and gave a 1542
21 waiver while foregoing his right to bring individual claims against Defendant. Indeed, Plaintiff's
22 participation was an essential element of Defendant's desire to mediate and of the pre- and post-
23 mediation analysis that allowed Class Counsel to settle the case. Of course, Plaintiff also took on
24 various risks, including the risk that he could have been ordered to pay Defendants' costs if he
25 lost and the risk of retaliation and being black-balled in the industry. Defendant does not oppose
26 the requested service award.

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30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

31. A true and correct copy of the Order granting preliminary approval is attached hereto as Exhibit B.

33. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit D.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 21, 2022, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant Future Foam, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

SAUL ELIZARRARAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FUTURE FOAM, INC., a Nebraska
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2020-01152286-CU-OE-CXC
*[Assigned to Hon. Judge James J. DiCesare,
Dept C16, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

Complaint filed: 7/31/2020

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Saul Elizarraras, individually and on behalf of all others similarly situated, and
3 Defendant Future Foam, Inc., and is approved by their respective counsel of record, subject to
4 the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Saul Elizarraras v.*
7 *Future Foam, Inc., et al.*, Orange County Superior Court, Case No. 30-2020-01152286-CU-OE-
8 CXC.

9 2. "Agreement" or "Settlement Agreement" shall mean this Class Action Settlement
10 Agreement and Release of Claims, including any attached Exhibits.

11 3. "Aggrieved Employees" means all current and former non-exempt employees of
12 Defendant who worked in California at any time during the PAGA Period. Defendant represents
13 that there are approximately 100 eligible Aggrieved Employees.

14 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
15 Lauby LLP.

16 5. "Class Data" means a complete list that Defendant will diligently and in good
17 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
18 and shall include the Settlement Class Members' full names; last known addresses; telephone
19 numbers; Social Security Numbers; the total Pay Periods Worked during the PAGA Period for
20 each Aggrieved Employee, and the total Pay Periods Worked during the Class Period for each
21 Settlement Class Member.

22 6. "Class Period" is deemed to be any time during the period of July 31, 2016,
23 through the Preliminary Approval Date.

24 7. "Class Representative" or "Plaintiff" means and refers to Saul Elizarraras.

25 8. "Complaint" refers to the operative complaint alleging class action and
26 representative PAGA action claims, which was originally filed in the Orange County Superior
27 Court on July 31, 2020, and amended on June 29, 2021, in the matter of *Saul Elizarraras v.*
28 *Future Foam, Inc.*, Orange County Superior Court Case No. 30-2020-01152286-CU-OE-CXC.

- 1 9. “Court” (or “Judge”) means the California Superior Court, County of Orange.
- 2 10. “Defendant” means and refers to Future Foam, Inc.
- 3 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to David Wimmer
4 and Lori Yankelevits of Swerdlow Florence Sanchez Swerdlow & Wimmer.
- 5 12. “Effective Date” means the latest of the following dates: (i) sixty-one (61)
6 calendar days following the date the Court enters an order granting Final Approval, assuming no
7 appeal is filed; or (ii) if a timely appeal is filed, the date of final resolution of that appeal
8 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
9 approval of the Settlement.
- 10 13. “Final Approval” refers to the order of the Court granting final approval of this
11 Settlement Agreement and entering a judgment approving this Agreement on substantially the
12 terms provided herein or as the same may be modified by subsequent agreement of the Parties.
- 13 14. “Final Settlement Class” means, collectively, all Settlement Class Members who
14 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.
- 15 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
16 46(a) below.
- 17 16. “Individual Settlement Payment” shall have the meaning ascribed to it in
18 Paragraph 46(c) below.
- 19 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 46(b)
20 below.
- 21 18. “Notice” means the notice of settlement of class action that will be sent to the
22 Settlement Class Members.
- 23 19. “Notice Response Deadline” is 45 calendar days from the date the Notice is
24 mailed to the Settlement Class Members.
- 25 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
26 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
27 respect to the Released Class Claims, pursuant to Paragraph 68(c) below.
- 28 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the

1 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
2 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
3 as the individual PAGA payment allocated to each Aggrieved Employee.

4 22. “PAGA Period” is deemed to be any time during the period of July 31, 2019,
5 through the Preliminary Approval Date.

6 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
7 the Settlement means any and all claims for civil penalties under the Private Attorneys General
8 Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of
9 Aggrieved Employees and State of California, based on the facts stated in Plaintiff’s operative
10 Complaint and in Plaintiff’s July 20, 2020, notice letter to the LWDA (including any
11 amendments thereto), including all PAGA claims seeking civil penalties for (a) failure to pay
12 minimum and regular wages, (b) failure to pay overtime wages, (c) failure to provide meal
13 periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period
14 and upon separation of employment, (f) failure to provide accurate itemized wage statements, (g)
15 failure to provide suitable seating and (h) failure to pay sick pay at the proper rate, and based on
16 or arising from alleged violations of the California Labor Code, including Sections 200-204, 208,
17 210, 218.6, 221-223, 225.5, 226, 226a. 226.3, 226.7, 256, 510, 512, 558, 1174, 1194,
18 1194.2, 1197, 1197.1, 1198, 1199, 2678, *et seq.*, and of the California Wage Orders. The time
19 period governing the PAGA Released Claims shall be any time during the PAGA Period. The
20 PAGA Released Claims do not release any potential claims for wages or statutory penalties.

21 24. “Participating Class Member” means any and all Settlement Class Members who
22 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
23 opt-out by submitting a timely valid Request for Exclusion.

24 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
25 Defendant, collectively.

26 26. “Pay Periods Worked” or “Eligible Pay Periods,” in the context of Settlement
27 Class Members, means all pay periods during the Class Period in which the Settlement Class
28 Member was employed by Defendant as a non-exempt employee in California and worked at

1 least one shift during the pay period. Likewise, in the context of Aggrieved Employees, these
2 phrases mean all pay periods during the PAGA Period in which the Aggrieved Employee was
3 employed by Defendant as a non-exempt employee in California and worked at least one shift
4 during the pay period.

5 27. “Preliminary Approval Date” means the date the Court approves the Settlement
6 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

7 28. “Preliminary Approval Order” means the judicial Order to be entered by the
8 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
9 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
10 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
11 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
12 costs. Defendant will not object to Plaintiff’s motion for preliminary approval, but will be
13 provided with an opportunity to review and comment upon the motion at least five days before it
14 is filed.

15 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
16 Administrator for the benefit of the Final Settlement Class, and from which the settlement
17 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
18 Code Sec. 468.

19 30. “Released Class Claims” or “Class Claims” by the Participating Class Members
20 upon Final Approval of the Settlement will include any and all claims, demands, rights,
21 liabilities, and causes of action that were or could have been pled under local, state or federal law
22 arising out of or based on the facts alleged in the operative Complaint against Defendant for the
23 duration of the Release Period, including but not limited to claims for (a) failure to pay minimum
24 and regular wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)
25 failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon
26 separation of employment, (f) failure to provide accurate itemized wage statements, (g) failure to
27 pay sick pay at the proper rate, and (h) unfair and unlawful business practices. In addition, each
28 Participating Class Member who cashes their Individual Settlement Payment shall be deemed to

1 have released all claims alleged in the operative Complaint or that could have been alleged based
2 on the facts therein under the California Labor Code. However, such Released Class Claims
3 shall not include the PAGA Released Claims and the FLSA. The time period governing the
4 Released Class Claims shall be the same as the Class Period.

5 31. “Released Parties” means Defendant, its divisions, subsidiaries, partnerships,
6 parents, affiliated corporations, trusts, or other related entities, past and present, and each of
7 them, as well as its and their directors, officers, shareholders, partners, members, representatives,
8 executors, trustees, administrators, beneficiaries, assignees, successors, business managers,
9 agents, contractors, insurers, attorneys, and employees, past and present, and each of them and
10 their marital community.

11 32. “Release” shall mean the release and discharge of the Released Class Claims by
12 Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA
13 Released Claims by Plaintiff and all of the Aggrieved Employees. The *res judicata* effect of the
14 Judgment will be the same as that of the Release of the Released Class Claims and PAGA
15 Released Claims.

16 33. “Request for Exclusion” means and refers to a valid and timely request for
17 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
18 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 68(a) below.

19 34. “Service Payment” or “Service Award” means the amount approved by the Court
20 to be paid to the Class Representative, Saul Elizarraras, in addition to his Individual Settlement
21 Payment as a Participating Class Member.

22 35. “Settlement Administrator” means and refers to ILYM Group, the third-party
23 class action settlement administrator agreed to by the Parties, that will provide the Notice Packet
24 to the Class Members and distribute the settlement amounts as described in this Agreement.

25 36. “Settlement Administration Costs” means the costs payable from the Gross
26 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
27 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
28 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property

1 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
2 and providing necessary reports and declarations, as requested by the Parties. The Settlement
3 Administration Costs shall be paid from the Settlement Amount, including, if necessary, any
4 such costs in excess of the amount represented by the Settlement Administrator as being the
5 maximum costs necessary to administer the Settlement.

6 37. "Settlement Class" consists of all current and former non-exempt employees of
7 Defendant who worked in California at any time during the Class Period. Defendant represents
8 that there are approximately 140 eligible Class Members.

9 38. "Settlement Class Member" or "Class Member(s)" refers to individual members
10 of the Settlement Class.

11 **B. General Terms**

12 39. Plaintiff filed a class and representative PAGA action complaint in the Court on
13 July 31, 2020 against Defendant and Does 1 through 10. Plaintiff subsequently amended the
14 Complaint on June 29, 2021. The operative Complaint alleges class and representative PAGA
15 claims, including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime
16 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to failure
17 to timely pay wages each period and upon separation of employment, (6) failure to provide
18 accurate itemized wage statements, (7) failure to provide suitable seating, (8) failure to pay sick
19 pay at the proper rate, (9) unfair and unlawful competition pursuant to Business and Professions
20 Code §17200 *et seq.*, and (10) related claims under PAGA.

21 40. Defendant denies Plaintiff's claims and allegations and contends that the Action is
22 not suitable for class certification or manageable as a class or representative action.

23 41. The Class Representative believes he can proceed with his representative and
24 class claims, that the Action is meritorious, and that class certification is appropriate.

25 42. The Parties have conducted a thorough investigation into the facts of the Action.
26 This includes conducting an extensive exchange of informal discovery, including Defendant's
27 written policies and practices and the production of payroll and timekeeping records for
28 Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive

1 research with respect to the applicable law and potential defenses to the claims of the Settlement
2 Class. Class Counsel has diligently pursued an investigation of the Class Members' claims
3 against Defendant. Based on the foregoing data and on their own independent investigation and
4 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
5 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
6 adequate and is in the best interest of the Class Members in light of all known facts and
7 circumstances, including the risk of significant delay and uncertainty associated with litigation,
8 various defenses asserted by Defendant, and numerous potential appellate issues.

9 43. On May 20, 2021, Plaintiff and Defendant participated in mediation before Lynn
10 Frank, a highly experienced wage and hour class action mediator. The matter resolved at
11 mediation pursuant to a mediator's proposal.

12 44. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
13 to be performed or judgments to be entered pursuant to the terms of the Settlement and
14 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
15 any statute or law or liability on the claims or allegations in the Action.

16 45. Stipulation for Class Certification and Representative Treatment. For settlement
17 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
18 do not submit a Request for Exclusion from the Settlement Class may be conditionally certified
19 as a settlement class and that the Aggrieved Employees are appropriate for representative
20 treatment for purposes of settlement. This stipulation to certification and representative treatment
21 is in no way an admission that class action certification and/or representative treatment is proper
22 and shall not be admissible in this or in any other action except for the sole purposes of enforcing
23 this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
24 stipulation to class certification and representative treatment as part of the Settlement shall
25 become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
26 connection with, the issue of whether or not certification and/or representative treatment would
27 be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares
28 that it would continue to oppose class certification, representative treatment, and the substantive

merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

46. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for One Million Two Hundred Thousand Dollars (\$1,200,000) (“the Gross Settlement Amount”). The Gross Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendant shall separately pay the employers’ share of applicable payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, as approved and awarded by the Court, the Settlement Administration Costs, as approved and awarded by the Court, and PAGA Penalties. If the Court reduces the attorneys’ fees, litigation costs, Service Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

(c) Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Eligible Pay Periods a Settlement Class Member worked during the Class Period. Specific Calculations of Individual Settlement Payments will be made as follows:

- Defendant will calculate the total number of Pay Periods Worked by each Settlement Class Member during the Class Period and the aggregate total number of Pay Periods Worked by all Settlement Class Members during the Class Period.
- To determine each Settlement Class Member’s estimated Individual

Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Pay Periods Worked, resulting in the "Pay Period Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Pay Periods Worked during the Class Period by the Pay Period Value.

- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings and deductions.
- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Pay Periods Worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and Eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000, in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the Settlement) and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this request if Plaintiff does not

request exclusion from the Settlement Class and does not take any action, directly or indirectly, to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement nor to appeal this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third of the Gross Settlement Amount (\$400,000), plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Parties agree that any amount awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be a basis for Class Counsel to rescind or otherwise void this Settlement Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

(g) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,000 unless approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this

1 amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
2 Private Attorney General Act of 2004 (“PAGA”) and \$12,500 (25%) will be paid to the
3 Aggrieved Employees on a Pay Periods Worked basis, which will be treated entirely as civil
4 penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give
5 proper notice to the LWDA of the Settlement.

6 (i) Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make
7 no representations as to the tax treatment or legal effect of Settlement Amounts called for
8 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
9 representation by Class Counsel, Defendant, or Defendant’s counsel in this regard. Plaintiff,
10 Participating Class Members, and Aggrieved Employees understand and agree that they will be
11 solely responsible for the payment of any taxes and penalties assessed on their respective
12 Settlement Amounts described herein. The amount of federal income tax withholding will be
13 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.
14 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
15 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
16 and/or Forms 1099 will be distributed at times and in the manner required by the Internal
17 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
18 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
19 Agreement, the processes set forth in this Section may be modified in a manner to bring
20 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
21 Aggrieved Employees understand and agree that they will be solely responsible for the payment
22 of any taxes and penalties assessed on their respective payments described herein and will hold
23 Defendant harmless from and against any claims resulting from treatment of such payments as
24 non-taxable damages.

25 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
26 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
27 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
28 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO

1 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
2 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
3 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
4 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
5 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
6 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
7 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
8 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
9 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
10 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
11 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
12 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
13 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
14 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
16 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
17 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
18 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
19 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
20 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

21 47. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
22 Participating Class Members under this Agreement, as well as any other payments made
23 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
24 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
25 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
26 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
27 intention that this Settlement will not affect any rights, contributions, or amounts to which any
28 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the

1 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
2 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

3 48. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
4 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
5 Participating Class Members will not have to make a claim in order to receive an Individual
6 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
7 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
8 will be made directly to each Participating Class Member and Aggrieved Employee. The
9 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
10 obligations with respect to unclaimed funds as a result of a Participating Class Member or
11 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
12 deadline, as set forth herein.

13 49. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
14 adequate, and will so represent same to the Court.

15 **D. Release by Plaintiff and the Settlement Class**

16 50. Upon entry of the Final Approval Order and Defendant’s funding of the
17 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
18 Agreement, the Participating Class Members, for themselves and for their respective spouses,
19 domestic partners, children, estates, heirs, and representatives, will forever completely release
20 and discharge the Released Parties from the Released Class Claims for the Class Period. It is the
21 intent of the Parties that the Final Approval Order and judgment entered by the Court shall have
22 full equitable and collateral estoppel and *res judicata* effect and be final and binding upon
23 Participating Class Members regarding the Released Class Claims.

24 51. Each Participating Class Member will be deemed to have made the foregoing
25 Release as if by manually signing it.

26 52. Upon entry of the Final Approval Order and Defendant’s funding of the
27 Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on
28 behalf of the State of California and all Aggrieved Employees, for themselves and for their

1 respective spouses, domestic partners, , children, estates, heirs, and representatives, will forever
2 completely release and discharge the Released Parties from the PAGA Released Claims through
3 the PAGA Period. It is the intent of the Parties that the Final Approval Order and judgment
4 entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and
5 be final and binding upon Aggrieved Employees regarding the PAGA Released Claims.

6 53. Each Aggrieved Employee and the LWDA will be deemed to have made the
7 foregoing Release as if by manually signing it.

8 54. Plaintiff and Defendant intend that the Settlement described in this Agreement
9 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
10 arbitration, demand, or other action of any kind, by each and all of the Participating Class
11 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
12 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
13 only applies to Participating Class Members and, thus, does not apply to any Class Member who
14 timely and validly submits a Request for Exclusion, nor does it apply to Aggrieved Employees
15 with respect to the PAGA Released Claims.

16 55. Plaintiff and Defendant also intend that the Settlement described in this
17 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
18 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
19 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
20 to any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in
21 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement
22 prior to the filing of the Motion for Preliminary Approval. This section is not intended to
23 preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than a
24 PAGA claim.

25 56. Class Representative, on behalf of himself and the Participating Class Members,
26 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
27 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
28 sums allegedly due to them. Class Representative, on behalf of himself and the Participating

Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

E. Release by Class Representative

57. As a material inducement to Defendant to enter into this Settlement Agreement, and in addition to the Class Representative's release of the Released Class Claims and PAGA Released Claims, Class Representative does hereby, for himself and for his respective spouses, domestic partners, marital community, children, estates, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge and covenants not to sue the Released Parties with respect to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against said Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment, as alleged in the operative Complaint, arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims or pleadings filed by Class Representative against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever; or arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the date

hereof, including specifically without limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California Constitution, the California Labor Code, the California Civil Code, the California Government Code, the California Business & Professions Code, the California Family Rights Act, the California Fair Employment and Housing Act, or any other federal, state, or local statute or regulation (collectively, the “Class Representative’s Claims”).

58. Class Representative agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties’ relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

59. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California 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.

1 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
2 full and complete release and discharge of all parties, Class Representative and Class Counsel
3 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
4 without limitation, all claims that Class Representative knew of, as well as all claims that he does
5 not know or suspect to exist in his favor against the Released Parties, or any of them, for the time
6 period from the beginning of time to the execution of this Settlement Agreement, and that this
7 Settlement Agreement contemplates the extinguishment of any such Class Representative's
8 claims. Notwithstanding the above, the general release by Class Representative shall not extend
9 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
10 that may not be released by law.

11 **F. Interim Stay of Proceedings**

12 60. Pending completion of all of the prerequisites necessary to effectuate this
13 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
14 except such as are necessary to effectuate the Settlement.

15 **G. Notice Process**

16 61. Appointment of Settlement Administrator. The Parties have agreed to the
17 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
18 including mailing the Notice, using standard devices to obtain forwarding addresses,
19 independently reviewing and verifying documentation associated with any claims or opt-out
20 requests, resolving any disputes regarding the calculation or application of the formula for
21 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
22 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
23 unclaimed funds due diligence, reporting and remittance obligations, and performing such other
24 tasks as set forth herein or as the Parties mutually agree or that the Court orders.

25 62. Disputes Regarding Settlement Administration. Any and all disputes relating to
26 administration of the Settlement by the Settlement Administrator (except for disputes regarding
27 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
28 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify

1 the Court that all payments and obligations contemplated by this Settlement Agreement have
2 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
3 confer in good faith to resolve the dispute without the necessity of Court intervention. The
4 Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class
5 Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may
6 be required by law for all amounts paid pursuant to this Agreement. The Settlement
7 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
8 all payroll taxes and penalties to the appropriate government authorities.

9 63. Class Data. Within thirty (30) days after entry of the Preliminary Approval
10 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
11 Administrator will run a check of the Class Members' addresses against those on file with the
12 U.S. Postal Service's National Change of Address List. The Class Data provided to the
13 Settlement Administrator will remain confidential, shall be used solely to administer the
14 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
15 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
16 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
17 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
18 the Action and Settlement. The Settlement Administrator will be required to sign and provide to
19 Defendant a Certification Regarding Confidential Discovery Materials and to be bound by a
20 Stipulated Protective Order as entered by the Court.

21 64. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
22 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
23 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
24 The Settlement Administrator shall use standard devices, including a skip trace, to obtain
25 forwarding addresses of Settlement Class Members if any envelopes are returned.

26 65. Returned Notices. The Settlement Administrator will take steps to ensure that the
27 Notice is received by all Settlement Class Members, including utilization of the National Change
28 of Address Database maintained by the United States Postal Service to review the accuracy of

1 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
2 Member for whom an updated address is located within ten (10) calendar days following both
3 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
4 The Notice shall be identical to the original Notice, except that it shall notify the Settlement
5 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
6 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

7 66. Disputes Regarding Information on Notices. Class Members are deemed to
8 participate in the Settlement, unless they opt-out, and Aggrieved Employees may not opt out of
9 the PAGA Released Claims. The Notice will inform Class Members of his/her estimated
10 Individual Settlement Payment and the number of Pay Periods Worked during the Class Period
11 and during the PAGA Period. Class Members may dispute their Pay Periods Worked if they feel
12 they should be credited with more Eligible Pay Periods than Defendant's records show by timely
13 submitting evidence to the Settlement Administrator. Defendant's records will be presumed
14 determinative absent reliable evidence to rebut Defendant's records, but the Settlement
15 Administrator will evaluate the evidence submitted by the Class Member and provide the
16 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
17 faith about the evidence to determine the Class Member's actual number of Pay Periods Worked
18 and estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable
19 to agree, they agree to submit the dispute to the Settlement Administrator to render a final
20 decision. Class Members will have until the Notice Response Deadline to dispute Pay Periods
21 Worked, object or opt out, unless extended by the Court. In the event that the Settlement
22 Administrator increases the number of Pay Periods Worked for any Settlement Class Member,
23 then the Settlement Administrator will recalculate the Participating Class Members' Individual
24 Settlement Payments; accordingly, in no event will Defendant be required to increase the Gross
25 Settlement Amount.

26 67. Declaration of Due Diligence. The Settlement Administrator shall provide
27 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
28 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

68. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the Released Class Claims. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE FUTURE FOAM LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

To be valid, any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Released Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement for the Released Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion will still be subject to the

1 PAGA Released Claims to the fullest extent permitted by law and shall be sent his or her share of
2 PAGA Penalties.

3 (b) Binding Effect on Participating Class Members. Except for those
4 Settlement Class Members who exclude themselves in compliance with the procedures set forth
5 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
6 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
7 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
8 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
9 reasonableness, and adequacy of the Settlement.

10 (c) Objections to Settlement of the Released Class Claims. Any Settlement
11 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the
12 PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement
13 Administrator, in writing, of his or her objection which must be postmarked by the Notice
14 Response Deadline at the address set forth in the Notice. Such objection shall include the
15 objecting Settlement Class Member's full name, address, telephone number, and dates of
16 employment with Defendant, the case name and number, the basis for the objection, including
17 any legal support and each specific reason in support of the objection, as well as any
18 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
19 represented by counsel, the name and address of his or her counsel. The Settlement
20 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
21 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
22 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
23 Participating Class Member who files an objection remains eligible to receive monetary
24 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
25 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
26 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
27 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
28 and properly intervening or filing a motion to vacate the judgment under Code of Civil

1 Procedure Section 663. Settlement Class Members and Aggrieved Employees may not object to
2 or opt-out of the Settlement with respect to the PAGA Claims.

3 (d) Failure to Object. Any Settlement Class Member who desires to object to
4 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
5 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
6 from making any objection to this Settlement. Any Settlement Class Member who does not
7 timely and properly become a party of record by intervening or filing a motion to vacate the
8 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
9 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
10 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary
11 writs.

12 (e) Responses to Objections. Counsel for the Parties may file a response to
13 any objections submitted by objecting Settlement Class Members at least five (5) court days
14 before the date of the Final Approval Hearing.

15 (f) Settlement Class Members will have until the Notice Response Deadline
16 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
17 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
18 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
19 request of Class Counsel or Defense Counsel.

20 (g) Defective Submissions. If a Settlement Class Member's Request for
21 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
22 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
23 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
24 defective submission to advise the Settlement Class Member that his or her submission is
25 defective and that the defect must be cured to render the Request for Exclusion or objection
26 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
27 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
28 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or

received by fax within that period, it will be deemed untimely.

69. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the QSF of the Gross Settlement Amount within fifteen (15) calendar days after the Effective Date. Defendant separately shall pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator. Once Defendant has complied with its obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall have no further obligations under the Agreement, regardless of what occurs with respect to the further administration of the Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the Class Members.

70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual Settlement Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

71. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member or Aggrieved Employee. The release will be binding upon all Participating Class Members and Aggrieved Employees who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator

1 will have any liability for lost or stolen settlement checks, forged signatures on settlement
2 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
3 event a Participating Class Member or Aggrieved Employee notifies the Settlement
4 Administrator that he or she believes that a settlement check has been lost or stolen, the
5 Settlement Administrator shall immediately stop payment on such check. If the check in
6 question has not been negotiated prior to the stop payment order, the Settlement Administrator
7 will issue a replacement check.

8 72. No person shall have any claim against Defendant (or their designees),
9 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
10 mailings, distributions, payments or reports made in accordance with or pursuant to this
11 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
12 Agreement.

13 73. Without prejudice to any other remedies, the Settlement Administrator shall agree
14 to be responsible for any breach of its obligations (whether committed by the Settlement
15 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
16 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
17 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

18 **H. Duties of the Parties Prior to the Court's Approval**

19 74. Promptly after execution of this Settlement Agreement, Plaintiff will move the
20 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
21 accomplishing the following:

22 (a) Scheduling the Final Approval Hearing on the issue of whether this
23 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
24 and a hearing on fees, costs and the Service Payment;

25 (b) Approving as to form and content the proposed Notice;

26 (c) Directing the mailing of the Notice by first class mail to the Settlement
27 Class Members;

28 (d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

75. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

76. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any PAGA Released Claims against any of the Released Parties.

77. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter that will be included with the Individual Settlement Payments.

J. Voiding the Agreement

78. Defendant will have, in its sole discretion, the right to void and withdraw from the Settlement if ten percent (10%) or more of Class Members opt out of the Settlement by giving written notice to the Settlement Administrator at least 30 calendar days before the final approval hearing date.

79. All Parties, signatories and their counsel shall not encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or

indirectly, through any means.

80. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

81. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

82. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

83. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Claim.

84. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

85. No Publicity. Communications regarding this Settlement prior to the Final Approval Date shall be limited to Court-Approved Notices in the Action. After the Final Approval Date, Class Counsel and Class Representative agree that they will not make any direct or indirect comment or publication of the Settlement or of Defendant in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media, or public at large. Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees

1 and costs, or to communications with Settlement Class Members or their representatives about
2 this Settlement, including through the posting of Court-filed documents on Class Counsel's
3 websites for access solely by the Settlement Class Members, or to prevent the Parties or their
4 representatives from communicating with financial or legal advisors regarding the Settlement. In
5 response to any media inquiry, Class Counsel may state only that the Action has been settled on
6 terms mutually agreeable to the Parties.

7 86. No Defamatory Statements. Plaintiff will not make, or encourage anyone else to
8 make, any defamatory or maliciously false statements or remarks about Defendant, any of its
9 employees, and/or any of its services; this restriction includes, but is not limited to, Plaintiff not
10 making any such statements or remarks on Yelp, Glassdoor, LinkedIn, Facebook, other social
11 media, and other online forums. Likewise, Defendant's Officers and Directors will not make any
12 negative or false statements about Plaintiff.

13 87. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
14 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
15 such documents and to take such other action as may reasonably be necessary to implement the
16 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
17 best efforts, including all efforts contemplated by this Settlement Agreement and any other
18 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
19 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
20 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
21 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
22 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
23 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
24 Motion for review at least five days prior to the filing deadline.

25 88. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
26 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
28 cause of action or rights released and discharged by this Settlement Agreement.

1 89. No Admission. Defendant denies any and all liability to Plaintiff and/or any
2 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
3 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
4 compromise the matters at issue in the Complaint to avoid further substantial expense and the
5 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken
6 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
7 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
8 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
9 conditions set forth in this Agreement.

10 90. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
11 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
13 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
14 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
15 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
16 and it, along with all related documents such as the notices, and motions for preliminary and
17 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
18 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
19 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
20 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
21 for any reason the settlement is not approved, the stipulation will be of no force or effect.

22 91. Notices. Unless otherwise specifically provided herein, all notices, demands or
23 other communications given hereunder shall be in writing and shall be deemed to have been duly
24 given as of the third business day after mailing by United States registered or certified mail,
25 return receipt requested, addressed:

To the Settlement Class Members and Aggrieved Employees:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

David Wimmer
dwimmer@swerdlowlaw.com
Lori Yankelevits
lyankelevits@swerdlowlaw.com
SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER
9401 Wilshire Blvd., Suite 828
Beverly Hills, California 90212
Tel: (310) 288-3980 | Fax: (310) 733-1727

92. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

93. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

94. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its

1 terms or by a writing signed by all of the Parties hereto.

2 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
3 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
4 provide written notice to the other Party and allow an opportunity to cure the alleged
5 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
6 Agreement to resolve any dispute they are unable to resolve informally. During this period, the
7 Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
8 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

9 96. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
10 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
11 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
12 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations
13 of this Agreement.

14 97. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
15 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible
16 in a court of law.

17 98. Choice of Law. This Settlement Agreement shall be governed by and construed,
18 enforced and administered in accordance with the laws of the State of California.

19 99. Integration Clause. This Settlement Agreement contains the entire agreement
20 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
21 or contemporaneous agreements, understandings, representations, and statements, whether oral
22 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
23 hereunder may be waived except in writing.

24 100. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
25 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
26 successors and assigns.

27 101. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
28 because the members of the Settlement Class are numerous, it is impossible or impractical to

1 have each Class Member execute this Settlement Agreement. The Notice will advise all
2 Settlement Class Members of the binding nature of the releases provided herein and such shall
3 have the same force and effect as if this Settlement Agreement were executed by each Settlement
4 Class Member.

5 102. Invalidity of Any Provision. Before declaring any provision of this Settlement
6 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
7 extent possible consistent with applicable precedents so as to define all provisions of this
8 Settlement Agreement valid and enforceable.

9 103. Counterparts. This Settlement Agreement may be executed in counterparts, and
10 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
11 deemed an original, and, when taken together with other signed counterparts, shall constitute one
12 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
13 Electronic signatures shall have the same force and effect as an original.

14
15 Dated: September 24, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

16 
17 Saul Elizarraras (Sep 24, 2021 14:05 PDT)

Saul Elizarraras

18 Dated: September 24, 2021

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

20 
21 Brian J. Mankin
22 Attorneys for Plaintiff

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1 Dated: September 13, 2021

DEFENDANT:
FUTURE FOAM, INC.

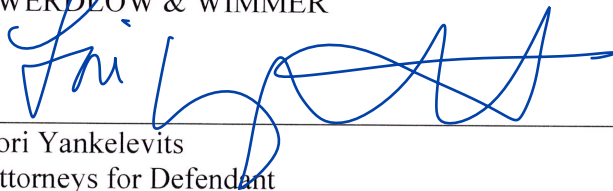
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3
4 By: Patrick Medinger
5 Title: Chief Financial Officer



6 Dated: September 13, 2021

DEFENDANT'S COUNSEL:
SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER

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10 Lori Yankelevits
11 Attorneys for Defendant



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EXHIBIT “B”

1 Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
2 Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
3 LAUBY, MANKIN & LAUBY LLP
4 4590 Allstate Drive
Riverside, CA 92501
5 Tel: (951) 320-1444
Fax: (951) 320-1445

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 18 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: LM DEPUTY

6 Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10
11 SAUL ELIZARRARAS, individually, on a
12 representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14
15 vs.

16 FUTURE FOAM, INC., a Nebraska
17 Corporation; and DOES 1 through 20,
inclusive;

18 Defendants.
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Case No.: 30-2020-01152286-CU-OE-CXC
[Assigned to Hon. Judge James J. DiCesare,
Dept C16, for all purposes]

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL AND:

- (1) CONDITIONALLY CERTIFYING
THE CLASS FOR SETTLEMENT
PURPOSES ONLY;
- (2) ORDERING THE DISTRIBUTION
OF THE NOTICE PACKET TO
THE CLASS; AND
- (3) SETTING A FINAL FAIRNESS
HEARING FOR FINAL APPROVAL
OF THE SETTLEMENT

Complaint Filed: July 31, 2020

1 Having considered the Class Action Settlement Agreement ("Settlement Agreement"),
2 the Memorandum of Points and Authorities in Support of the Motion for Preliminary Approval
3 of Class Action Settlement, all documents and legal authorities in support thereof, and for good
4 cause appearing therefor, IT IS HEREBY ORDERED:

5 1. The Court grants preliminary approval of the Settlement based upon the terms set
6 forth in the Settlement Agreement (See the Register of Action ["ROA"] # 37, Exhibit A, Pages
7 11 - 43). The settlement appears to be fair, adequate and reasonable to the Class. Based on a
8 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
9 arms-length negotiations conducted after Class Counsel had adequately investigated the claims
10 and become familiar with the strengths and weaknesses of the claims. The assistance of an
11 experienced mediator in the Settlement process supports the Court's conclusion that the
12 Settlement is non-collusive.

13 2. For settlement purposes only, the Court conditionally certifies the following
14 Class:

15 All similarly situated non-exempt employees of Defendant Future Foam, Inc.,
16 who worked in California at any time during the Class Period of July 31, 2016,
17 through the Preliminary Approval Date.

18 3. As set forth in the Settlement Agreement, Aggrieved Employees includes: "all
19 current and former non-exempt employees of Defendant Future Foam, Inc., who worked in
20 California at any time during the PAGA Period of July 31, 2019, through the Preliminary
21 Approval Date." Under the Settlement, \$50,000 will be allocated to PAGA Penalties to pay to
22 the Labor and Workforce Development Agency ("LWDA") in connection with the California
23 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"),
24 as well as the individual PAGA payment allocated to each Aggrieved Employee. Of this amount,
25 \$37,500 (75%) will be paid to the California Labor Workforce Development Agency ("LWDA")
26 in satisfaction of the claims for penalties under PAGA, and the remaining \$12,500 (25%) will be
27 paid to Aggrieved Employees on a Pay Periods Worked basis. Any Aggrieved Employee who
28 timely requests exclusion from the Settlement will still receive a share of PAGA Penalties and be

1 bound by the release of the PAGA Claims.

2 4. The Court has determined that sufficient evidence has been presented to grant
3 preliminary approval of the Settlement Agreement, as the terms appear to be presumptively
4 valid, proper and fall within the range of a fair, reasonable, and adequate settlement, subject to a
5 final determination at the Final Approval Hearing.

6 5. For settlement purposes only, Plaintiff Saul Elizarraras is appointed as the class
7 representative, and Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP are appointed
8 as Class Counsel.

9 6. The Court approves, as to form and content, the Class Notice (attached hereto as
10 Exhibit "A") and finds that the Class Notice satisfies the requirements of California Rule of
11 Court, rules 3.766 and 3.769, subd. (f), and fairly apprises the Class Members of the terms of the
12 final approval hearing date, the proposed settlement terms and of their options, including: (1) the
13 nature of the action, the definition of the Class, the identity of Class Counsel, and the essential
14 terms of the Settlement; (2) Named Plaintiff's and Class Counsel's applications for the class
15 representative's enhancement award, and Class Counsel's request for attorneys' fees and
16 litigation costs; (3) a formula used to determine the Class Member's estimated payment; (4)
17 Settlement Class Members' rights to appear through counsel if they desire; (5) how to object to
18 the Settlement or submit a request to opt-out of the Class Claims if a Class Member wishes to do
19 so; and (6) how to obtain additional information regarding the action and the Settlement.
20 Counsel for the Parties are authorized to correct any typographical errors in settlement and make
21 clarifications, to the extent the same are found or needed, so long as such corrections do not
22 materially alter the substance of the documents.

23 7. The Court approves the procedure for Class Members to participate in, request
24 exclusion from or object to the Class Claims, and preserve appeal rights as set forth in the
25 Settlement Agreement and the Class Notice. Settlement Class Members who wish to request
26 exclusion or object to the Settlement of the Class Claims are directed to mail the appropriate
27 documents to the Settlement Administrator (and not to the Court) within the time periods set
28 forth in the Class Notice.

1 8. The Court approves ILYM Group to act as the Settlement Administrator, who is
2 directed to fulfill all of the duties and services set forth in the Settlement Agreement.

3 9. The Court finds that the deadlines and method set forth in the Settlement
4 Agreement for the mailing of the Notice and related forms described herein meet the
5 requirements of due process, provide the best notice practicable under the circumstances,
6 constitute due and sufficient notice to all persons entitled to notice, and otherwise satisfy the
7 requirements of California law.

8 10. Defendant is directed to provide the Settlement Administrator, not later than thirty
9 (30) days after the Preliminary Approval Date, an electronic database containing the Class Data,
10 as set forth in the Settlement Agreement.

11 11. The Court directs the Settlement Administrator to calculate the number of Pay
12 Periods credited for each Class Member and Aggrieved Employee, perform address verification
13 measures and mail the Class Notice in English and Spanish by first class mail to the Settlement
14 Class Members within 10 days of receipt of the Class Data and to otherwise carry out the
15 Settlement according to the terms of the Settlement Agreement and in conformity with this
16 Order. The Parties are also ordered to carry out the Settlement according to the terms of the
17 Settlement Agreement.

18 12. All Class Members shall be deemed to participate in the Settlement, although any
19 Class Member who wishes to comment on or object to the Settlement as to the Class Claims or
20 who elects not to participate in the Settlement as to the Class Claims has until forty-five (45)
21 days (i.e., the "Notice Response Deadline") after the mailing of the Class Notice to submit his or
22 her objection or Request for Exclusion from the Class Claims, pursuant to the procedures set
23 forth in the Class Notice.

24 13. The Court approves the handling of unclaimed funds set forth in the Settlement
25 Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a
26 result of a failure to timely cash a settlement check shall be issued to the State Controller's
27 Office in the name of the Class Member, as set forth in the Settlement Agreement.

28 ///

14. The following dates shall govern for purposes of this settlement:

March 18, 2022	Preliminary Approval (PA) hearing
April 27, 2022 (40 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
June 11, 2022 (45 days after mailing Class Notice)	Deadline for Settlement Class Members to mail Requests for Exclusion, Objections to the settlement, as well as dispute his/her Pay Periods credited.
July 22, 2022 (14 calendar days before Final Approval hearing)	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
July 25, 2022 (9 court days before Final Approval hearing)	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
July 29, 2022 (5 court days before final approval hearing)	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
August 5, 2022 at 9:30 a.m.	Final Approval Hearing.
15 days after Effective Date	Defendant to fund the Gross Settlement Amount

15. A final approval hearing shall be held in this Court on August 5, 2022, at 9:30 a.m. to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3) the amount of the service awards awarded to the class representatives.

16. Upon final approval, Participating Class Members and Aggrieved Employees will be bound by the terms and conditions of the Settlement Agreement, the final Order/Judgment, and the releases set forth therein; and, except as otherwise provided herein and in the Settlement Agreement, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

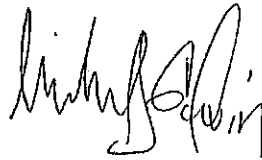
17. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement

1 may be construed as, or may be used as an admission by or against Defendant or any of the other
2 Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing
3 or liability whatsoever.

4 18. The Court may, for good cause shown, extend any of the deadlines set forth in
5 this Order. If any Settlement Class Member submits an objection to the settlement and the Final
6 Approval Hearing is continued, either Class Counsel or the Settlement Administrator are directed
7 to give notice of the new hearing date to the objecting party; and

8 19. In the event that the Settlement Agreement does not receive final approval or the
9 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and
10 shall be vacated.

11
12 Date: 04-18-2022



13 MICHAEL J. GALVIN
14 TEMPORARY JUDGE OF THE SUPERIOR COURT
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EXHIBIT “C”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00434 Elizarraras v Future Foam (Active Only)

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Saul Elizarraras</u>									
<u>14000-00434 Elizarraras v Future Foam</u>									
07-27-2020	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	75.00	0.00	1.00	75.00
LWDA - Check #573									
07-31-2020	Approved		Non-Billable	E101 Copying	Aguilera, Sophia J.	0.20	0.00	48.00	9.60
48 copies @ \$0.20 for LWDA letters and letters to employer									
07-31-2020	Approved		Non-Billable	E108 Postage	Aguilera, Sophia J.	16.50	0.00	1.00	16.50
Postage for the month of July 2020									
08-03-2020	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	1,494.56	0.00	1.00	1,494.56
One Legal Order #14987451 to file complaint									
09-22-2020	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	103.45	0.00	1.00	103.45
Bosco Inv 4885281 Serve: FUTURE FOAM INC., A NEBRASKA CORPORATION SUMMONS;COMPLAINT;CIVIL CASE COVER SHEET;SCHEDULE AND GENERAL INFORMATION;GUIDELINES ALL COMPLEX CIVIL DEPARTMENTS;ADR Court: Orange County Superior Court - Civil Complex Center									
09-23-2020	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	12.20	0.00	1.00	12.20
One Legal Order #15229784 to file POS									
12-16-2020	Approved		Non-Billable	E125 Mediation fees	Aguilera, Sophia J.	7,500.00	0.00	1.00	7,500.00
Inv dated 12-16-20 for Lynn S. Frank for Mediation 5-20-21									
02-04-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.25	0.00	1.00	14.25
One Legal Order #15823820 to file Notice of Name Change									
06-02-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	35.26	0.00	1.00	35.26
One Legal Order #16349756 to file Notice of Settlement and Request to Continue									
06-29-2021	Approved		Non-Billable	E119 Experts	Aguilera, Sophia J.	1,162.50	0.00	1.00	1,162.50
Berger Consulting Inv 4357									
07-08-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.67	0.00	1.00	14.67
One Legal Order #16532600 to file FAC									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00434 Elizarraras v Future Foam (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Saul Elizarraras</u> <u>14000-00434 Elizarraras v Future Foam</u>									
10-12-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	76.44	0.00	1.00	76.44
One Legal Order #17040898 to file MPA									
11-08-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	35.26	0.00	1.00	35.26
One Legal Order #17175477 to file Stip to Cont SC									
02-22-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	94.00	0.00	1.00	94.00
Courtcall ID #11456025 for 2-18-22 MPA									
03-18-2022	Approved		Non-Billable	E112 Court fees	Grossi, Tracie L.	94.00	0.00	1.00	94.00
Courtcall ID# 11476895 for 3-18-22 Cont'd MPA									
04-29-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	15.19	0.00	1.00	15.19
OneLegal Order#17894688 - file revised proposed order on MPA									
07-22-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated cost to file MFA and supporting documents									

Project Total 11,052.88
Client Total 11,052.88
Grand Total 11,052.88

EXHIBIT “D”