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Attorneys for Plaintiff DANIEL JACOBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL JACOBS, on behalf of himself, and
others similarly situated,

Plaintiff,

v.

RUSH MEDIA COMPANY, LLC, a
Wisconsin limited liability company; XLT
MANAGEMENT SERVICES, INC. an Illinois
corporation; and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32350

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Hearing Date: November 12, 2021

Hearing Time: 10:30 AM

Honorable Judge Daniel J. Buckley
Department 1

Trial Date: Not Set

Action Filed: August 25, 2020

1 This matter having come before the Honorable Judge Daniel J. Buckley of the Superior Court of
2 the State of California, in and for the County of Los Angeles, at 10:30 a.m. on November 12, 2021 with
3 Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, as counsel for plaintiff DANIEL JACOBS
4 (“Plaintiff”), and counsel appearing for defendants RUSH MEDIA COMPANY, LLC and XLT
5 MANAGEMENT SERVICES, INC., (hereinafter collectively “Defendants”). The Court, having
6 carefully considered the briefs, argument of counsel and all the matters presented to the Court, and
7 good cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class and
8 PAGA Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
11 and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy of which is
12 attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement
13 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
14 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
18 Defendants shall pay is Three Hundred and Thirty Thousand Dollars (\$330,000). It appears to the
19 Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as
20 to the entire Settlement Class when balanced against the probable outcome of further litigation relating
21 to certification, liability, and damages issues. It further appears that investigation and research have
22 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial additional
24 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
25 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
26 intensive, serious, and non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
28

1 reasonably of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Settlement Class are fair, adequate,
4 and reasonable when balanced against the probable outcome of further litigation relating to
5 certification, liability, and damages issues.

6 5. The Agreement specifies for an award of Attorneys' Fee and Costs in the amount of up-
7 to one-third of the Total Settlement Amount for attorneys' fees, currently estimated at One Hundred
8 Ten Thousand Dollars (\$110,000) **and** an award of litigation expenses incurred not to exceed Fifteen
9 Thousand Dollars (\$15,000.00), and proposed Class Representative Service Award to the Class
10 Representative, Daniel Jacobs, in an amount not to exceed Ten Thousand Dollars (\$10,000). While
11 these awards appear to be within the range of reasonableness, the Court will not approve the Class
12 Counsel Award or Class Representative Service Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Settlement Class:

17 "All of the current and former non-exempt employees and independent
18 contractors that worked for Rush Media Corporation, Inc., including those
19 that received payroll services from XLT Management Services, Inc., in
20 California between August 20, 2016 to July 4, 2021."

21 7. The Court concludes that, for settlement purposes only, the Settlement Class meets the
22 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
23 the Settlement Class is ascertainable and so numerous that joinder of all members of the Settlement
24 Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined
25 community of interest amongst the Settlement Class with respect to the subject matter of the litigation;
26 (c) the claims of the Class Representative are typical of the claims of the Settlement Class; (d) the Class
27 Representative will fairly and adequately protect the interests of the Settlement Class; (e) a class action

1 is superior to other available methods for the efficient adjudication of this controversy; and (f) Class
2 Counsel are qualified to act as counsel for the Class Representative in his individual capacity and as
3 the representative of the Settlement Class Members.

4 8. The Court provisionally appoints plaintiff DANIEL JACOBS as the representative of the
5 Settlement Class.

6 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
7 APC, and Shani Zakay, Esq., of the Zakay Law Group, APLC, as Class Counsel for the Settlement
8 Class.

9 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
10 Class and Representative Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit**
11 **“A”**. The Court finds that both notices appear to fully and accurately inform the Settlement Class and
12 Aggrieved Employees of all material elements of the proposed Settlement, including right of any
13 Settlement Class member to be excluded from the Settlement Class by submitting a written request for
14 exclusion, and of each Settlement Class member’s right and opportunity to object to the Settlement.
15 The Court further finds that the distribution of the notices substantially in the manner and form set forth
16 in the Agreement and this Order meets the requirements of due process, is the most reasonable notice
17 under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
18 The Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the
19 Agreement.

20 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within ten
21 (10) calendar days of this order, Defendants shall provide, to the Settlement Administrator the Class
22 List, including information regarding Settlement Class Members that Defendants will in good faith
23 compile from their records, including each Settlement Class Member’s full name; last known address;
24 Social Security Number; dates of employment, and number of Work Shifts accrued by each Settlement
25 Class member during the Class Period and the PAGA Period. Within fourteen (14) calendar days after
26 receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice to
27 all identified, potential members of the Settlement Class via first class U.S. Mail using the most current
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mailing address information available.

12. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Settlement Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Settlement Class members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

13. Any Settlement Class member who has not opted out may appear at the final approval hearing and may object or express the Member's views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Settlement Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement Administrator.

14. A final approval hearing shall be held before this Court on _____ at _____ in Department 1 of the Los Angeles County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an Order Granting Final Approval should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Settlement Class; and to finally approve the Class Counsel Award, Class

1 Representative Service Award, and the Settlement Administration Costs. All papers in support of the
2 motion for final approval and the motion for Attorneys' Fee and Costs and Class Representative
3 Enhancement Award shall be filed with the Court and served on all counsel no later than sixteen (16)
4 court days before the hearing.

5 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
6 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
7 evidence of, or used against Defendants as, an admission or indication in any way, including with
8 respect to any claim of any liability, wrongdoing, fault or omission by Defendants or with respect to
9 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
10 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
11 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted
12 in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant,
13 including, but not limited to, evidence of a presumption, concession, indication or admission by
14 Defendants of any liability, fault, wrongdoing, omission, concession or damage.

15 16. In the event the Settlement does not become effective in accordance with the terms of the
16 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
17 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
18 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
19 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
20 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
21 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

22 17. Pending final determination of whether the Settlement should be approved, Class
23 Representative and all members of the Settlement Class are barred and enjoined from filing,
24 commencing, prosecuting, intervening in, instigating or in any way participating in the commencement
25 or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in
26 any forum, asserting any claims that are, or relate in any way to, the Class Representative's Released
27 Claims or the Settlement Class' Released Claims, unless and until they submit a timely request for
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1 exclusion pursuant to the Agreement.

2 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
3 and all dates provided for in the Agreement without further notice to Settlement Class and retains
4 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

5
6 Dated: _____

7 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DANIEL JACOBS; an individual, on behalf
of himself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

RUSH MEDIA COMPANY LLC, a
Wisconsin limited liability company; XLT
MANAGEMENT SERVICES, INC., an
Illinois corporation; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. 20STCV32350

[Action Filed 08/25/2020]

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

Judge: Honorable Daniel J. Buckley.
Dept.: 1

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff DANIEL JACOBS (hereinafter “Plaintiff”), individually and on behalf of the
3 Settlement Class, and in their representative capacity on behalf of the State of California and the
4 Aggrieved Employees, and Defendants RUSH MEDIA COMPANY, LLC, a Wisconsin limited
5 liability company (“Defendant Rush”) and XLT MANAGEMENT SERVICES, INC., an Illinois
6 corporation (“Defendant XLT”) (hereinafter collectively “Defendants”) (all parties collectively
7 referred to herein as the “Parties”). This Agreement is subject to Court Approval and the terms and
8 conditions prescribed below. The Parties expressly acknowledge that this Agreement is entered into
9 solely for the purpose of compromising significantly-disputed claims and that nothing in this
10 Agreement is or shall constitute an admission of liability or wrongdoing by the Defendants. If for
11 any reason this Agreement is not approved, it will be of no force or effect, and the Parties will be
12 returned to their respective positions immediately prior to and as if they had never executed this
13 Agreement.

14 **I. DEFINITIONS**

- 15 A. “Action” shall mean the putative class action lawsuit designated *Jacobs v. Rush*
16 *Media Company*, Los Angeles Superior Court, Case No. 20STCV32350 (hereinafter
17 the “Action”).
- 18
- 19 B. “Aggrieved Employees” shall mean all of the current and former non-exempt
20 employees and independent contractors that worked for Defendant Rush, including
21 those that received payroll services from XLT Management Services, Inc., in
22 California during the PAGA Period.
- 23
- 24 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
25 Class Action and Release of Claims.
- 26
- 27
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1 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
2 Shani Zakay of Zakay Law Group, APLC.

3
4 E. "Class Counsel Award" means the award of fees, costs, and expenses that the Court
5 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
6 and the Class in the Action, consisting of attorneys' fees currently not to exceed one-
7 third of the Total Settlement Amount currently estimated to be \$110,000 out of
8 \$330,00.00 plus costs and expenses up to \$15,000 and supported by declaration as
9 to the reasonableness of attorney's fees and costs. Class Counsel's award for
10 attorneys' fees will be allocated between Class Counsel as follows: Fifty percent
11 (50%) to the JCL Law Firm, APC; fifty percent (50%) to the Zakay Law Group,
12 APLC.
13

14
15 F. "Class Data" means information regarding Class Members that Defendants will in
16 good faith compile from its records and provide to the Settlement Administrator. It shall be
17 formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full
18 name; last known address; Social Security Number; and information sufficient to enable the
19 Settlement Administrator to calculate each Class Member's total number of Work shifts.
20

21 G. "Class Members" or the "Class" means all of the current and former non-exempt
22 employees and independent contractors that worked for Defendant Rush, including
23 those that received payroll services from XLT Management Services, Inc., in
24 California during the Class Period.
25

26 H. "Class Period" means the period from August 20, 2016 to July 4, 2021.
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- 1 I. "Class Representative Service Award" means the amount that the Court authorizes to
2 be paid to the Class Representative, in addition to their Individual Settlement
3 Payments and his pro-rata share of the PAGA Settlement, in recognition of his efforts
4 and risks in assisting with the prosecution of the Action and in exchange for executing
5 a General Release of Defendants and waiver of Civil Code 1542 from the named
6 Plaintiff.
7
8 J. "Class Representative" shall mean plaintiff DANIEL JACOBS.
9
10 K. "Court" means the Superior Court for the State of California, County of Los Angeles
11 presiding over the Action.
12
13 L. "Defendants" shall mean RUSH MEDIA COMPANY, LLC and XLT
14 MANAGEMENT SERVICES, INC. (collectively "Defendants").
15
16 M. "Effective Date" means the earliest date, following entry by the Court of an order
17 and judgment finally approving this Settlement, upon which one of the following have
18 occurred: (i) if no objection is filed to the settlement and no objector appears at the
19 hearing on final approval, thirty (30) calendar days following the Court's entry of the
20 order granting final approval, (ii) if an objection is filed to the settlement and/or an
21 objector appears at the hearing on final approval, then the earlier of the following: (a)
22 the expiration of all potential appeal periods without a filing of a notice of appeal of
23 the final approval order or judgment; (b) final affirmance of the final approval order
24 and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal
25 or denial of all such appeals (including any petition for review, rehearing, certiorari,
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1 etc.) such that the final approval order and judgment is no longer subject to further
2 judicial review.

3
4 N. “Funding Date” shall mean thirty (30) calendar days after the Effective Date and is
5 the date Defendants and/or the Released Parties transfer the Total Settlement Amount
6 into the QSF in accord with the terms of this Agreement.

7
8 O. “Individual Settlement Payment” means the amount payable from the Net Settlement
9 Amount to each Settlement Class Member who does not request exclusion from the
10 Settlement and excludes any amounts distributed to Aggrieved Employees pursuant
11 to PAGA.

12
13 P. “Net Settlement Amount” or “NSA” means the Total Settlement Amount, less Class
14 Counsel Award, Class Representative Service Award, PAGA Settlement, and
15 Settlement Administration Costs.

16
17 Q. “Notice Packet” means the Class Notice to be provided to the Class Members by the
18 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
19 than formatting changes to facilitate printing by the Settlement Administrator).

20 R. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
21 Labor Code § 2698 *et seq.*

22
23 S. “PAGA Payment Ratio” means the respective Work Shifts during the PAGA Period
24 for each Aggrieved Employee divided by the sum total of the Work Shifts for all
25 Aggrieved Employees during the PAGA Period.

- 1 T. "PAGA Period" means the period of August 20, 2019, through and including July 4,
2 2021.
- 3
- 4 U. "PAGA Settlement" shall mean Twenty Thousand Dollars (\$20,000.00) to be
5 allocated from the Total Settlement Amount.
- 6
- 7 V. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
8 Plaintiff or Defendants, individually.
- 9
- 10 W. "Payment Ratio" means the respective Work Shifts for each Class Member divided
11 by the total Work Shifts for all Class Members.
- 12
- 13 X. "Plaintiff" shall mean DANIEL JACOBS.
- 14
- 15 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
16 by the Settlement Administrator to fund the Total Settlement Amount.
- 17
- 18 Z. "Released Class Claims" means any and all class action claims, actions, demands,
19 causes of action, suits, debts, obligations, damages, penalties but excluding PAGA
20 penalties which are being separately released herein, rights or liabilities, of any nature
21 and description whatsoever that are asserted in the Action or based on the facts and
22 theories pleaded in the operative complaint on file at the time of final approval,
23 including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210,
24 218.5, 218.6, 226, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198,
25 1199, 2802, and 2804 and the applicable IWC Wage Orders which occurred during
26 the Class Period, and expressly excluding all other claims, including claims for
27 vested, benefits, wrongful termination, unemployment, insurance, disability, social
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1 security, workers' compensation, and class claims outside of the Class Period (Class
2 Release")

3
4 AA. "Released PAGA Claims" means any and all claims for penalties under PAGA,
5 arising during the PAGA Period, which were alleged in the operative complaint at the
6 time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the
7 LWDA, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204,
8 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
9 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting
10 claim for attorneys' fees and costs under PAGA, which occurred during the PAGA
11 Period (the "PAGA Release").
12

13
14 BB. "Released Parties" shall mean Defendants and their past, present and/or future, direct
15 and/or indirect officers, including but not limited to Tim Eichorst, directors, owners,
16 members managers, employees, agents, representatives, attorneys, insurers, partners,
17 investors, shareholders, administrators, parent companies, contractors, customers,
18 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
19 venturers
20

21 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
22 Administrator mails Notice Packets to Class Members and the last date on which
23 Class Members may submit requests for exclusion or objections to the Settlement.
24

25 DD. "Settlement" means the disposition of the Action pursuant to this Agreement.

26
27 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
28 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement

1 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
2 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
3 of the Total Settlement Amount is deposited for the purpose of resolving the claims
4 of Settlement Class Members. The Settlement Administrator shall maintain the funds
5 until distribution in an account(s) segregated from the assets of Defendants and any
6 person related to Defendants. *All accrued interest shall be paid and distributed to*
7 *the Settlement Class Members as part of their respective Individual Settlement*
8 *Payment.*
9

10
11 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
12 have not submitted a timely and valid request for exclusion as provided in this
13 Agreement.

14
15 GG. "Total Settlement Amount" means Three Hundred Thirty Thousand Dollars
16 (\$330,000.00) that Defendants and/or the Released Parties must pay into the QSF in
17 connection with this Settlement, inclusive of the sum of the Individual Settlement
18 Payments, the Class Representative Service Awards, the Class Counsel Award,
19 PAGA Settlement and the Settlement Administration Costs and *exclusive* of the
20 employer's share of payroll tax, if any, triggered by any payment under this
21 Settlement.
22

23 HH. "Work Shift", for purposes of calculating the distribution of the Net Settlement
24 Amount, means the number of shifts where a Class Member performed work as non-
25 exempt employees and independent contractors for Defendant Rush and may have
26 also received payroll services from Defendant XLT Management Services, Inc. in
27 California during the Class Period, calculated by using the timekeeping and payroll
28

1 data for each Class Member during the Class Period to identify the number of shifts
2 in which said Class Member presented for work and/or performed at least one hour
3 of work. For purpose of determining the Individual Settlement Payments and the
4 Settlement Allocation, each Class Member who is a former employee no longer
5 working for Defendants will be assigned two (2) additional Work Shifts.
6

7 II. "PAGA Work Shifts", for purposes of calculating the distribution of the Aggrieved
8 Employee Payment, as defined herein, means the number of shifts where an
9 Aggrieved Employee performed work as non-exempt employees and independent
10 contractors for Defendant Rush and may have also received payroll services from
11 Defendant XLT Management Services, Inc. in California during the PAGA Period,
12 calculated by using the timekeeping and payroll data for each Class Member during
13 the Class Period to identify the number of shifts in which said Class Member
14 presented for work and/or performed at least one hour of work.
15
16

17 **II. RECITALS**

18 A. The Parties stipulate to provisional class certification for purposes of settlement only.
19 If the Court does not grant final approval of this Settlement, this provisional class certification
20 shall immediately be set aside, any order conditionally certifying the Class shall be vacated,
21 and this Agreement shall not be used as evidence that class certification is appropriate. If the
22 Court does not grant either preliminary or final approval of this Settlement, the Parties shall
23 be returned to their respective statuses as of the date and time immediately prior to the
24 execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement
25 had not been executed, except that any costs actually incurred by the Settlement
26 Administrator shall be paid in equal apportionment among the Parties.
27
28

1 B. On August 20, 2020, Plaintiff filed a Notice of Violations with the Labor and
2 Workforce Development Agency (LWDA) and served the same on Defendant.

3
4 C. On August 25, 2020, Plaintiff filed the Lawsuit for:

5 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

6
7 2. Failure to pay minimum wages in violation of California Labor Code sections
8 1194, 1197 and 1197.1;

9
10 3. Failure to pay overtime wages in violation of California Labor Code sections
11 510 *et seq*;

12
13 4. Failure to provide required meal periods in violation of California Labor Code
14 sections 226.7 and 512 and the applicable IWC wage order;

15
16 5. Failure to provide required rest periods in violation of California Labor Code
17 sections 226.7 and 512 and the applicable IWC wage order;

18
19 6. Failure to provide accurate itemized wage statements in violation of California
20 Labor Code section 226;

21
22 7. Failure to reimburse Plaintiff for required expenses in violation of California
23 Labor Code section 2802;

24
25 8. Failure to provide wages when due in violation of California Labor Code
26 sections 201, 202 and 203.

27 D. On November 2, 2020, Plaintiff filed the First Amended Complaint ("FAC") against
28 Defendants adding a ninth cause of action for violations of PAGA.

1 E. The Class Representative believes he has meritorious claims based on alleged
2 violations of the California Labor Code, and the Industrial Wage Commission
3 Orders, and that class certification is appropriate because the prerequisites for class
4 certification can be satisfied in the Action, and this action is manageable as a PAGA
5 representative action.
6

7 F. Defendants deny any liability or wrongdoing of any kind associated with the claims
8 alleged in the Action, dispute any wages, damages and penalties claimed by the Class
9 Representative are owed, and further contend that, for any purpose other than settlement,
10 the Action is not appropriate for class or representative action treatment. Defendants
11 contend, among other things, that at all times they complied with the California Labor
12 Code, the Industrial Wage Commission Orders, the California Business & Professions
13 Code, and the Common Law.
14

15 G. The Class Representative is represented by Class Counsel. Class Counsel
16 investigated the facts relevant to the Action, including conducting an independent
17 investigation as to the allegations, reviewing documents and information exchanged
18 through informal discovery, and reviewing documents and information provided by
19 Defendants pursuant to informal requests for information to prepare for mediation.
20 Defendants produced for the purpose of settlement negotiations certain employment
21 data concerning the Settlement Class, which Class Counsel reviewed and analyzed.
22 Based on their own independent investigation and evaluation, Class Counsel are of
23 the opinion that the Settlement with Defendants is fair, reasonable and adequate, and
24 is in the best interest of the Settlement Class in light of all known facts and
25 circumstances, including the risks of significant delay, defenses asserted by
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1 Defendants, uncertainties regarding class certification, and numerous potential
2 appellate issues. Although they deny any liability, Defendants are agreeing to this
3 Settlement solely to avoid the inconveniences and cost of further litigation. The
4 Parties and their counsel have agreed to settle the claims on the terms set forth in
5 this Agreement.
6

7 H. On May 4, 2021, the Parties participated in mediation presided over by Hon. William
8 C. Pate (Ret.) a respected jurist and mediator of wage and hour class actions. The
9 mediation concluded with a settlement after both sides agreed to a Mediator's
10 proposal which was subsequently memorialized in the form of a Memorandum of
11 Understanding.
12

13 I. This Agreement replaces and supersedes the Memorandum of Understanding and any
14 other agreements, understandings, or representations between the Parties. This
15 Agreement represents a compromise and settlement of highly disputed claims.
16 Nothing in this Agreement is intended or will be construed as an admission by
17 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
18 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
19 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
20 have merit.
21

22 J. The Parties believe that the Settlement is fair, reasonable and adequate. The
23 Settlement was arrived at through arm's-length negotiations, taking into account all
24 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
25 attendant to continuing the Action through trial and any appeal. Accordingly, the
26
27
28

Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

- K. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendants and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Total Settlement Amount of Three Hundred Thirty Thousand Dollars (\$330,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Total Settlement Amount shall revert to Defendants. Other than the Defendants' share of employer payroll taxes, or as otherwise specified in this Agreement, Defendants shall not be required to pay more than the Total Settlement Amount, except as provided for hereinbelow.

2. Class Size. As of April 28, 2021, Defendants estimated that the Settlement Class was comprised of 397 individuals who collectively worked

1 approximately 4,704 Work Shift (“Projected Work Shifts”) during the Class
2 Period. In regard hereto, Defendants will provide a declaration under penalty
3 of perjury confirming the number of applicable Class Members and Work
4 Shifts they worked during the applicable Class Period. The Settlement
5 Amount will increase proportionally if added class members are more than
6 10% of the estimate above, or if the Projected Work Shifts are more than 15%
7 of the estimate set forth herein.
8

9
10 3. Settlement Payment. Defendants and the Released Parties, and each of them,
11 are jointly and severally liable for payment of the Total Settlement Amount.
12 Defendants shall pay, via wire transfer, the Total Settlement Amount to the
13 Settlement Administrator on the Funding Date.

14
15 4. Defendants’ Share of Payroll Taxes. Defendants’ share of employer side
16 payroll taxes is in addition to the Total Settlement Amount and shall be paid
17 together with the Total Settlement Amount.
18

19 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
20 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
21 release the Released Parties from the Released Class Claims for the Class Period.

22 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
23 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
24 California release the Released Parties from the PAGA Released Claims for the PAGA
25 Period.
26

27 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
28 in this Agreement, Plaintiff, on his own behalf and on behalf of his heirs, spouses,

1 executors, administrators, attorneys, agents, and assigns, fully and finally waives, releases,
2 acquits and forever discharges the Released Parties from any and all claims, whether known
3 or unknown, which exist or may exist on her behalf as of the date of this Agreement,
4 including but not limited to any and all tort claims, contract claims, wage claims, wrongful
5 termination claims, disability claims, benefit claims, public policy claims, retaliation
6 claims, statutory claims, personal injury claims, emotional distress claims, invasion of
7 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all
8 claims arising under any federal, state or other governmental statute, law, regulation or
9 ordinance, including, but not limited to claims for violation of the Fair Labor Standards
10 Act, the California Labor Code, the Wage Orders of California's Industrial Welfare
11 Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
12 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security
13 Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing
14 Act, the California Family Rights Act, the Family Medical Leave Act, California's
15 Whistleblower Protection Act, California Business & Professions Code Section 17200 et
16 seq., and any and all claims arising under any federal, state or other governmental statute,
17 law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
18 rights or benefits that he may have under California Civil Code § 1542, which provides as
19 follows:
20
21
22

23 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
24 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
25 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
26 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
27
28

***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.***

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understand this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enter into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now know or believe to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

1 E. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendants fully fund the Total Settlement Amount.

16 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
17 not preliminarily or finally approved by the Court, fails to become effective, or is
18 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
19 Defendants from obtaining a complete resolution of the Released Claims, or if
20 Defendants fails to fully fund the Total Settlement Amount:

- 21
- 22 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
23 and shall not be admissible in any judicial, administrative or arbitral
24 proceeding for any purpose or with respect to any issue, substantive or
25 procedural;
26

1 2. The conditional class certification (obtained for any purpose) shall be void *ab*
2 *initio* and of no force or effect, and shall not be admissible in any judicial,
3 administrative or arbitral proceeding for any purpose or with respect to any
4 issue, substantive or procedural; and

5
6 3. None of the Parties to this Settlement will be deemed to have waived any
7 claims, objections, defenses or arguments in the Action, including with respect
8 to the issue of class certification.

9
10 4. Defendants shall bear the sole responsibility for any cost to issue or reissue
11 any curative notice to the Settlement Class Members and all Settlement
12 Administration Costs incurred to the date of nullification.

13
14 G. Certification of the Settlement Class. The Parties stipulate to conditional class
15 certification of the Class for the Class Period for purposes of settlement only. In the
16 event that this Settlement is not approved by the Court, fails to become effective, or is
17 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
18 Defendants from obtaining a complete resolution of the Released Claims, the
19 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
20 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
21 proceeding for any purpose or with respect to any issue, substantive or procedural.

22
23
24 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
25 effect of the payments called for, and Class Members and/or Aggrieved Employees are
26 not relying on any statement or representation by the Parties in this regard. Class
27 Members and/or Aggrieved Employees understand and agree that they will be
28

1 responsible for the payment of any taxes and penalties assessed on the Individual
2 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
3 Settlement described and will be solely responsible for any penalties or other
4 obligations resulting from their personal tax reporting of Individual Settlement
5 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.
6

- 7 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
8 the "acknowledging party" and each Party to this Agreement other than the
9 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
10 of this Agreement, and no written communication or disclosure between or among the
11 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
12 such communication or disclosure constitute or be construed or be relied upon as, tax
13 advice within the meaning of United States Treasury Department circular 230 (31 CFR
14 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
15 her or its own, independent legal and tax counsel for advice (including tax advice) in
16 connection with this Agreement, (b) has not entered into this Agreement based upon
17 the recommendation of any other Party or any attorney or advisor to any other Party,
18 and (c) is not entitled to rely upon any communication or disclosure by any attorney
19 or adviser to any other party to avoid any tax penalty that may be imposed on the
20 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
21 any limitation that protects the confidentiality of any such attorney's or adviser's tax
22 strategies (regardless of whether such limitation is legally binding) upon disclosure by
23 the acknowledging party of the tax treatment or tax structure of any transaction,
24 including any transaction contemplated by this Agreement.
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1 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
2 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
3 which shall include this Settlement Agreement. Plaintiff will provide Defendants with
4 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
5 Defendants an opportunity to propose changes or additions to the Motion.
6

7 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
8 establishing and administering the QSF; calculating, processing and mailing payments
9 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
10 mailing the Notice Packets to the Class Members as directed by the Court; receiving
11 and reporting the objections and requests for exclusion; calculating, deducting and
12 remitting all legally required taxes from Individual Settlement Payments and
13 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
14 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
15 Settlement; processing and mailing tax payments to the appropriate state and federal
16 taxing authorities; providing declaration(s) as necessary in support of preliminary
17 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
18 or the Court orders the Settlement Administrator to perform. The Settlement
19 Administrator shall keep the Parties timely apprised of the performance of all
20 Settlement Administrator responsibilities by among other things, sending a weekly
21 status report to the Parties' counsel stating the date of the mailing, the of number of
22 Elections Not to Participate in Settlement it receives (including the numbers of valid
23 and deficient), and number of objections received.
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27 L. Notice Procedure.
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1 1. Class Data. No later than ten (10) business days after the Preliminary
2 Approval Date, Defendants shall provide the Settlement Administrator with
3 the Class Data for purposes of preparing and mailing Notice Packets to the
4 Class Members.

5
6 2. Notice Packets.

7
8 a) The Notice Packet shall contain the Notice of Class Action Settlement
9 in a form substantially similar to the form attached as Exhibit A. The
10 Notice of Class Action Settlement shall inform Class Members and
11 Aggrieved Employees that they need not do anything in order to
12 receive an Individual Settlement Payment and/or Aggrieved
13 Employees' individual shares of the PAGA Settlement and to keep the
14 Settlement Administrator apprised of their current mailing address, to
15 which the Individual Settlement Payments and/or Aggrieved
16 Employees' individual shares of the PAGA Settlement will be mailed
17 following the Funding Date. The Notice of Class Action Settlement
18 shall set forth the release to be given by all members of the Class who
19 do not request to be excluded from the Settlement Class and/or
20 Aggrieved Employees' in exchange for an Individual Settlement
21 Payment and/or Aggrieved Employees' individual shares of the PAGA
22 Settlement, the number of Work Shifts worked by each Class Member
23 during the Class Period and PAGA Period, if any, and the estimated
24 amount of their Individual Settlement Payment if they do not request
25 to be excluded from the Settlement and each Aggrieved Employee's
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1 share of the PAGA Settlement, if any. The Settlement Administrator
2 shall use the Class Data to determine Class Members' Work Shifts and
3 PAGA Work Shifts. The Notice will also advise the Aggrieved
4 Employees that they will release the Released PAGA Claims and will
5 receive their share of the PAGA Settlement regardless of whether they
6 request to be excluded from the Settlement.
7

8 b) The Notice Packet's mailing envelope shall include the following
9 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
10 ENTITLED TO PARTICIPATE IN A CLASS ACTION
11 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
12 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
13 NOTICE."
14

15
16 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
17 Settlement Administrator will perform a search based on the National Change
18 of Address Database to update and correct any known or identifiable address
19 changes. No later than fourteen (14) calendar days after receiving the Class
20 Data from Defendant, the Settlement Administrator shall mail copies of the
21 Notice Packet to all Class Members via regular First-Class U.S. Mail . The
22 Settlement Administrator shall exercise its best judgment to determine the
23 current mailing address for each Class Member. The address identified by the
24 Settlement Administrator as the current mailing address shall be presumed to
25 be the best mailing address for each Class Member.
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1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform a re-mailing, if another mailing address is identified by the
8 Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendant Rush
10 and/or receiving payroll services from Defendant XLT Management Services,
11 Inc. are returned to the Settlement Administrator as non-delivered and no
12 forwarding address is provided, the Settlement Administrator shall notify
13 Defendants. Defendants will then request that the current Class Member
14 provide a corrected address and transmit to the Administrator any corrected
15 address provided by the Class Member. Class Members who received a re-
16 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
17 days from the original Response Deadline.

21 5. Disputes Regarding Individual Settlement Payments. Class Members will
22 have the opportunity, should they disagree with Defendants' records regarding
23 the number of Work Shifts to which they have been credited to provide
24 documentation and/or an explanation to show contrary numbers. If there is a
25 dispute, the Settlement Administrator will consult with the Parties to
26 determine whether an adjustment is warranted. The Settlement Administrator
27 shall determine the eligibility for, and the amounts of, any Individual
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1 Settlement Payments under the terms of this Agreement. The Settlement
2 Administrator's determination of the eligibility for and amount of any
3 Individual Settlement Payment shall be binding upon the Class Member and
4 the Parties.
5

6 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
7 by the Settlement Administrator concerning the administration of the
8 Settlement will be resolved by the Court under the laws of the State of
9 California. Before any such involvement of the Court, counsel for the Parties
10 will confer in good faith to resolve the disputes without the necessity of
11 involving the Court.
12

13 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
14 Packet shall state that Class Members who wish to exclude themselves from
15 the Settlement must submit a written request for exclusion by the Response
16 Deadline. The written request for exclusion must state that the Class Member
17 wishes to exclude himself or herself from the Settlement and (1) must contain
18 the name, address, and the last four digits of the Social Security number of the
19 person requesting exclusion; (2) must be signed by the Class Member; (3)
20 must be postmarked or fax stamped by the Response Deadline and returned to
21 the Settlement Administrator at the specified address or fax telephone number;
22 and (4) contain a typewritten or handwritten notice stating in substance: "I
23 have read the Notice and wish to opt out and be excluded from the settlement
24 of the class action lawsuit entitled *Jacobs v. Rush Media Company*, currently
25 pending in the Los Angeles Superior Court, Case No. 20STCV32350. I
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1 understand that by requesting to be excluded from the settlement, I will
2 receive no money from the Settlement described in the Notice.” The request
3 for exclusion will not be valid if it is not timely submitted, if it is not signed
4 by the Class Member, or if it does not contain the name and address and last
5 four digits of the Social Security number of the Class Member. The date of
6 the postmark on the mailing envelope or fax stamp on the request for exclusion
7 shall be the exclusive means used to determine whether the request for
8 exclusion was timely submitted. Any Class Member who requests to be
9 excluded from the Settlement Class will not be entitled to an Individual
10 Settlement Payment and will not be otherwise bound by the terms of the
11 Settlement or have any right to object, appeal or comment thereon. However,
12 any Class Member that submits a timely request for exclusion that is also a
13 member of the Aggrieved Employees will still receive their pro rata share of
14 the PAGA Settlement, as specified below, and in consideration, will be bound
15 by the Release by the Aggrieved Employees as set forth herein. Settlement
16 Class Members who fail to submit a valid and timely written request for
17 exclusion on or before the Response Deadline shall be bound by all terms of
18 the Settlement and any final judgment entered in this Action if the Settlement
19 is approved by the Court. No later than fourteen (14) calendar days after the
20 Response Deadline, the Settlement Administrator shall provide counsel for
21 the Parties with a final list of the Class Members who have timely submitted
22 written requests for exclusion. At no time shall any of the Parties or their
23 counsel seek to solicit or otherwise encourage members of the Class to submit
24 requests for exclusion from the Settlement.
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1 8. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who wish to object to the Settlement
3 may submit to the Settlement Administrator a written statement of objection
4 ("Notice of Objection") shall have forty-five (45) days from the date the notice
5 is first mailed in which to object to the terms of the Settlement. The postmark
6 date of mailing shall be deemed the exclusive means for determining that a
7 Notice of Objection was served timely. The Notice of Objection must be
8 signed by the Settlement Class Member and state: (1) the case name and
9 number; (2) the name of the Settlement Class Member; (3) the address of the
10 Settlement Class Member; (4) the last four digits of the Settlement Class
11 Member's Social Security number; (4) the basis for the objection; and (5) if
12 the Settlement Class Member intends to appear at the Final
13 Approval/Settlement Fairness Hearing. Class Members who fail to make
14 objections in writing in the manner specified above may still make their
15 objections orally at the Final Approval/Settlement Fairness Hearing with the
16 Court's permission. Settlement Class Members will have a right to appear at
17 the Final Approval/Settlement Fairness Hearing to have their objections heard
18 by the Court. At no time shall any of the Parties or their counsel seek to solicit
19 or otherwise encourage Class Members to file or serve written objections to
20 the Settlement or appeal from the Order and Final Judgment. Class Members
21 who submit a written request for exclusion may not object to the Settlement.
22 Class Members may not object to the PAGA Settlement.

1 M. Funding and Allocation of the Total Settlement Amount. Defendants are required to
2 pay the Total Settlement Amount on or before the Funding Date, plus any employer's
3 share of payroll taxes as mandated by law within the time specified herein.
4

5 1. Individual Settlement Payments. Individual Settlement Payments shall be
6 paid from the Net Settlement Amount and shall be paid pursuant to the
7 formula set forth herein. Using the Class Data, the Settlement Administrator
8 shall add up the total number of Work Shifts for all Class Members. The
9 respective Work Shifts for each Class Member will be divided by the total
10 Work Shifts for all Class Members, resulting in the Payment Ratio for each
11 Class Member. Each Class Member's Payment Ratio will then be multiplied
12 by the Net Settlement Amount to calculate each Class Member's estimated
13 Individual Settlement Payments. Each Individual Settlement Payment will be
14 reduced by any legally mandated employee tax withholdings (e.g., employee
15 payroll taxes, etc.). Individual Settlement Payments for Class Members who
16 submit valid and timely requests for exclusion will be redistributed to
17 Settlement Class Members who do not submit valid and timely requests for
18 exclusion on a pro rata basis based on their respective Payment Ratios.
19

20
21 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
22 Class Data, the Settlement Administrator shall add up the total number of
23 PAGA Work Shifts for all Aggrieved Employees during the PAGA Period.
24 The respective PAGA Work Shifts for each Aggrieved Employee will be
25 divided by the total PAGA Work Shifts for all Aggrieved Employees,
26 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
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1 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
2 Aggrieved Employee Payment to calculate each Aggrieved Employee's
3 estimated share of the PAGA Settlement.
4

5 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
6 Settlement Payments shall be allocated and treated as follows: 20% as wages
7 ("Wage Portion"); 80% as penalties and interest ("Non-Wage Portion"). The
8 Wage Portion is subject to wage withholdings and shall be reported on IRS
9 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
10 and shall be reported on IRS Form 1099.
11

12 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
13 Employee Settlement Payments shall be allocated and treated as 100%
14 penalties and shall be reported on IRS Form 1099.
15

16 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
17 individual shares of the PAGA Settlement made to Settlement Class Members
18 and/or Aggrieved Employees under this Settlement Agreement, as well as any
19 other payments made pursuant to this Settlement Agreement, will not be
20 utilized to calculate any additional benefits under any benefit plans to which
21 any Class Members may be eligible, including, but not limited to profit-
22 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
23 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
24 Parties' intention that this Settlement Agreement will not affect any rights,
25 contributions, or amounts to which any Class Members may be entitled under
26 any benefit plans.
27
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1 6. All monies received by Settlement Class Members under the Settlement which
2 are attributable to wages shall constitute income to such Settlement Class
3 Members solely in the year in which such monies actually are received by the
4 Settlement Class Members. It is the intent of the Parties that Individual
5 Settlement Payments and individual shares of the PAGA Settlement provided
6 for in this Settlement agreement are the sole payments to be made by Defendants
7 to Settlement Class Members and/or Aggrieved Employees in connection with
8 this Settlement Agreement, with the exception of Plaintiff, and that the
9 Settlement Class Members and/or Aggrieved Employees are not entitled to any
10 new or additional compensation or benefits as a result of having received the
11 Individual Settlement Payments and/or their shares of the PAGA Settlement.
12

13
14 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
15 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
16 and/or Aggrieved Employees last known mailing address no later than fifteen
17 (15) calendar days after the Funding Date.
18

19 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
20 Employees shall remain valid and negotiable for one hundred and eighty (180) days
21 from the date of their issuance. If a Settlement Class Member and/or Aggrieved
22 Employee does not cash his or her settlement check within 90 days, the Settlement
23 Administrator will send a letter to such persons, advising that the check will expire
24 after the 180th day, and invite that Settlement Class Member and/or Aggrieved
25 Employee to request reissuance in the event the check was destroyed, lost or
26 misplaced. In the event an Individual Settlement Payment and/or Aggrieved
27 Employee does not cash his or her settlement check within 90 days, the Settlement
28 Administrator will send a letter to such persons, advising that the check will expire

1 Employee's individual share of the PAGA Settlement check has not been cashed
2 within one hundred and eighty (180) days, the Settlement Administrator shall transfer
3 the amount represented by the checks to the State of California Controller pursuant to
4 the Unclaimed Property Law, Code of Civil procedure Section 1500, et seq. with the
5 identity of the Settlement Class Member and/or Aggrieved Employee to whom the
6 funds belong, to be held for the Participating Class Member pursuant to the California
7 Unclaimed Property Law. In that event, the Settlement Class Member and/or
8 Aggrieved Employee shall remain bound by the terms of the Agreement and the Final
9 Approval Order and Judgment. The money transferred to the State of California
10 Controller shall remain the property of the Settlement Class Member and/or
11 Aggrieved Employee. This shall allow Participating Class Members who did not cash
12 their checks to collect their Individual Settlement Payments at any time in the future.
13 Therefore, there shall be no unpaid residue or unclaimed or abandoned Class Member
14 fund created by this Settlement and California Code of Civil Procedure Section 384
15 shall not apply. The Parties hereby expressly agree to this specific distribution for any
16 and all unclaimed funds.
17
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19

20 9. Class Representative Service Award. In addition to the Individual Settlement
21 Payment and the individual share of the PAGA Settlement to be paid to
22 Plaintiff, Plaintiff will apply to the Court for an award of not more than
23 \$10,000, as the Class Representative Service Award. Defendants does not
24 presently intend to oppose a Class Representative Service Award of not more
25 than \$10,000 for Plaintiff. In the event the Court reduces or does not approve
26 of the requested Service Award payments, Plaintiff shall not have the right to
27 revoke the settlement and it will remain binding. Plaintiff retains the right to
28

1 appeal any denial of a requested Service Award. The Settlement
2 Administrator shall pay the Class Representative Service Award, either in the
3 amount stated herein if approved by the Court or some other amount as
4 approved by the Court, to Plaintiff from the Total Settlement Amount no later
5 than ten (10) calendar days after the Funding Date. Any portion of the
6 requested Class Representative Service Awards that are not awarded to the
7 Class Representatives shall be part of the Net Settlement Amount and shall be
8 distributed to Settlement Class Members as provided in this Agreement. The
9 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff
10 for his Class Representative Service Award. Plaintiff shall be solely and
11 legally responsible to pay any and all applicable taxes on their Class
12 Representative Service Award and shall hold harmless the Released Parties
13 from any claim or liability for taxes, penalties, or interest arising as a result of
14 the Class Representative Service Awards. The Class Representative Service
15 Award shall be in addition to Plaintiff's Individual Settlement Payment as a
16 Settlement Class Member. Approval of this Settlement shall not be
17 conditioned on Court approval of the requested amount of the Class
18 Representative Service Award. In the event that the Court reduces or does not
19 approve the requested Class Representative Service Award, Plaintiff shall not
20 have the right to revoke the Settlement, and it will remain binding.

- 21
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24
25 10. Class Counsel Award. Defendants understand a motion by Class Counsel for
26 attorneys' fees not to exceed one-third of the Total Settlement Amount
27 currently estimated to be \$110,000.00 plus costs and expenses supported by
28 declaration not to exceed Dollars (\$15,000), from the Total Settlement

1 Amount will be filed. Any portion of the requested Class Counsel Award that
2 is not awarded to Class Counsel shall be part of the Net Settlement Amount
3 and shall be distributed to Settlement Class Members as provided in this
4 Agreement. The Settlement Administrator shall allocate and pay the Class
5 Counsel Award to Class Counsel from the Total Settlement Amount no later
6 than five (5) calendar days after the Funding Date. Class Counsel shall be
7 solely and legally responsible to pay all applicable taxes on the payment made
8 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
9 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
10 paragraph. In the event that the Court reduces or does not approve the
11 requested Class Counsel Award, Plaintiff and Class Counsel shall not have
12 the right to revoke the Settlement, or to appeal such order, and the Settlement
13 will remain binding.
14
15

- 16
17 11. PAGA Settlement. Twenty Thousand Dollars (\$20,000) shall be allocated
18 from the Total Settlement Amount for settlement of claims for civil penalties
19 under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
20 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
21 Settlement (\$15,000) to the California Labor and Workforce Development
22 Agency no later than twenty-five (25) calendar days after the Funding Date
23 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
24 (\$5,000) will be distributed to the Aggrieved Employees as described in this
25 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
26 distributing the PAGA Settlement to the Aggrieved Employees, each
27
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1 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
2 Employee Payment using the PAGA Payment Ratio as defined above.

3
4 12. Settlement Administration Costs. The Settlement Administrator shall be paid
5 for the costs of administration of the Settlement from the Total Settlement
6 Amount. The estimate of the Settlement Administration Costs is \$11,000.00.
7 The Settlement Administrator shall be paid the Settlement Administration
8 Costs no later than twenty-five (25) calendar days after the Funding Date.
9

10 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
11 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
12 twenty-eight (28) days following the expiration of the Response Deadline, which
13 motion shall request final approval of the Settlement and a determination of the
14 amounts payable for the Class Representative Service Award, the Class Counsel
15 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
16 provide Defendants with a draft of the Motion at least 3 business days prior to the
17 filing of the Motion to give Defendants an opportunity to propose changes or
18 additions to the Motion
19

20
21 1. Declaration by Settlement Administrator. No later than seven (7) calendar
22 days after the Response Deadline, the Settlement Administrator shall submit
23 a declaration in support of Plaintiff's motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Class Members, the number of undeliverable Notice Packets, the number of
26 timely requests for exclusion, the number of objections received, the amount
27 of the average Individual Settlement Payment and highest Individual
28

1 Settlement Payment, the Settlement Administration Costs, and any other
2 information as the Parties mutually agree or the Court orders the Settlement
3 Administrator to provide.
4

5 2. Final Approval Order and Judgment. Class Counsel shall present an Order
6 Granting Final Approval of Class Action Settlement to the Court for its
7 approval, and Judgment thereon, at the time Class Counsel files the Motion
8 for Final Approval.
9

10 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
11 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
12 Final Approval, including the Order Granting Final Approval of Class Action
13 Settlement, and Judgment before filing with the Court. The Parties and their counsel
14 will cooperate with each other and use their best efforts to affect the Court's approval
15 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
16 Judgment.
17

18
19 O. Cooperation. The Parties and their counsel will cooperate with each other and use
20 their best efforts to implement the Settlement.

21 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
22 except such proceedings necessary to implement and complete the Settlement, pending
23 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
24

25 Q. Amendment or Modification. This Agreement may be amended or modified only by
26 a written instrument signed by counsel for all Parties or their successors-in-interest.
27
28

1 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
2 Agreement among these Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Agreement or its Exhibit
4 other than the representations, warranties and covenants contained and memorialized
5 in this Agreement and its Exhibit.
6

7 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement and to take all appropriate Action required or permitted to be taken by
10 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
11 documents required to effectuate the terms of this Agreement. The persons signing
12 this Agreement on behalf of Defendants represent and warrant that they are authorized
13 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
14 he is authorized to sign this Agreement and that he has not assigned any claim, or part
15 of a claim, covered by this Settlement to a third-party.
16
17

18 T. No Public Comment: The Parties and their counsel agree that they will not issue any
19 press releases, initiate any contact with the press, respond to any press inquiry, or have
20 any communication with the press about the fact, amount or terms of the Settlement
21 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
22 of its terms for any marketing or promotional purposes. Nothing herein will restrict
23 Class Counsel from including publicly available information regarding this settlement
24 in future judicial submissions regarding Class Counsel's qualifications and experience.
25 Further, Class Counsel will not include, reference or use the Settlement Agreement for
26
27
28

1 any marketing or promotional purposes, either before or after the Motion for
2 Preliminary Approval is filed.

3
4 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
5 to the benefit of, the successors or assigns of the Parties, as previously defined.

6
7 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
8 shall be governed by and interpreted according to the laws of the State of California.

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

14
15 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
16 is a fair, adequate and reasonable settlement of this Action and have arrived at this
17 Settlement after extensive arms-length negotiations, taking into account all relevant
18 factors, present and potential.

19
20 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
21 respect to the interpretation, implementation and enforcement of the terms of this
22 Agreement and all orders and judgments entered in connection therewith, and the
23 Parties and their counsel submit to the jurisdiction of the Court for purposes of
24 interpreting, implementing and enforcing the settlement and all orders and judgments
25 entered in connection with this Agreement.
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1 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5
6 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
7 intend to pursue any claims against the Released Parties, including, but not limited to,
8 any and all claims relating to or arising from Plaintiff's employment with Defendants,
9 regardless of whether Class Counsel is currently aware of any facts or legal theories
10 upon which any claims or causes of action could be brought against Released Parties,
11 including those facts or legal theories alleged in the operative complaint in this Action.
12 The Parties further acknowledge, understand and agree that this representation is
13 essential to the Agreement and that this Agreement would not have been entered into
14 were it not for this representation.

15
16
17 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
18 certification for purposes of this settlement only.

19
20 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
21 Released Claims have merit and give rise to liability on the part of Defendants.
22 Defendants claims that the Released Claims have no merit and do not give rise to
23 liability. This Agreement is a compromise of disputed claims. Nothing contained in
24 this Agreement and no documents referred to and no action taken to carry out this
25 Agreement may be construed or used as an admission by or against the Defendants or
26 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
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1 than as may be specifically set forth herein, each Party shall be responsible for and
2 shall bear its/his own attorney's fees and costs.
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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 9/9/2021

DocuSigned by:
Daniel Jacobs
4634BE60A9A5451...
DANIEL JACOBS

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Printed Name

Title

DATED: 8/31/2021 | 1:08 PM PDT

DocuSigned by:
Scott West
7EB05CE52FB2400...
XLT MANAGEMENT SERVICES, INC., an Illinois
corporation

Scott West

Printed Name

President

Title

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
2

3 DATED: _____
4

DANIEL JACOBS
5

6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:
7

8 DATED: 9/7/21
9


RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Tim Eichorst
11

Printed Name
12

Managing Member
13

Title
14

15 DATED: _____
16

XLT MANAGEMENT SERVICES, INC., an Illinois
corporation
17

Printed Name
18

Title
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20
21
22
23
24
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1 IT IS SO AGREED AS TO FORM BY COUNSEL:

2
3 DATED: 9/9/2021

JCL LAW FIRM, A.P.C.

4 By:

DocuSigned by:

Jean-Claude Lapuyade

0EBC26D5B9CD468...

5 Attorneys for Plaintiffs and the Settlement Class
6 Members

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8
9 DATED: 9/9/2021

ZAKAY LAW GROUP, APLC

11 By:

DocuSigned by:

Shani B. Zakay

4ECDE73A91D4420...

12 Attorneys for Plaintiffs and the Settlement Class
13 Members

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15
16 DATED:

RYAN H. CROSNER

PAUL M. SMITH

18 OGLETREE, DEAKINS, NASH, SMOAK &
19 STEWART, P.C.

20 By:

21 Attorneys for Defendant RUSH MEDIA COMPANY LLC

22 DATED:

KAREN E. POINTER

KELLY ANN COLEMAN

24 LERMAN & POINTER LLP

25 By:

26 Attorneys for Defendant RUSH MEDIA COMPANY LLC
27
28

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

2
3 DATED: _____

JCL LAW FIRM, A.P.C.

4 By: _____

5 Attorneys for Plaintiffs and the Settlement Class
6 Members

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10 DATED: _____

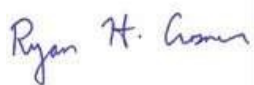
ZAKAY LAW GROUP, APLC

11 By: _____

12 Attorneys for Plaintiffs and the Settlement Class
13 Members

14
15
16 DATED: September 9, 2021

17 RYAN H. CROSNER
18 PAUL M. SMITH
19 OGLETREE, DEAKINS, NASH, SMOAK &
20 STEWART, P.C.

21 By:  _____

Attorneys for Defendant RUSH MEDIA COMPANY LLC

22 DATED: September 9, 2021

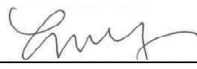
23 KAREN E. POINTER
24 KELLY ANN COLEMAN
25 LERMAN & POINTER LLP

26 By:  _____

27 Attorneys for Defendant RUSH MEDIA COMPANY LLC
28

1 DATED: 9/10/21

GREG A. GARBACZ
LINDA M. TOUTANT
KLINEDINST PC

3 By: 
4

5 Attorneys for Defendant XLT MANAGEMENT
6 SERVICES, INC.
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EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Jacobs, et al., v. Rush Media Company LLC, County of Los Angeles Superior Court Case No. 20STCV32350)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Los Angeles (the “Court”) has been reached between Plaintiff Daniel Jacobs (“Plaintiff”) and Defendants Rush Media Company LLC and XLT Management Services, Inc., (hereinafter collectively “Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All of the current and former non-exempt employees and independent contractors that worked for Defendant Rush, including those that received payroll services from XLT Management Services, Inc., in California during the Class Period.

The “Class Period” is the period of time running from August 20, 2016 to July 4, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On August 25, 2020, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendants: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203. On November 2, 2020, Plaintiff filed the First Amended Complaint adding a ninth cause of action for Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendants deny and dispute all claims asserted in the Actions. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendants properly paid members of the class all wages and overtime that was due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; that Plaintiff did not request seating and that the nature of the work does not permit the use of seats; and that Defendants are not liable for any of the penalties claimed or that could be claimed in the Actions.

On May 4, 2021, the Parties participated in an all-day mediation with Honorable William C. Pate., a respected jurist and an experienced mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Three Hundred Thirty Thousand Dollars (\$330,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$ [REDACTED], for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$110,000) and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment of up to Ten Thousand and Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$20,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$15,000.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$5,000.00 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of work shifts for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's work shifts that occurred during the Class Period. A "work shift" is defined as a shift of work during the Class Period in which, according to Defendants' records, a member of the class presented for work and/or worked at least one hour of work on any such work shift.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of work shift worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of work shifts worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all of the current and former non-exempt employees and independent contractors that worked for Defendant Rush, including those that received payroll services from XLT Management Services, Inc., in California during the PAGA Period. The PAGA Period means the period of August 20, 2019 through and including July 4, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Twenty percent (20%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue

Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means any and all class action claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties but excluding PAGA penalties which are being separately released herein, rights or liabilities, of any nature and description whatsoever that are asserted in the Action or based on the facts and theories pleaded in the operative complaint on file at the time of final approval, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 22, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders which occurred during the Class Period, and expressly excluding all other claims, including claims for vested, benefits, wrongful termination, unemployment, insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means any and all claims for penalties under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the LWDA, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 22, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants' records reflect that you have <<____>> Work Shifts worked during the Class Period (August 20, 2016 to July 4, 2021).

Based on this information, your estimated Settlement Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out and be excluded from the class action and settlement of the case *Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350*. I understand that by requesting to be excluded, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
3990 Old Town Ave., Suite C204
San Diego, CA 92110
Tel.: (619) 826-6975
Fax: (619) 599-2891
E-Mail: jlapyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
3990 Old Town Ave., Suite
C204
San Diego, CA 92110
Tel: (619) 599-8282
Fax: (619) 599-8291
Email:
shani@zakaylaw.com
Website: www.zakaylaw.com

**Counsel for Defendant Rush
Media Company LLC:**

Ryan H. Crosner
Ogletree, Deakins, Nash,
Smoak & Stewart, PC.
400 South Hope Street suite
1200
Los Angeles, CA
Tel.: (213) 329-9800
Fax: (213) 239-9045
E-Mail:
ryan.crosner@ogletree.com

**Counsel for
Defendant XLT
Management
Services, Inc.:**

Greg A. Garbacz
Klinedinst PC
2 Park Palza, Suite
1250
Irvine, CA 92614
Tel.: (714) 542-1800
Fax: (714) 542-3592
E-Mail:
ggarbacz@klinedinstlaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 920012 in Department 1 before Judge Daniel J. Buckley. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to **Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350**, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Participating Class Members who cashed his or her Settlement Share check using the same work shift formula used for distribution of the Net Settlement Amount. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.