

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

Attorneys for Plaintiff and on behalf of the Proposed Class

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. James J. DiCesare, Dept
C16, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: January 21, 2022
Time: 9:30 a.m.
Dept.: C16
RES#: 73623082

Complaint filed: July 31, 2020

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 department within my firm where I am also a Partner. I represent Plaintiff in this action and 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 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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 close to 500 employee vs. employer litigation matters during my
7 20 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 200 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 over half of those actions to date, and anticipate receiving
12 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). My team and I once held the record for the largest PAGA-only case in
17 California’s history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

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

25 6. Over the last several consecutive years, I have been selected by my peers as a
26 “Super Lawyer” in Employment Litigation.

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BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested but productive mediation, Plaintiff and Defendants (collectively, the “Parties”) entered into a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$1,200,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of All current and former non-exempt employees of Defendant who worked in California at any time during the Class Period of July 31, 2016, through the Preliminary Approval Date (the “Class” or “Class Members”). Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$6,000, a PAGA Penalties payment of \$50,000 of which \$37,500 will be paid to the LWDA and the remaining \$12,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff. After subtracting the agreed-upon deductions from the Settlement Amount, approximately \$714,000 will be available to pay the individual settlement amounts to approximately 150 Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 1,200,000.00
Attorneys’ Fees (1/3)	\$ 400,000.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 50,000.00
Class Representatives Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 714,000.00

8. Assuming approximately 150 total Class Members employed during the Class Period, each will receive approximately \$4,760 on average.

1 9. Each Class Member will receive the Class Notice, explaining the nature of the
2 case, and the process for participating, objecting and opting-out, and advising of his/her
3 estimated settlement payment and the number of Pay Periods he/she is credited with working
4 during the Class Period (attached hereto as **Exhibit B**).

5 **PROCEDURAL BACKGROUND**

6 10. My office has performed considerable work and diligently investigated and
7 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
8 significant settlement fund for the benefit of the Class. We efficiently communicated and
9 exchanged information informally with Defense counsel which enabled the parties to
10 successfully settle the case. Because of the risks involved in litigating the case and the contested
11 legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair,
12 reasonable, and adequate.

13 11. After being retained by Plaintiff, we submitted a letter to the California Labor
14 Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney
15 General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously
16 sent a letter to Defendant requesting the production of his personnel and timekeeping records to
17 further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction
18 over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

19 12. Then, on July 31, 2020, we filed a putative class and representative action
20 Complaint, alleging claims arising out of Defendant's alleged: (1) Failure to Pay Minimum
21 Wages; (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods; (4) Failure to
22 Provide Rest Breaks; (5) Failure to Timely Pay Wages Each Period and Upon Separation of
23 Employment; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Unfair and
24 Unlawful Competition, and (8) related PAGA claims.

25 13. Defendant fully denied the allegations. However, before incurring significant
26 costs and expenses in protracted discovery and litigation, the parties agreed to explore an early
27 resolution through mediation. In preparation for the mediation, the Parties informally
28 exchanged documents and information that allowed both sides to calculate the potential damages

1 and evaluate potential risk, including extensive policies and procedures pertaining to each claim
2 alleged, and statistics relating to the number of current and former employees, number of shifts,
3 pay periods and other things. In this regard, Defendants provided a comprehensive database of
4 timekeeping and payroll records of the Class Members that consisted of nearly 100,000 shifts
5 (and almost 9,900 Pay Periods) worked by the Class Members. This robust sampling enabled
6 both parties and their experts to take a deep dive into the claims. Additionally, during this
7 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
8 including matters related to the calculation of damages, trial, and appellate issues and risks.

9 14. On May 20, 2021, the parties participated in a full-day mediation with Lynn
10 Frank, who is one of the most experienced and reputable class action mediators in California.
11 Ultimately, Ms. Frank issued a mediator's proposal calling for a class-wide settlement for
12 \$1,200,000. The Parties accepted the mediator's proposal and memorialized the terms of the
13 settlement in a long-form Settlement Agreement. Under the terms of the settlement, the Parties
14 now seek preliminary approval of the Settlement.

15 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL'S INVESTIGATION**

16 15. The putative Class in this case consists of approximately 150 similarly situated
17 non-exempt employees who worked for Defendant in California during the Class Period.
18 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt employees.
19 However, Defendants vigorously contested and denied each of Plaintiff's material allegations on
20 the merits and as to the propriety of a class action or PAGA representative action on behalf of the
21 putative class and allegedly aggrieved employees.

22 16. First, Plaintiff claimed that Defendant failed to pay proper minimum and overtime
23 wages due to its "rounding" policy that only paid in quarter-hour increments (*i.e.*, Class
24 Members were paid for .00 / .25 / .50 / .75 hours but never other fractions of time). Based on the
25 class-wide timekeeping data, Plaintiff alleged that the Class Members were routinely
26 undercompensated, in violation of California law. Therefore, Plaintiff argued that these
27 violations resulted in unpaid minimum wages and overtime, as well as waiting time penalties
28 under Labor Code § 203 and other derivative penalties. However, Defendant opposed this claim

1 and argued that its rounding policy was neutral both on its face and in application.

2 17. Second, Plaintiff argued that the Class members were often denied compliant
3 meal and rest breaks due to the nature of the work. However, Defendant argued that it provided
4 and made available meal and rest breaks to all employees, and any employee who did not take a
5 meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced
6 its written policies and practices, which it argued show full compliance with the law. As such,
7 Defendant argued that these claims were without merit because, for each violation, a fact-finder
8 would have to determine why a break was noncompliant/nonexistent, because if it was by the
9 employee's choice, no liability attaches to the Defendant.

10 18. Plaintiff also claimed, among other things, that Defendant failed to timely pay
11 final wages, failed to provide accurate itemized wage statements, and alleged various PAGA
12 claims arising out of the claimed violations mentioned above. However, Defendant argued that
13 claims for wage statements, waiting time penalties and PAGA penalties were derivative of other
14 claims, which it argued have no merit.

15 19. Nonetheless, the Parties concluded that further litigation of the Action would be
16 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
17 order to limit further risk, expense and protracted litigation.

18 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

19 20. The settlement was the product of extensive arm's length negotiations, facilitated
20 by an experienced mediator. Though cordial and professional, the settlement negotiations were
21 adversarial and non-collusive in nature. The settlement reached is the product of substantial
22 effort by the parties and their counsel. Although we believed that there was a possibility of
23 certifying the claims, we recognized the potential risk, expense, and complexity posed by
24 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
25 on the damages awarded, and/or on an appeal that can take several more years to litigate.

26 21. The settlement will result in a fair payment to each class member based on the
27 number of Pay Periods Worked during the Class Period. As set forth hereinabove, Plaintiff and
28 his counsel have diligently investigated the claims and defenses on behalf of the Class Members

1 and worked to achieve a resolution of the claims to maximize the recovery by avoiding further
2 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
3 further litigation described above and weighing them against the benefits of a known
4 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
5 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
6 reasonable resolution of the claims alleged.

7 22. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
8 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
9 and investigation, making it possible to exercise informed judgment throughout the settlement
10 process, including significant document review (e.g. documents pertaining to Defendant's
11 policies and procedures, personnel documents, among others), and conducted an extensive
12 analysis of the detailed class-wide data provided by Defendant.

13 23. Based on my experience in other cases, including wage and hour matters, I
14 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
15 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
16 settlement at this time is in the best interests of the class. The settlement provides each class
17 member with compensation for the alleged violations when viewed in relation to the costs and
18 risks inherent in obtaining class certification and proceeding to trial.

19 24. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
20 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

21 25. Of course, the settlement amount represents a compromise figure, taking into
22 account the various risks surrounding class certification and the merits of Defendant's asserted
23 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
24 members, with no reversion to Defendant.

25 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

26 26. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
27 which I believe is fair and warranted. Mr. Elizarraras came forward in an effort to effectuate a
28 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.

1 He assumed significant risk in bringing this litigation—namely, had he lost, he would have been
2 ordered to pay Defendant’s costs.

3 27. Plaintiff provided invaluable assistance to my office and the Class in this case,
4 including providing factual background for the Class Complaint; reviewing the litigation
5 documents; providing information and documents about Defendant’s policies and practices;
6 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
7 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
8 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
9 the reasons why he believes that the service award should be approved.

10 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
11 **REQUESTED FEES AND COSTS**

12 28. As set forth above, I have over 200 class and representative actions, have been
13 appointed as class counsel and have successfully resolved over half of those cases, and many
14 others remain pending and will successfully resolve in the future.

15 29. When this case was taken on a contingency fee basis, with my firm agreeing to
16 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
17 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
18 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
19 those expenditures.

20 30. It is my experience that attorney fee awards of one-third of a common fund
21 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
22 of the Settlement Amount for attorneys’ fees. Defendants do not oppose this fee request. The fee
23 is further warranted because it is within the range of reasonableness typically awarded in class
24 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
25 amount of costs incurred at the time of final approval.

26 **SETTLEMENT ADMINISTRATOR**

27 31. The parties request that the Court appoint ILYM Group to serve as the Settlement
28 Administrator. ILYM Group is experienced in administering class action settlements, and has

1 provided a proposal to administer this settlement for a total of \$6,000, which is attached hereto as
2 **Exhibit D.**

3 **SUBMISSION TO THE LWDA**

4 32. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
5 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E.**

6 **EXHIBITS AND CONCLUSION**

7 33. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
8 “A.”

9 34. The proposed Class Notice is attached as Exhibit “B.”

10 35. A true and correct copy of the notice letter we submitted to the LWDA is attached
11 as Exhibit “C.”

12 36. ILYM Group’s proposal to administer the Settlement is attached hereto as Exhibit
13 “D.”

14 37. The LWDA’s confirmation of receipt of this Motion and Declaration is attached
15 hereto as Exhibit “E.”

16 38. For the foregoing reasons, it is respectfully requested that the Court grant
17 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
18 class, as well as preliminarily approve the requested attorneys’ fees, costs, and enhancement
19 payment to the Class Representative.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on October 8, 2021, at Riverside, California.

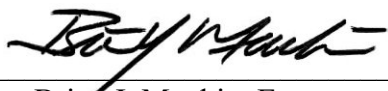
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23 By: 
24 Brian J. Mankin, Esq.
25
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27
28

EXHIBIT “A”

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

Attorneys for Plaintiff Saul Elizarraras and all others similarly situated

David A. Wimmer (CSB No. 155792)
dwimmer@swerdlowlaw.com
Lori M. Yankelevits (CSB No. 156253)
lyankelevits@swerdlowlaw.com
SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER, ALC
9401 Wilshire Blvd., Suite 828
Beverly Hills, California 90212
Tel: (310) 288-3980 | Fax: (310) 733-1727

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 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
14 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
16 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
17 ADVISER'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

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

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

6 **E. Release by Class Representative**

7 57. As a material inducement to Defendant to enter into this Settlement Agreement,
8 and in addition to the Class Representative's release of the Released Class Claims and PAGA
9 Released Claims, Class Representative does hereby, for himself and for his respective spouses,
10 domestic partners, marital community, children, estates, attorneys, heirs, successors,
11 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
12 personal representatives, and assigns forever and completely release and discharge and covenants
13 not to sue the Released Parties with respect to any and all claims, demands, liens, agreements,
14 contracts, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated
15 damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and
16 liabilities of whatever kind or nature in law, equity or otherwise, whether now known or
17 unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or
18 has at any time heretofore owned or held as against said Released Parties, or any of them. Such
19 released claims include specifically, but not exclusively and without limiting the generality of the
20 foregoing, any and all claims, demands, agreements, obligations and causes of action, known or
21 unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims
22 arising out of, based upon, or relating to Class Representative's employment with Defendant or
23 the remuneration for or termination of such employment, as alleged in the operative Complaint,
24 arising out of or in any way connected with any transactions, occurrences, acts or omissions set
25 forth, or facts alleged, in any and all charges, complaints, claims or pleadings filed by Class
26 Representative against any Released Party prior to the date hereof with any city, county, state or
27 federal agency, commission, office or tribunal whatsoever; or arising out of or in any way
28 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

19 
20 Brian J. Mankin
21 Attorneys for Plaintiff

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1 Dated: September 13, 2021

DEFENDANT:
FUTURE FOAM, INC.

2
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”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Saul Elizarraras v. Future Foam, Inc.
Superior Court of the State of California, County of Orange
Case No. 30-2020-01152286-CU-OE-CXC

To: all current and former non-exempt employees of Defendant Future Foam, Inc. who worked in California at any time between July 31, 2016, and [REDACTED], 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2022, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and Aggrieved Employee in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible pay periods you worked at Future Foam in California between July 31, 2016, and [REDACTED], 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by [REDACTED], 2022 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2022 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe that your number of pay periods that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited pay periods). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Pay Period calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Elizarraras v. Future Foam Inc.*, Orange County Superior Court Case No. 30-2020-01152286-CU-OE-CXC (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Future Foam’s records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between July 31, 2016, and [REDACTED], 2022 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Future Foam as a non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On July 31, 2020, Plaintiff and Class Representative Saul Elizarraras, through his attorneys (“Class Counsel”), filed a class and representative action complaint against Future Foam for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by Future Foam in California at any time since July 31, 2016. On or about June 29, 2020, Plaintiff filed a First Amended Complaint in the Lawsuit that alleges that Future Foam violated various Labor Code sections by failing to pay wages for all hours worked, failing to provide all required meal and rest breaks, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Claim Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All of these claims are called the “Class Claims.” The Lawsuit also sought, also on behalf of the California Labor Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is July 31, 2019, to [REDACTED], 2022 (“PAGA Claim Period”).

Future Foam has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Future Foam is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Future Foam has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Future Foam and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Future Foam, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Future Foam, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Future Foam will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by Future Foam in California at any time from July 31, 2016, through [REDACTED], 2022 (the "Settlement Class") and approved a representative class all non-exempt employees employed by Future Foam in California at any time from July 31, 2019, through [REDACTED], 2022 ("Aggrieved Employees"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become "Participating Class Members" and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against Future Foam.

Without admitting any wrongdoing, Future Foam has agreed to pay \$1,200,000 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved ILYM Group to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$6,000 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff's PAGA Claims. Of this amount, \$37,500 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 will be divided between all Aggrieved Employees based on the number of pay periods worked during the PAGA Claim Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Aggrieved Employees includes "all current and former non-exempt employees of Future Foam who worked in California at any time during the PAGA Claim Period." You will receive your allocated portion of this payment and will be bound by the release of all such PAGA Claims without regard to your selected option discussed in Section V., below. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$12,500 allocation:

Aggrieved Employee?	Pay Periods Worked as Aggrieved Employee?	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award Class Representative a Service Payment in the amount of \$10,000 to compensate him for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$400,000) of the common fund Gross Settlement

Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of Pay Periods a Settlement Class Member is credited with working during the Class Period. A Class Member is credited with one Pay Period Worked each time the Class Member works at least one shift during the Class Period in a non-exempt position in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Pay Periods Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Pay Period Value." The Pay Period Value will be multiplied by the number of Pay Periods Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Pay Periods Worked at Future Foam during the Class Period will be calculated from Future Foam's records. Future Foam's records indicate that you worked for [TOTAL PAY PERIODS] Pay Periods in California during the Class Period of July 31, 2016, through [REDACTED], 2022. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2022, with documentation to establish the number of eligible Pay Periods you claim to have actually worked for Future Foam in California between July 31, 2016, and [REDACTED], 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. Twenty percent (20%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining eighty percent (80%) will be considered and reported as interest and civil penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Future Foam and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Once the Court approves the proposed Settlement and enters Judgment, and Future Foam funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against Future Foam. Specifically, the Participating Class Members will fully release and discharge Defendant, its divisions, subsidiaries, partnerships, parents, affiliated corporations, trusts, or other related entities, past and present, and each of them, as well as its and their directors, officers, shareholders, partners, members, representatives, executors, trustees, administrators, beneficiaries, assignees, successors, business managers,

agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community, of all claims, demands, rights, liabilities, and causes of action that were or could have been pleaded under local, state or federal law arising out of, relating to, or based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the First Amended Complaint against Future Foam for the duration of the Class Period, including but not limited to claims that were pled in the operative First Amended Complaint or that could have been pled based on the facts alleged therein, including claims for: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, and (i) unfair and unlawful competition, whether known or unknown, suspected or unsuspected, concealed or hidden. These released claims and damages are hereinafter referred to as “Released Class Claims.” The time period governing these Released Class Claims shall be at any time from July 31, 2016, through [REDACTED], 2022 (“Class Period”).

Release of PAGA Claims. Also upon the Court’s approval of the Settlement, entry of Judgment, and Future Foam’s funding of the Settlement Amount, the Settlement Agreement will bind the LWDA, Plaintiff, and all Aggrieved Employees, and will bar them from bringing PAGA claims against Future Foam, its divisions, subsidiaries, partnerships, parents, affiliated corporations, trusts, or other related entities, past and present, and each of them, as well as its and their directors, officers, shareholders, partners, members, representatives, executors, trustees, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community, of all claims, demands, rights, liabilities, and causes of action pursuant to PAGA that were or could have been pleaded in the Lawsuit against Future Foam or alleged in Plaintiff’s letter to the LWDA, including but not limited to claims for civil penalties based on or arising from alleged violation by Future Foam of California Labor Code Sections 200-204, 208, 210, 218.6, 221-223, 225.5, 226, 226a, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2678, et seq., and of the California Wage Orders whether known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff, the LWDA, and any Aggrieved Employee have or had at any time during the PAGA Period.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall 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 such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Pay Periods Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Future Foam, who will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2022 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. 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.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2022. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at Future Foam, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2022. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Pay Periods Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2022, at 9:30 a.m. in Department C16 of the Orange County Superior Court, located at 700 Civic Center Drive West, Santa Ana, CA 92701. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2022. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Future Foam in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Class Claims. All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2022 at 9:30 a.m. in Department C16 of the Orange County Superior Court, located at 700 Civic Center Drive West, Santa Ana, CA 92701.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

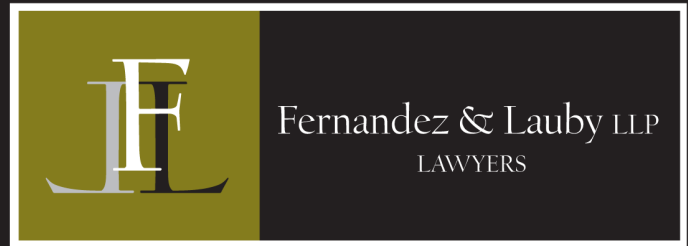
This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2022. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2022. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



July 20, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Future Foam, Inc.
2451 Cypress Way
Fullerton, CA 92831

Future Foam, Inc.
1610 Avenue N
Council Bluffs, IA 51501

Re: PAGA Civil Penalty Claim
Saul Elizarraras v. Future Foam, Inc.

To the Labor and Workforce Development Agency, Future Foam, Inc., and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Saul Elizarraras (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Future Foam, Inc., and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2017 through March 2020. Claimant alleges that, at all relevant times, he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In other words, the Company’s rounding policy is not neutral and results in systematic undercompensation.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices,

Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, Defendants failed to pay the Aggrieved Employees for these earned wages upon separation of employment and, further, failed to pay them at the "final rate" as required by Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked as well as the illegal rounding policy and practice. As a result, Claimant and the Aggrieved Employees were not paid all earned wages to which they were entitled, including proper overtime for hours worked in excess of 8 and/or 12 hours per day, and/or forty hours per week pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

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**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company failed to pay vested vacation upon separation of employment, and further failed to pay such wages at the final rate of pay. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled each period as required by Labor Code § 204, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to state the start and end date of the pay period; failure to accurately state net wages earned; failure to state the name and address of the legal entity that is the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SUITABLE SEATING

(Labor Code § 1198; IWC Wage Order § 14)

Section 14 of the applicable IWC Wage Order states: “All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” Furthermore, “When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Here, the Company failed to provide suitable seating for Claimant and the Aggrieved Employees, in violation of IWC Wage Order § 14, and penalties for such violations can be enforced both through Labor Code §§ 1199 (below) and 1198 (“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful”).

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney’s fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants’ notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

EXHIBIT “D”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Elizarraras v. Future Foam

Requesting Attorneys Name:

Brian Mankin

E-Mail:

bjm@fernandezlauby.com

ILYM Contact:

Jonathan Paul

E-Mail:

Jonathan@ilymgroup.com

Contact Number:

310.948.7117

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	150
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Opt-Outs	Hourly	\$70.00	2	\$140.00
NCOA	Flat Rate	\$250.00	1	\$250.00
Weekly Reports	Flat Rate	\$750.00	1	\$750.00

Subtotal \$1,740.00

NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$0.75	150	\$112.50
USPS First Class 1oz Postage	Per Piece	\$0.55	150	\$82.50
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.50	30	\$45.00
Toll Free Customer Service Representative	Flat Fee	\$150.00	1	\$150.00
Storage, Photocopies, Deliveries	Flat Fee	\$325.00	1	\$325.00

Subtotal \$715.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
1st Check Stub & Release - Print & Mail (W-2/1099)	Per Check	\$0.75	150	\$112.50
USPS First Class 1oz Postage	Per Piece	\$0.55	150	\$82.50
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$4.00	15	\$60.00
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$500.00	1	\$500.00
Escheat Funds to State Controller	Per Piece	\$695.00	1	\$695.00

**Additional Bank fees may apply*

Subtotal \$2,875.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$345.00

TOTAL CASE ESTIMATE: \$6,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “E”