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AND TOM WIGGINGTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

ALFRED GONZALES, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiff,

v.

EL MONTE RENTS, INC, a California
corporation; TOM WIGGINGTON, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV10209

[Assigned to the Hon. Stuart M. Rice in
Dept. 1]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: March 15, 2021

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Alfred Gonzales (“Plaintiff”) and defendants El Monte Rents, Inc.
3 (“Company”) and Tom Wiggington (collectively “Defendants”). The Agreement refers to
4 Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendants captioned *Gonzales, et al. v. El Monte Rents* initiated on March 15, 2021, and pending
8 in Superior Court of the State of California, County of Los Angeles - Spring Street Courthouse.

9 1.2. “Administrator” means ILYM Group, Inc (“ILYM”) the neutral entity the Parties have
10 agreed to appoint to administer the Settlement.

11 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
12 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
13 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
14 Preliminary Approval of the Settlement.

15 1.4. “Aggrieved Employee” means Class Members working for the Company during the
16 PAGA Period as non-exempt, hourly-paid employees in California.

17 1.5. “Class” means all individuals who worked for the Company as non-exempt, hourly-paid
18 employees in California at any time during the Class Period.

19 1.6. “Class Counsel” means David D. Bibiyan of Bibiyan Law Group, P.C.

20 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
21 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
22 expenses, respectively, incurred to prosecute the Action and subject to Court approval.

23 1.8. “Class Data” means Class Member identifying information in Defendants’ possession
24 including the Class Member’s (1) name; (2) last known address(es) currently in Defendants’
25 possession, custody, or control; (3) last known telephone number(s) currently in Defendants’
26 possession, custody, or control; (4) last known Social Security Number(s) in Defendants’
27 possession, custody, or control; and (5) the dates of employment (i.e., hire dates, and, if
28 applicable, re-hire date(s) and/or separation date(s)).

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from July 25, 2019, through March 15, 2022.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of County of Los Angeles - Spring Street Courthouse.

1.16. “Defendants” means the named Defendants in the operative complaint in the Action El Monte Rents, Inc. (the “Company”), and Tom Wiggington.

1.17. “Defense Counsel” means Kevin Nowicki of Gordee, Nowicki & Blakeney LLP.

1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

2 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
3 of the Settlement.

4 1.21. "Final Judgment" means the Judgment entered by the Court based upon the Final
5 Approval.

6 1.22. "Gross Settlement Amount" means \$225,920.00 (Two Hundred Twenty-Five Thousand
7 Dollars Nine Hundred Twenty and Zero Cent) which is the total amount Defendants agree will
8 be paid under the Settlement, except as provided in Paragraph 8.1 below and any and all employer
9 payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement
10 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA
11 PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service
12 Payment and the Administrator's Expenses.

13 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the
14 Net Settlement Amount calculated according to the number of Workweeks worked during the
15 Class Period.

16 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
17 the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during
18 the PAGA Period.

19 1.25. "Judgment" means the judgment entered by the Court based upon Final Approval.

20 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency
21 entitled, under Labor Code section 2699, subd. (i).

22 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
23 under Labor Code section 2699, subd. (i).

24 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
25 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
26 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
27 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to
28 be paid to Participating Class Members as Individual Class Payments.

1 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
2 Settlement by sending the Administrator a valid and timely Request for Exclusion.

3 1.30. “PAGA Pay Period” or “Pay Period” means any Pay Period during which an Aggrieved
4 Employee worked for Defendants for at least one day during the PAGA Period.

5 1.31. “PAGA Period” means the period from July 25, 2019, through the end of the Class Period.

6 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

7 1.33. “PAGA Notice” means Plaintiff’s July 24, 2020, letter to Defendants and the LWDA,
8 providing notice pursuant to Labor Code section 2699.3 subd. (a).

9 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
10 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75%
11 to the LWDA (\$7,500.00) in settlement of PAGA claims.

12 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
13 timely Request for Exclusion from the Settlement.

14 1.36. “Plaintiff” means Alfred Gonzales, the named plaintiff in the Action.

15 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
16 Settlement.

17 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
18 and Approval of PAGA Settlement.

19 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2
20 below.

21 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.2
22 below.

23 1.41. “Released Parties” means: Defendants and each of their former and present directors,
24 officers, shareholders, owners, members, attorneys, insurers, representatives, predecessors,
25 successors, assigns, subsidiaries, and affiliates and their respective. former and present
26 directors, officers, shareholders, owners, members, attorneys, insurers, and representatives.

27 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be
28 excluded from the Class Settlement signed by the Class Member.

1 1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
2 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
3 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail
4 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after
5 having been returned undeliverable to the Administrator shall have an additional 15 days beyond
6 the Response Deadline has expired.

7 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the
8 Judgment.

9 1.45. “Workweek” means any week during which a Class Member was employed by and
10 worked for the Defendants in a non-exempt, hourly position during the Class Period in California,
11 based on time records, hire dates, re-hire dates (as applicable), and termination dates (as
12 applicable).

13 2. RECITALS

14 2.1. On March 15, 2021, Plaintiff commenced this Action by filing a Complaint alleging
15 causes of actions against Defendants for: (1) failure to pay overtime; (2) failure to pay minimum
16 wages; (3) failure to provide meal periods, or compensation in lieu thereof; (4) failure to provide
17 rest periods, or compensation in lieu thereof; (5) waiting time penalties; (6) wage statement
18 violations; (7) failure to indemnify; (8) violation of Labor Code section 227.3; (9) unfair
19 competition; and (10) Plaintiff sought civil penalties under PAGA pursuant to Labor Code
20 sections 210, 226.3, 558, 1197.1, and 2699. The Complaint is the operative complaint in the
21 Action (the “Operative Complaint”). Defendants deny the allegations in the Operative
22 Complaint, deny any failure to comply with the laws identified in the Operative Complaint and
23 deny any and all liability for the causes of action alleged and assert all applicable affirmative
24 defenses.

25 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to
26 Defendants and the LWDA by sending the PAGA Notice.

27 2.3. On March 15, 2022, the Parties participating in an all-day mediation presided over by the
28 Lynn S. Frank. The Parties reached a tentative resolution to the matter contingent upon the

outcome of *Viking River Cruises v. Moriana*. Once the Supreme Court issued its decision in *Viking River*, the Parties continued negotiations which led to this Agreement to settle the Action.

2.4. Prior to mediation Plaintiff obtained, through informal discovery: (1) time and payroll records for 25% of the estimated 368 Class Members; (2) a class list that allowed calculation of relevant data points, including average rates of pay, the number of shifts worked during the Class and PAGA Period, the number of aggrieved employees (current and former), and number of pay periods in the PAGA period, as well as the number of pay periods during the relevant time period for wage statement and waiting time penalties; (3) an employee handbook containing Company's policies in effect during the Class and PAGA Period; and (4) sample list of non-exempt employees during the Class and PAGA Period. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Company promises to pay \$225,920.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Company has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court

1 in the Final Approval:

2 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative
3 of not more than \$7,500.00, in addition to any Individual Class Payment and any
4 Individual PAGA Payment the Class Representative is entitled to receive as a
5 Participating Class Member. Defendants will not oppose Plaintiff's request for a Class
6 Representative Service Payment that does not exceed this amount. As part of the motion
7 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will
8 seek Court approval for any Class Representative Service Payment prior to the Final
9 Approval Hearing. If the Court approves a Class Representative Service Payment less
10 than the amount requested, the Administrator will retain the remainder in the Net
11 Settlement Amount. The Administrator will pay the Class Representative Service
12 Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for
13 employee taxes owed on the Class Representative Service Payment and holds
14 Defendants harmless, and indemnifies Defendants, from any dispute or controversy
15 regarding any tax liability for such payments.

16 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35 %, which,
17 unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to
18 be \$79,072.00 and a Class Counsel Litigation Expenses Payment of not more than
19 \$25,000.00. Defendants will not oppose requests for these payments provided that do
20 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class
21 Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final
22 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
23 Counsel Litigation Expenses Payment less than the amounts requested, the
24 Administrator will allocate the remainder to the Net Settlement Amount. Released
25 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising
26 from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel
27 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
28 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.

Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments or tax liability for such payments. There will be no additional charge of any kind to either the Class Members or request for additional consideration from Defendants for such work. However, in the event either party must initiate an action to enforce a material term of this settlement, including funding, the prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$12,150 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,150, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any tax liability for such payments.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records, Defendants had estimated that there are 368 Class Members who collectively worked a total of 14,796 Workweeks, and 368 Aggrieved Employees who collectively worked a total of 7,060 PAGA Pay Periods. Defendants currently estimate there are 377 Class Members who collectively worked a total of 18,852 Workweeks, and 377 Aggrieved Employees who collectively worked a total of 9,842 PAGA Pay Periods.

1 4.2. Class Data. Not later than 7 days after the Court grants Preliminary Approval of the
2 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
3 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
4 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
5 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
6 employees who need access to the Class Data to effect and perform under this Agreement.
7 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
8 Class Data omitted class member identifying information and to provide corrected or updated
9 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
10 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
11 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
12 to missing or omitted Class Data.

13 4.3. Funding of Gross Settlement Amount. Company shall fully fund the Gross Settlement
14 Amount, and also fund the amounts necessary to fully pay Company's share of payroll taxes by
15 transmitting the funds to the Administrator no later than 14 days after the Effective Date.

16 4.4. Payments from the Gross Settlement Amount. Within 7 days after Company funds the
17 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
18 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
19 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
20 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,
21 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment
22 shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

23 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
24 Individual PAGA Payments and send them to the Class Members via First Class U.S.
25 Mail, postage prepaid. The face of each check shall prominently state the date (not less
26 than 180 days after the date of mailing) when the check will be voided. The
27 Administrator will cancel all checks not cashed by the void date. The Administrator
28 will send checks for Individual Settlement Payments to all Participating Class Members

(including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. Release of Claims.

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,

1 and on the date when Company fully funds the entire Gross Settlement Amount and funds all
2 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
3 Class Members, and Class Counsel will release claims against all Released Parties as follows:

4 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,
5 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
6 and discharge Released Parties from all claims, transactions, or occurrences including, but not
7 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
8 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
9 have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA
10 Notice, or ascertained during the Action and released under 5.2 below. ("Plaintiff's Release.")
11 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any
12 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
13 workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may
14 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows
15 or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
16 in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

17 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
18 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
19 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
20 which reads:

21 A general release does not extend to claims that the creditor or releasing party does not
22 know or suspect to exist in his or her favor at the time of executing the release, and that
23 if known by him or her would have materially affected his or her settlement with the
24 debtor or Released Party.

25 5.2. Release by Participating Class Members: For the duration of the Class Period, all
26 Participating Class Members, on behalf of themselves and their respective former and present
27 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
28 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the

facts stated in the Operative Complaint including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide compliant meal periods, or compensation in lieu thereof; (4) all claims for failure to provide compliant rest periods, or compensation in lieu thereof (5) all claims for waiting time penalties; (6) all claims for non-compliant wage statements; (7) all claims for failure to indemnify; (8) violation of Labor Code section 227.3; (9) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint; and (10) all claims for violation of Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246 *et. seq.*, 404, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1199, 2699, 2802, 2810.5, and California Code of Regulations, Title 8, section 11050.

5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699 in connection with violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 246 *et. seq.*, 404, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title 8, section 11050.

6. MOTION FOR PRELIMINARY APPROVAL

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

1 6.1. Defendants' Declaration in Support of Preliminary Approval. Because funds from
2 uncashed checks will be transmitted to the California Controller's Office, Unclaimed Property
3 Fund, Defendants and Defendants' counsel have no obligation to provide declarations disclosing
4 any facts relevant to any actual or potential conflicts with a "cy pres recipient."

5 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and endeavor to deliver to Defense
6 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
7 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
8 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement
9 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
10 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
11 declaration from the Administrator attaching its "not to exceed" bid for administering the
12 Settlement and attesting to its willingness to serve; competency; operative procedures for
13 protecting the security of Class Data; amounts of insurance coverage for any data breach,
14 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
15 interest with Class Members; and the nature and extent of any financial relationship with
16 Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
17 willingness and competency to serve and disclosing all facts relevant to any actual or potential
18 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm
19 attesting to its competency to represent the Class Members; its timely transmission to the LWDA
20 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
21 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
22 section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all
23 modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts
24 relevant to any actual or potential conflict of interest with Class Members and the Administrator.
25 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
26 of any other pending matter or action asserting claims that will be extinguished or adversely
27 affected by the Settlement.

28 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible

1 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
2 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
3 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
4 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
5 Administrator.

6 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
7 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
8 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
9 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
10 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
11 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
12 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
13 Court's concerns.

14 7. SETTLEMENT ADMINISTRATION

15 7.1. Selection of Administrator. The Parties have jointly selected ILYM to serve as the
16 Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this
17 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
18 payment of Administration Expenses. The Parties and their Counsel represent that they have no
19 interest or relationship, financial or otherwise, with the Administrator other than a professional
20 relationship arising out of prior experiences administering settlements.

21 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
22 Identification Number for purposes of calculating payroll tax withholdings and providing reports
23 to state and federal tax authorities.

24 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
25 the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
26 468B-1.

27 7.4. Notice to Class Members

28 7.4.1. No later than three (3) business days after receipt of the Class Data, the

1 Administrator shall notify Class Counsel that the list has been received and state the
2 number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class
3 Data.

4 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
5 days after receiving the Class Data, the Administrator will send to all Class Members
6 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
7 the Class Notice with Spanish translation, substantially in the form attached to this
8 Agreement as Exhibit A. The Class Notice shall prominently estimate the dollar amounts
9 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
10 Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to
11 calculate these amounts. Before mailing Class Notices, the Administrator shall update Class
12 Member addresses using the National Change of Address database.

13 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
14 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
15 using any forwarding address provided by the USPS. If the USPS does not provide a
16 forwarding address, the Administrator shall conduct a Class Member Address Search,
17 and re-mail the Class Notice to the most current address obtained. The Administrator
18 has no obligation to make further attempts to locate or send Class Notice to Class
19 Members whose Class Notice is returned by the USPS a second time.

20 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
21 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
22 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
23 notice is re-mailed. The Administrator will inform the Class Member of the extended
24 deadline with the re-mailed Class Notice.

25 7.4.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class Data
27 and should have received Class Notice, the Parties will expeditiously meet and confer
28 in person or by telephone, and in good faith, in an effort to agree on whether to include

1 them as Class Members. If the Parties agree, such persons will be Class Members
2 entitled to the same rights as other Class Members, and the Administrator will send, via
3 email or overnight delivery, a Class Notice requiring them to exercise options under this
4 Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in
5 the Class Notice, which ever are later.

6 7.5. Requests for Exclusion (Opt-Outs).

7 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
8 must send the Administrator, by fax, email, or mail, a signed written Request for
9 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an
10 additional 15 days for Class Members whose Class Notice is re-mailed). A Request for
11 Exclusion is a letter from a Class Member or his/her representative that reasonably
12 communicates the Class Member's election to be excluded from the Settlement and
13 includes the Class Member's name, address and email address or telephone number. To
14 be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the
15 Response Deadline.

16 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
17 fails to contain all the information specified in the Class Notice. The Administrator
18 shall accept any Request for Exclusion as valid if the Administrator can reasonably
19 ascertain the identity of the person as a Class Member and the Class Member's desire
20 to be excluded. The Administrator's determination shall be final and not appealable or
21 otherwise susceptible to challenge. If the Administrator has reason to question the
22 authenticity of a Request for Exclusion, the Administrator may demand additional proof
23 of the Class Member's identity. The Administrator's determination of authenticity shall
24 be final and not appealable or otherwise susceptible to challenge.

25 7.5.3. Every Class Member who does not submit a timely and valid Request for
26 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
27 to all benefits and bound by all terms and conditions of the Settlement, including the
28 Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement,

1 regardless whether the Participating Class Member actually receives the Class Notice
2 or objects to the Settlement.

3 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
4 Non-Participating Class Member and shall not receive an Individual Class Payment or
5 have the right to object to the class action components of the Settlement. Because future
6 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
7 Participating Class Members who are Aggrieved Employees are deemed to release the
8 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
9 PAGA Payment.

10 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
11 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
12 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
13 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
14 the allocation by communicating with the Administrator via fax, email or mail. The
15 Administrator must encourage the challenging Class Member to submit supporting
16 documentation. In the absence of any contrary documentation, the Administrator is entitled to
17 presume that the Workweeks contained in the Class Notice are correct so long as they are
18 consistent with the Class Data. The Administrator's determination of each Class Member's
19 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
20 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
21 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
22 Administrator's determination the challenges.

23 7.7. Objections to Settlement

24 7.7.1. Only Participating Class Members may object to the class action components of
25 the Settlement and/or this Agreement, including contesting the fairness of the
26 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
27 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

28 7.7.2. Participating Class Members may send written objections to the Administrator,

1 by fax, email, or mail. In the alternative, Participating Class Members may appear in
2 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
3 Approval Hearing. A Participating Class Member who elects to send a written objection
4 to the Administrator must do so not later than 45 days after the Administrator's mailing
5 of the Class Notice (plus an additional 15 days for Class Members whose Class Notice
6 was re-mailed).

7 7.7.3. Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement.

9 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
10 performed or observed by the Administrator contained in this Agreement or otherwise.

11 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
12 and use an internet website to post information of interest to Class Members including
13 the date, time and location for the Final Approval Hearing and copies of the Settlement
14 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
15 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
16 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
17 the Final Approval and the Judgment. The Administrator will also maintain and monitor
18 an email address and a toll-free telephone number to receive Class Member calls, faxes
19 and emails.

20 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
21 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
22 Not later than 5 days after the expiration of the deadline for submitting Requests for
23 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
24 containing (a) the names and other identifying information of Class Members who have
25 timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and
26 other identifying information of Class Members who have submitted invalid Requests
27 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
28 (whether valid or invalid).

1 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
2 reports to Class Counsel and Defense Counsel that, among other things, tally the number
3 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
4 Exclusion (whether valid or invalid) received, objections received, challenges to
5 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
6 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
7 Weekly Reports must include the Administrator’s assessment of the validity of Requests
8 for Exclusion and attach copies of all Requests for Exclusion and objections received.

9 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
10 address and make final decisions consistent with the terms of this Agreement on all
11 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
12 Administrator’s decision shall be final and not appealable or otherwise susceptible to
13 challenge.

14 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file
15 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
16 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
17 due diligence and compliance with all of its obligations under this Agreement,
18 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
19 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
20 number of Requests for Exclusion from Settlement it received (both valid or invalid),
21 the number of written objections and attach the Exclusion List. The Administrator will
22 supplement its declaration as needed or requested by the Parties and/or the Court. Class
23 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

24 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
25 disburses all funds in the Gross Settlement Amount, the Administrator will provide
26 Class Counsel and Defense Counsel with a final report detailing its disbursements by
27 employee identification number only of all payments made under this Agreement. At
28 least 7 days before any deadline set by the Court, the Administrator will prepare, and

submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendants estimated that, as of the date of this Settlement Agreement, (1) there are 368 Class Members who collectively worked a total of 14,397 Workweeks and 368 Aggrieved Employees who collectively worked a total of 7,060 Pay Periods. Defendants currently estimate that there are 377 Class Members who collectively worked a total of 18,852 Workweeks and 377 Aggrieved Employees who collectively worked a total of a total of 9,842 Pay Periods.

8.1. Increase in Pay Periods. Defendants currently estimate that the number of Pay Periods during the Class Period has increased by more than 10% from 7060 Pay Periods. Defendants currently estimate there are 377 Class Members who collectively worked a total of 18,852 Workweeks, and 377 Aggrieved Employees who collectively worked a total of 9,842 Pay Periods. Defendants agree that the Gross Settlement Amount shall be increased proportionally by the Pay Periods during the Class Period in excess of 7,766 Pay Periods (7,060 Pay Periods + 706 Pay Periods) multiplied by the Pay Period Value. The Pay Period Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$225,920.00) by 7,060, which amounts to a Pay Period Value of \$32.00. Thus, for example, should there be 9,842 Pay Periods during the Class Period, the Gross Settlement Amount shall be increased by \$66,432 [(9,842 Pay Periods – 7,766) x \$32.00].

9. MOTION FOR FINAL APPROVAL

Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall endeavor to provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and

1 in good faith, to resolve any disagreements concerning the Motion for Final Approval.

2 9.1. Response to Objections. Each Party retains the right to respond to any objection raised
3 by a Participating Class Member, including the right to file responsive documents in Court no
4 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
5 by the Court.

6 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
7 Approval on any material change to the Settlement (including, but not limited to, the scope of
8 release to be granted by Class Members), the Parties will expeditiously work together in good
9 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
10 Approval. The Court's decision to award less than the amounts requested for the Class
11 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
12 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
13 modification to the Agreement within the meaning of this paragraph.

14 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
15 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
16 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
17 and (iii) addressing such post-Judgment matters as are permitted by law.

18 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
19 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
20 Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective
21 counsel, and all Participating Class Members who did not object to the Settlement as provided in
22 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-
23 judgment and appellate proceedings, the right to file motions to vacate judgment, motions for
24 new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of
25 the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
26 Parties' obligations to perform under this Agreement will be suspended until such time as the
27 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
28 the amount of the Net Settlement Amount.

1 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
2 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
3 modification of this Agreement (including, but not limited to, the scope of release to be granted
4 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
5 expeditiously work together in good faith to address the appellate court's concerns and to obtain
6 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
7 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
8 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
9 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
10 as long as the Gross Settlement Amount remains unchanged.

11 **10. AMENDED JUDGMENT**

12 If any amended judgment is required under Code of Civil Procedure section 384, the
13 Parties will work together in good faith to jointly submit and a proposed amended judgment.

14 **11. ADDITIONAL PROVISIONS**

15 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other
16 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
17 Nothing in this Agreement is intended or should be construed as an admission by Defendants
18 that any of the allegations in the Operative Complaint have merit or that Defendants have any
19 liability for any claims asserted; nor should it be intended or construed as an admission by
20 Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
21 certification and representative treatment is for purposes of this Settlement only. If, for any
22 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
23 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
24 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
25 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
26 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
27 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
28 Settlement and this Agreement).

1 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
2 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
3 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
4 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
5 or indirectly, specifically or generally, to any person, corporation, association, government
6 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
7 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
8 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
9 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
10 government agency. Each Party agrees to immediately notify each other Party of any judicial or
11 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
12 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
13 conversation or other communication, before the filing of the Motion for Preliminary Approval,
14 any with third party regarding this Agreement or the matters giving rise to this Agreement except
15 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
16 restrict Class Counsel's communications with Class Members in accordance with Class
17 Counsel's ethical obligations owed to Class Members.

18 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and
19 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
20 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
21 ability to communicate with Class Members in accordance with Class Counsel's ethical
22 obligations owed to Class Members.

23 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
24 together with its attached exhibits shall constitute the entire agreement between the Parties
25 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
26 inducements made to or by any Party.

27 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
28 represent that they are authorized by Plaintiff and Defendants , respectively, to take all

appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

11.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the

1 Party was the drafter or participated in the drafting.

2 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
3 during Action and in this Agreement relating to the confidentiality of information shall survive
4 the execution of this Agreement.

5 11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
6 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
7 Defendants in connection with the mediation, other settlement negotiations, or in connection with
8 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
9 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

10 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
11 inserted for convenience of reference only and does not constitute a part of this Agreement.

12 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
13 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
14 weekend or federal legal holiday, such date or deadline shall be on the first business day
15 thereafter.

16 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
17 by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall
18 be accepted as an original. All executed counterparts and each of them will be deemed to be one
19 and the same instrument if counsel for the Parties will exchange between themselves signed
20 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
21 and contents of this Agreement.

22 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
23 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
24 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
25 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
26 process.

27 11.19. Interpretation of the Agreement. This Agreement constitutes the entire agreement
28 between the Parties with respect to its subject matter. Except as expressly provided herein, this

1 Agreement has not been executed in reliance upon any other written or oral representations or
2 terms, and no such extrinsic oral or written representations or terms shall modify, vary or
3 contradict its terms. The Parties, and each of them, participated in the negotiation and drafting of
4 this Agreement and had available to them the advice and assistance of independent counsel. As
5 such, neither Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be
6 construed against the other. The Agreement may be modified only by a writing signed by counsel
7 for the Parties and approved by the Court.

8 11.20. Severability. In the event that one or more of the provisions contained in this Agreement
9 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
10 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and
11 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
12 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
13 Agreement.

14
15 **IT IS SO AGREED:**

16
17 _____
18 For Plaintiff, Alfred Gonzales

17 _____
18 
19 For Defendants, El Monte Rents, Inc.
And Tom Wiggington

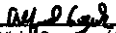
20
21 _____
22 David D. Bibiyan
23 Vedang J. Patel
Counsel for Plaintiff Alfred Gonzales

21 _____
22 
23 Kevin Nowicki
Counsel for Defendants El Monte Rents, Inc.
And Tom Wiggington

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6 construed against the other. The Agreement may be modified only by a writing signed by counsel
7 for the Parties and approved by the Court.

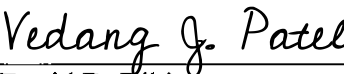
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10 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and
11 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
12 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
13 Agreement.

14
15 **IT IS SO AGREED:**

16
17
18 
Vicky Gonzales (Jul 5, 2023 11:03 PDT)

19 For Plaintiff, Alfred Gonzales

For Defendants, El Monte Rents, Inc.
And Tom Wiggington

20
21 

22 David D. Bibiyan
23 Vedang J. Patel
Counsel for Plaintiff Alfred Gonzales

Kevin Nowicki
Counsel for Defendants El Monte Rents, Inc.
And Tom Wiggington

EXHIBIT A

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Gonzales v. El Monte Rents, Inc., et al.

(County of Los Angeles, California Superior Court Case No. 21STCV10209)

As a current or former non-exempt, hourly-paid California employee of El Monte Rents, Inc., you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of El Monte Rents, Inc., (the “Company” or “Defendant”), show that you are a “Class Member” and, therefore, entitled to a payment from this class action Settlement. Class Members are all individuals who worked for the Company as non-exempt, hourly-paid employees in California at any time during the period from July 25, 2019, through March 15, 2022 (“Class Period”).

- The settlement is to resolve a class action lawsuit, *Gonzales v. El Monte Rents, Inc., et al.*, pending in the Superior Court of California for the County of Los Angeles, Case Number 21STCV10209 (the “Lawsuit”), which alleges that Defendants: (1) failed to pay overtime pay; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to timely pay all wages due at separation; (6) failed to provide compliant wage statements; (7) failed to indemnify for business expenses; (8) failed to pay for unused vacation time at separation; and (9) engaged in unfair competition. Based on these and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys’ General Act (“PAGA”). Defendants vigorously deny all of these allegations and contend that they have fully complied with all applicable laws. In order to avoid the uncertainties of litigation, the Parties have agreed to settle this Lawsuit.
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked at any time from July 25, 2019 through the end of the Class Period, (“PAGA Period”) as a non-exempt, hourly-paid employee of the Company, as well, then you will be deemed an “Aggrieved Employee” for purposes of the Settlement and you will still receive your

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the Class Settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, ILYM Group, Inc. about why you object to the settlement, and they will forward your concerns to counsel for the Parties which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department 1 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held at :.m. on _____, in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, in Department 1. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendants’ records show that you currently work, or previously worked, for the Company as a non-exempt, hourly-paid employee in the State of California at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

What is This Case About?

Alfred Gonzales was a non-exempt, hourly-paid employee of the Company. He is the “Plaintiff” in this case and is suing on behalf of himself and Class Members for Defendants’ alleged failure to pay overtime pay, failure to pay minimum wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, failure to timely pay all wages due at separation, failure to provide compliant wage statements, failure to indemnify for business expenses, failure to pay for unused vacation time at separation, and engaging in unfair competition.

Based on these and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Defendants deny all of the allegations made by Plaintiff and deny that they violated any law. The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount of \$225,920.00, unless increased pursuant to the Settlement Agreement. The Gross Settlement includes: (1) Administration Costs up to \$12,150.00; (2) a service award of up to \$7,500.00 to Plaintiff Alfred Gonzales for his time and effort in pursuing this case, and in exchange for a broader release of claims against Defendants; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless increased pursuant to the Settlement Agreement, amounts to \$79,072.00; (4) up to \$25,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$10,000.00 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the settlement of the PAGA claims, seventy-five percent (75%) of the amount allocated toward PAGA, or \$7,500.00, will be paid to the LWDA and twenty-five percent (25%), or \$2,500.00, will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$92,198 will be available for distribution to Class Members ("Net Settlement Amount").

Defendants currently estimate that the number of Pay Periods during the Class Period has increased by more than 10% from 7060 Pay Periods. Defendants currently estimate there are 377 Class Members who collectively worked a total of 9,842 Pay Periods. Defendants agree that the Gross Settlement Amount shall be increased proportionally by the Pay Periods during the Class Period in excess of 7,766 Pay Periods (7,060 Pay Periods + 706 Pay Periods) multiplied by the Pay Period Value. The Pay Period Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$225,920.00) by 7,060, which amounts to a Pay Period Value of \$32.00. Thus, for example, should there be Pay Periods during the Class Period, the Gross Settlement Amount shall be increased by \$66,432 [(9,842 Pay Periods – 7,766) x \$32.00]. So, based on Defendants' current estimates, the total Gross Settlement will be increased to \$292,352.

Distribution to Class Members

Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Class Members in non-exempt, hourly-paid positions for Defendants in California during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the \$2,500.00 allocated as PAGA penalties, whether or not they opt out, based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period.

Defendants' records indicate that you worked [Eligible Workweeks] Workweeks as a non-exempt, hourly-paid employee in California during the Class Period and [Eligible Workweeks] PAGA Pay Periods during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Tax Reporting

100% of the payments for settlement of PAGA penalties to Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 20% of each Settlement Payment to Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 80% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your check will be valid for 180 days after issuance. After 180 days, uncashed checks will be cancelled and the funds associated will be transmitted to California Controller's Office, Unclaimed Property Fund.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all "Released Claims" he or she may have or had upon final approval of this Settlement and payment by the Company to the Settlement Administrator.

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement, and on the date when Company fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, Aggrieved Employees and Class Counsel will release claims against all Released Parties as follows:

Release by Participating Class Members: For the duration of the Class Period, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide compliant meal periods, or compensation in lieu thereof; (4) all claims for failure to provide compliant rest periods, or compensation in lieu thereof (5) all claims for waiting time penalties; (6) all claims for non-compliant wage statements; (7) all claims for failure to indemnify; (8) violation of Labor Code section 227.3; (9) all claims asserted through California Business & Professions Code section 17200, et seq. arising out of the Labor Code violations referenced in the Operative Complaint; and (10) all claims for violation of Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246 et. seq., 404, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1199, 2699, 2802, 2810.5, and California Code of Regulations, Title 8, section 11050.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699 in connection with violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 246 et. seq., 404, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title 8, section 11050.

“Released Parties” means Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, representatives, predecessors, successors, assigns, subsidiaries, and affiliates and their respective. former and present directors, officers, shareholders, owners, members, attorneys, insurers, and representatives.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must reasonably communicate that you wish to be excluded from the Settlement and must include your name, address, and email address or telephone number. Sign, date and fax, email or mail your written request for exclusion to the address below.

ILYM Group, Inc.
[Mailing Address]

Your written request for exclusion must be mailed to the Administrator not later than [RESPONSE DEADLINE].

The proposed settlement includes the settlement of the PAGA Released Claims. An Aggrieved Employee may not request exclusion from the settlement of the PAGA claims. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – Submit an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing, by fax, email or mail, stating why you object to the Settlement. Your written objection must provide your name, address, signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s) why you believe that the Court should not approve the Settlement. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Even if you don't submit a written objection, you may appear at the Final Approval Hearing and provide a verbal objection before the Court.

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Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Final Approval Hearing

You may, if you wish, appear at the Final Approval Hearing set for [REDACTED] at [REDACTED]:[REDACTED].m. in the Department 1 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may attend this hearing virtually by audio or video at <https://my.lacourt.org/laccwelcome>. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

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You may also visit the Settlement Administrator's website at [WEBSITE] to gain access to key documents in this case, including the Settlement Agreement, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Department 1 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, during regular business hours of each court day. You may also obtain these documents through the Court's website at <https://www.lacourt.org/casesummary/ui/>.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]