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ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

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

**DECLARATION OF SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: May 2, 2022

Hearing Time: 10:30AM

Honorable Judge Daniel J. Buckley
Department 1

Trial Date: Not Set

Action Filed: August 25, 2020

1 I, SHANI O. ZAKAY, declare as follows:

2 1. I am the managing partner of the law firm of Zakay Law Group, APC, co-lead
3 counsel of record for Plaintiff DANIEL JACOBS (“Plaintiff”) in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of the matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters
6 stated herein. This declaration is being submitted in support of the Motion for Final Approval of
7 the Class Settlement by Plaintiff.

8 2. Over the course of the litigation during the last 20 months, a number of attorneys
9 from two firms have worked on this matter. The credentials of counsel in this action are reflected
10 in the Zakay Law Group, APC resume, a true and correct copy of which are attached hereto as
11 Exhibit #1, and the declaration of Jean-Claude Lapuyade. Some of the major cases those two
12 firms have undertaken are also set forth in Exhibit #1 and the Lapuyade declaration. The bulk of
13 the attorneys involved in this matter at have had substantial class litigation experience, mostly in
14 the area of employment class actions, unfair business practices and other complex litigation.
15 These attorneys have extensive experience in cases involving labor code violations and wage and
16 hour claims. Class Counsel has litigated similar wage and hour cases against other employers on
17 behalf of employees. Class Counsel have been approved as experienced class counsel during
18 contested motions in state and federal courts throughout California. It is this level of experience
19 which enabled the firm to undertake the instant matter and to successfully combat the resources of
20 the defendants and their capable and experienced counsel.

21 **3. Summary of the Proposed Settlement**

- 22 a. A true and correct copy of the Stipulation of Settlement of Class Action Claims and
23 Release of Claims (hereinafter the “Agreement”) is attached hereto as Exhibit #2.¹
24 Plaintiff and Defendants Rush Media, LLC and XLT Management Services, Inc.
25 (“Defendants”), reached a full and final Settlement of the above-captioned action,
26 which is embodied in the Agreement filed concurrently with the Court. As
27 consideration for this Settlement, Defendant has agreed to pay the all-in, non-

28

¹ Capitalized terms are defined in the Agreement.

1 reversionary amount of Three Hundred and Thirty Thousand Dollars (\$330,000)
2 (“Gross Settlement Amount”). The Total Settlement Amount includes all payments of
3 the Settlement Shares to Class Members, the Class Representative Service Award to
4 Plaintiff, Settlement Administration Expenses, the PAGA Payment, and Court-
5 approved attorneys’ fees and costs. Defendants will separately pay the employer’s
6 share of payroll taxes to the qualified settlement fund, per the Agreement. (Agreement
7 at ¶ 3(a)).

8 b. The Net Settlement Amount shall equal the net amount available for Settlement Shares
9 to Class Members from the Total Settlement Amount after deducting the Court-
10 approved amounts for the Class Representatives Service Award, the Class Counsel
11 Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment,
12 and the expenses the Settlement Administration Costs. The Settlement Administrator
13 will pay a Settlement Share from the Net Settlement Amount to each Class Member.
14 The submission of a claim form is not required in order for the Participating Class
15 Member to be paid his or her Settlement Share. The Settlement Share for each Class
16 Member will be calculated as follows: 1) respective Work Shifts for each Class
17 Member will be divided by the total Work Shifts for all Class Members, resulting in
18 the Payment Ratio for each Class Member; (2) each Class Member’s Payment Ratio is
19 then multiplied by the Net Settlement Amount to calculate each Class Member’s
20 estimated Individual Settlement Payments. The entire Net Settlement Amount shall be
21 distributed. The entire Net Settlement Fund shall be distributed.

22 c. Class Members were sent the Court approved Class Notice, using the procedure
23 approved by the Court, by mailing the notice packets after updating class members’
24 addresses using the National Change of Address database and, for any notice packets
25 returned as undeliverable, re-mailing such notices to any forwarding address provided
26 or updated address located through skip tracing. Class Members were provided with
27 the opportunity to exclude themselves (“opt out”) if they did not want to participate in
28 the Settlement. Class Members who did not “opt out” are deemed Participating Class

Members who are bound by the Settlement and will be mailed a settlement payment. The Notice advised the Aggrieved Employees that they will receive payment from the Net PAGA Payment regardless of their decision to participate in the Action. The Class Notice also advised Class Members of their right to object to the Settlement. This notice process is documented in the accompanying Declaration of Lluvia Islas (the Settlement Administrator).

4. If a Participating Class Member's Settlement Share check is not cashed within 180 days after its last mailing to the Participating Class Member, the funds from such uncashed checks will be paid to the State of California Controller's Office of Unclaimed Property and the Participating Class Member will remain bound by the Settlement.

5. The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will apply separately for an award of litigation expenses incurred in the prosecution and settlement of the Action in an amount not exceeding \$15,000. **In support of this request, Class Counsel is providing evidentiary support, including lodestar, in the declarations submitted concurrently herewith.** The Agreement provides for payment of Class Representative Service Payment of no more than \$10,000 for Plaintiff, or such lesser amount as may be approved by the Court in compensation for his services. Defendants do not oppose the requested Class Counsel Fees Payment, Litigation Expenses, Settlement Administration Costs, or Class Representative Service Payment.

6. The Parties allocated \$20,000 from the Gross Settlement Amount for settlement of civil penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of Labor Code §2699(i) the PAGA Payment shall be allocated \$15,000 to the LWDA ("LWDA Payment" or the "PAGA Payment") as the LWDA's share of the settlement of civil penalties and \$5,000 to the Net Settlement Amount for distribution to the Aggrieved Employees ("Net PAGA Amount").

7. On May 4, 2021, the parties participated in a mediation before Hon. William C. Pate (Ret.) a respected jurist and mediator of wage and hour class actions. Prior to the mediation,

1 the Parties prepared by exchanging data and records, calculating damages, and submitting
2 mediation briefs to the Mediator. Defendants provided Class Counsel with necessary records and
3 information for the members of the Class. Defendants produced a sample consisting of pay
4 records and time records for the Class Members for the entire Class Period. Defendants also
5 produced Defendants' relevant compensation policies and timekeeping policies. Plaintiff
6 analyzed the data with the help of an expert and prepared and submitted a mediation brief to
7 Judge Pate. The Parties were unable to reach an agreement to settle the Action, at which point
8 Judge West made a mediator's proposal, which was accepted by the Parties. The Parties
9 documented the agreement in the form of a Memorandum of Understanding. The Parties then
10 prepared the full Agreement which was signed by the Parties and received preliminary approval
11 from the Court by Order dated December 20, 2021.

12 8. The Settlement is fair, adequate and reasonable to the Class and should be finally
13 approved for the same reasons the Court granted preliminary approval to the Settlement, finding
14 that it is fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
15 valued at \$330,000 is an excellent result for the Class. This result is particularly favorable in light
16 of the fact that liability in this case was far from certain in light of the defenses asserted by
17 Defendants. There have been no objections and only one opt-out. Given the complexities of this
18 case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
19 proof at trial and appeal, the proposed Settlement is fair, reasonable and adequate, and should be
20 finally approved.

21 9. **Procedural Status of the Settlement** - The Court preliminarily approved the
22 Agreement via its Preliminary Approval Order dated December 20, 2021 ("Preliminary Approval
23 Order"); and pursuant to the Preliminary Approval Order the approved Class Notice has been
24 disseminated to the Class. On January 14, 2022, the Settlement Administrator Court-approved
25 Class Notice to the Class Members, which provided each Class Member with the terms of the
26 Settlement, including notice of the claims at issue and the financial terms of the settlement,
27 including the attorneys' fees, costs, and service awards that were being sought, how individual
28 settlement awards would be calculated, and the specific, estimated payment amount to that

individual. In disseminating the Class Notice, the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and only one opt out. (See Declaration of Lluvia Islas at ¶¶ 12-13.) As a result, 99.75% of the Class has elected to participate in the Settlement and will be sent a settlement check. The final administration results are documented in the accompanying Declaration of Lluvia Islas.

10. **Description of Plaintiff's Claims** – The Action generally alleges that Defendant violated the California Labor Code protections applicable to California employees including because Defendants have misclassified some California employees as independent contractors and otherwise underpaid wages, including overtime wages, failed to provide meal and rest breaks, accurate wage statements and final pay. The Action seeks unpaid wages, statutory penalties, civil penalties, attorneys' fees, litigation costs², and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing claims.

11. **Procedural History of the Litigation**

a. On August 20, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the same on Defendants. The Notice to the LWDA included a proposed Complaint which Plaintiff planned on filing with the Court, which asserted the Defendant: (1) Violated California Business and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (4) Failed to provide meal periods in violation of California Labor Code §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation of California Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code §226; (7) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (8) Failed to reimburse employees for required expenses in violation of

² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 California Labor Code §2802. On August 25, 2020, Plaintiff filed a class action
2 Complaint against Defendants in the Superior Court of the State of California, County
3 of Los Angeles. Plaintiff alleges that Defendants violated and continue to violate the
4 California Labor Code protections applicable to California employees including
5 because Defendants have misclassified some California employees as independent
6 contractors and otherwise underpaid wages, including overtime wages, failed to
7 provide meal and rest breaks, accurate wage statements and final pay. On November 2,
8 2020, Plaintiff filed a First Amended Complaint adding a claim for penalties pursuant
9 to PAGA.

- 10 b. Prior to mediation, Class Counsel engaged in informal discovery in preparation for the
11 mediation, and received significant responses and documents to the discovery requests.
12 Defendants produced a large sample consisting of pay records and time records for the
13 Class Members for the entire Class Period. Defendants also produced relevant
14 policies, including compensation policies and timekeeping policies. Class Counsel
15 conducted extensive review of time records and data with the help of an expert.

16 **12. History of Settlement Discussion**

- 17 a. This Settlement was the result of arm's-length negotiations as well as informal
18 settlement conferences between the Parties through their respective attorneys. After
19 comprehensive legal and factual analysis, Class Counsel possessed sufficient
20 information for intelligent evaluation of the case for purposes of settlement. Prior to
21 the initiation of settlement discussions, Class Counsel reviewed and outlined the case
22 based upon the information for the Class, and determined the conditions of settlement
23 which would be fair and reasonable to the Class with the assistance of an expert.
- 24 b. On May 4, 2021, the parties participated in a mediation before Hon. William C. Pate
25 (Ret.) a respected jurist and mediator of wage and hour class actions. Prior to the
26 mediation, the Parties prepared by exchanging data and records, calculating damages,
27 and submitting mediation briefs to the Mediator. Defendants provided Class Counsel
28 with necessary records and information for the members of the Class. Defendants

1 produced a sample consisting of pay records and time records for the Class Members
2 for the entire Class Period. Defendants also produced Defendants' relevant
3 compensation policies and timekeeping policies. Plaintiff analyzed the data with the
4 help of an expert and prepared and submitted a mediation brief to Judge Pate. The
5 Parties were unable to reach an agreement to settle the Action, at which point Judge
6 West made a mediator's proposal, which was accepted by the Parties. The Parties
7 documented the agreement in the form of a Memorandum of Understanding. The
8 Parties then prepared the full Agreement which was signed by the Parties and received
9 preliminary approval from the Court by Order dated December 20, 2021.

- 10 c. The Order dated December 20, 2021 preliminarily approved the Class Settlement
11 contained in the Agreement as fair, reasonable and adequate.
- 12 d. Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate.
13 In my judgment as experienced Class Counsel, this Settlement should be finally
14 approved.

15 **13. The Outcome of this Case would Have Been Uncertain and Fraught with Risks**

- 16 a. Here, several defenses asserted by Defendants presented serious threats to the claims
17 of the Plaintiff and other Class Members. In order to recover any penalties, Plaintiff
18 would be required at trial to prove each of the underlying Labor Code violations.
19 Specifically, Plaintiff would need to prove as to individuals who worked for
20 Defendants that he or she was misclassified as an independent contractor, and that he
21 or she was not properly compensated for minimum wages, meal break wages, rest
22 break wages, expenses, and overtime wages. To do so, Plaintiff would require proof of
23 Labor Code violations to each of the above. Defendants maintain that Plaintiff and
24 other Class Members were properly classified as independent contractors and were
25 properly compensated, and that Defendants did not violate the Labor Code as to any of
26 them. Given Defendants' potential defenses to the Labor Code violations, and the
27 risks and costs of continued litigation, Plaintiff and Class Counsel believe that the
28 Settlement Amount is fair and reasonable. While Plaintiff believes that these defenses,
and others, could be overcome, Defendants maintain these defenses have merit and

1 therefore present a serious risk to recovery for the Class. Further supporting the
2 fairness and reasonableness of the settlement is Defendants' financial condition.
3 Defendants provide video, field production and post-production packaging services for
4 televised sporting events (Rush Media, LLC) and related payroll services (XLT
5 Management Services, Inc.). The production business has suffered significantly as a
6 result of the effects of the COVID-19 virus and the Governor's order prohibiting large
7 events and gatherings, which resulted in the cancellation of many sporting events. In
8 fact, as a result of the pandemic, many of the Defendants' operations were largely shut
9 down for more than a year. Considering the resulting financial hardship, the
10 settlement provides great value for the Class Members, while also allowing Defendants
11 to continue in business. Further, during the time that many of Defendants' operations
12 were mandated closed by state and local authorities during the COVID-19 pandemic,
13 the alleged violations could not have occurred.

14 b. There was also a significant risk that, if the Action was not settled, Plaintiff would be
15 unable to obtain class certification and thereby not recover on behalf of any Class
16 Member other than themselves. Defendants argued that the individual experience of
17 each Class Member varied with respect to the alleged claims. While other cases have
18 approved class certification of wage and hour claims, class certification in this action
19 would have been hotly disputed and was by no means a foregone conclusion. Finally,
20 even if class certification was successful, as demonstrated by the California Supreme
21 Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
22 significant hurdles to overcome for a class-wide recovery even where the class has
23 been certified.

24 c. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
25 and trying the Action against Defendants through possible appeals which even if
26 successful could take several years. Class Counsel have also taken into account the
27 uncertain outcome and risk of litigation, especially in complex actions such as this
28 Action. Class Counsel are also mindful of and recognize the inherent problems of

1 proof under, and alleged defenses to, the claims asserted in the Action. As
2 demonstrated by the decision in *Duran*, the complexities and duration of further
3 litigation cannot be overstated. There is little doubt that Defendants would post a bond
4 and appeal in the event of an adverse judgment. A post-judgment appeal by
5 Defendants would have required many more years to resolve, assuming the judgment
6 was affirmed. If the judgment was not affirmed in total, then the case could have
7 dragged on for years after the appeal. The benefits of a guaranteed recovery today
8 outweigh an uncertain result three or more years in the future. Moreover, post-trial
9 motions and appeals would have been inevitable. Costs would have mounted and
10 recovery would have been delayed if not denied, thereby reducing the benefits of an
11 ultimate victory. Plaintiff and Class Counsel believe that the Settlement confers
12 substantial benefits upon the Class. Based upon their evaluation, Plaintiff and Class
13 Counsel have determined that the Settlement set forth in the Agreement is in the best
14 interest of the Class Members.

15 d. In sum, the Settlement is a fair and reasonable result, and provides the Class with a
16 significant recovery, particularly when viewed in light of the fact that Defendants
17 asserted serious and substantial defenses both to liability and to class certification.
18 Given the complexities of this case, the defenses, along with the uncertainties of proof
19 and appeal, the proposed Settlement is fair, reasonable and adequate, and should be
20 finally approved.

21 e. It is impossible to predict with certainty whether, under the facts of this case, Plaintiff
22 would prevail against the Defendant's factual and legal defenses. While Plaintiff and
23 Class Counsel believe in the merits of the claims, Defendant has asserted real and
24 substantial defenses to these claims and to class certification. Settlement in this case
25 clearly benefits the Class when measuring the strengths of Plaintiff's case and the risk
26 of establishing class wide liability and damages.

27
28 ///

1 **14. The Result Achieved by this Litigation and Settlement**

2 a. The Settlement in this case is fair, reasonable and adequate. As detailed during
3 preliminary approval, the Total Settlement Amount compares favorably to the value of
4 the claims. Class Members will receive immediate and certain payments of
5 considerable amounts under the Settlement. Currently, the overall maximum and
6 average Participating Class Member allocations are estimated to be \$4,607.70 and
7 \$404.94 respectively. Additionally, the overall maximum and average PAGA Member
8 allocations are estimated to be \$4,607.70 and \$404.94 respectively. (Decl. Islas at ¶
9 14).

10 b. Faced with the serious doubts as to recovery, the Settlement of approximately
11 \$330,000 represents almost 39% of the value of the maximum actual *damages* at issue.
12 Furthermore, the Settlement represents almost 11.6% of the maximum combination of
13 damages and penalties to the Class, assuming all of these amounts could be proved at
14 trial.

15 15. Plaintiff used Berger Consulting to analyze the data and determine the potential damages for
16 the employees. Plaintiff estimates that Defendants were subject to maximum liability for
17 damages in the amount of \$847,986 consisting of \$220,750 for unreimbursed business
18 expenses, \$238,760 for unpaid wages, and \$388,476 for meal and rest break periods. In
19 addition, Plaintiff calculated that Defendants could be liable for \$1,907,914 for waiting time
20 penalties and \$83,150 for wage statement penalties. Finally, Plaintiff's expert calculated that
21 Defendant could be liable for PAGA penalties in an amount of \$1,266,650.³ Consequently,
22

23 ³ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
24 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
25 a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th
26 1157, 1209 (2008) ("Until the employer has been notified that it is violating a Labor Code
27 provision (whether or not the commissioner or court chooses to impose penalties), the employer
28 cannot be presumed to be aware that its continuing underpayment of employees is a "violation"
subject to penalties."). In addition, Plaintiff recognizes that PAGA claims bear some risk. See
Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff
prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount
by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon
review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington*

1 the Settlement of approximately \$330,000 represents almost 39% of the value of the
2 maximum actual *damages* at issue. Furthermore, the Settlement represents almost 11.6% of
3 the maximum combination of damages and penalties to the Class, assuming all of these
4 amounts could be proved at trial.⁴

5 16. Given the uncertainty of litigation and the value of the claims alleged, the Settlement amount
6 of \$330,000 is certainly reasonable, and the goal of this litigation has clearly been met.

7 17. **Notice to LWDA.** On April 7, 2022 at the time this motion was submitted for filing, I
8 submitted a copy of the fully executed settlement agreement to the LWDA through their
9 online filing system, and received an email confirming the submission of the proposed
10 settlement (See Exhibit 3).

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 7th day of April 2022, at San Diego, California.

14
15 By: 
16 Shani O. Zakay
17
18
19

20
21 decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were
22 reduced by 90%.

23 ⁴ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
24 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
25 a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th
26 1157, 1209 (2008) (“Until the employer has been notified that it is violating a Labor Code
27 provision (whether or not the commissioner or court chooses to impose penalties), the employer
28 cannot be presumed to be aware that its continuing underpayment of employees is a “violation”
subject to penalties.”). In addition, Plaintiff recognizes that PAGA claims bear some risk. See
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prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount
by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon
review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington*
decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were
reduced by 90%.

EXHIBIT 1

Zakay Law Group, APC
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San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
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Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 2

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 5440 MOREHOUSE DRIVE, SUITE 3600
4 SAN DIEGO, CA 92121
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 5440 MOREHOUSE DRIVE, SUITE 3600
10 SAN DIEGO, CA 92121
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

13
14
15 **SUPERIOR COURT OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

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

20
21
22 **PLAINTIFF,**

23 vs.

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

DEFENDANTS.

Case No. 20STCV32350

[Action Filed 08/25/2020]

**AMENDED 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
28

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.
27
28

- 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,
26
27
28

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
28

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
26
27
28

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
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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. The allocation of settlement
14 funding between the Defendants shall be as follows: eighty percent (80%)
15 from Defendant Rush Media Company, LLC and twenty percent (20%) from
16 Defendant XLT Management Services, Inc.
17

18 4. Defendants’ Share of Payroll Taxes. Defendants’ share of employer side
19 payroll taxes is in addition to the Total Settlement Amount and shall be paid
20 together with the Total Settlement Amount.
21

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

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

3 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
4 in this Agreement, Plaintiff, on his own behalf and on behalf of his heirs, spouses,
5 executors, administrators, attorneys, agents, and assigns, fully and finally waives, releases,
6 acquits and forever discharges the Released Parties from any and all claims, whether known
7 or unknown, which exist or may exist on her behalf as of the date of this Agreement,
8 including but not limited to any and all tort claims, contract claims, wage claims, wrongful
9 termination claims, disability claims, benefit claims, public policy claims, retaliation
10 claims, statutory claims, personal injury claims, emotional distress claims, invasion of
11 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all
12 claims arising under any federal, state or other governmental statute, law, regulation or
13 ordinance, including, but not limited to claims for violation of the Fair Labor Standards
14 Act, the California Labor Code, the Wage Orders of California's Industrial Welfare
15 Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
16 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security
17 Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing
18 Act, the California Family Rights Act, the Family Medical Leave Act, California's
19 Whistleblower Protection Act, California Business & Professions Code Section 17200 et
20 seq., and any and all claims arising under any federal, state or other governmental statute,
21 law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
22 rights or benefits that he may have under California Civil Code § 1542, which provides as
23 follows:
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1 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
2 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
3 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
4 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
5 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
6 ***DEBTOR OR RELEASED PARTY.***
7

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

3
4 E. Conditions Precedent: This Settlement will become final and effective only upon the
5 occurrence of all of the following events:

- 6
7 1. The Court enters an order granting preliminary approval of the Settlement;
8
9 2. The Court enters an order granting final approval of the Settlement and a Final
10 Judgment;
11
12 3. If an objector appears at the final approval hearing, the time for appeal of the
13 Final Judgment and Order Granting Final Approval of Class Action
14 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
15 any appeal from the Judgment and Order Granting Final Approval of Class
16 Action Settlement; and
17
18 4. Defendants fully fund the Total Settlement Amount.

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

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

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

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

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

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

25
26 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
27 effect of the payments called for, and Class Members and/or Aggrieved Employees are
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1 not relying on any statement or representation by the Parties in this regard. Class
2 Members and/or Aggrieved Employees understand and agree that they will be
3 responsible for the payment of any taxes and penalties assessed on the Individual
4 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
5 Settlement described and will be solely responsible for any penalties or other
6 obligations resulting from their personal tax reporting of Individual Settlement
7 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.
8

- 9
- 10 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
11 the "acknowledging party" and each Party to this Agreement other than the
12 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
13 of this Agreement, and no written communication or disclosure between or among the
14 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
15 such communication or disclosure constitute or be construed or be relied upon as, tax
16 advice within the meaning of United States Treasury Department circular 230 (31 CFR
17 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
18 her or its own, independent legal and tax counsel for advice (including tax advice) in
19 connection with this Agreement, (b) has not entered into this Agreement based upon
20 the recommendation of any other Party or any attorney or advisor to any other Party,
21 and (c) is not entitled to rely upon any communication or disclosure by any attorney
22 or adviser to any other party to avoid any tax penalty that may be imposed on the
23 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
24 any limitation that protects the confidentiality of any such attorney's or adviser's tax
25 strategies (regardless of whether such limitation is legally binding) upon disclosure by
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1 the acknowledging party of the tax treatment or tax structure of any transaction,
2 including any transaction contemplated by this Agreement.

3
4 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
5 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
6 which shall include this Settlement Agreement. Plaintiff will provide Defendants with
7 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
8 Defendants an opportunity to propose changes or additions to the Motion.

9
10 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
11 establishing and administering the QSF; calculating, processing and mailing payments
12 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
13 mailing the Notice Packets to the Class Members as directed by the Court; receiving
14 and reporting the objections and requests for exclusion; calculating, deducting and
15 remitting all legally required taxes from Individual Settlement Payments and
16 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
17 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
18 Settlement; processing and mailing tax payments to the appropriate state and federal
19 taxing authorities; providing declaration(s) as necessary in support of preliminary
20 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
21 or the Court orders the Settlement Administrator to perform. The Settlement
22 Administrator shall keep the Parties timely apprised of the performance of all
23 Settlement Administrator responsibilities by among other things, sending a weekly
24 status report to the Parties' counsel stating the date of the mailing, the of number of
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1 Elections Not to Participate in Settlement it receives (including the numbers of valid
2 and deficient), and number of objections received.

3
4 L. Notice Procedure.

5
6 1. Class Data. No later than ten (10) business days after the Preliminary
7 Approval Date, Defendants shall provide the Settlement Administrator with
8 the Class Data for purposes of preparing and mailing Notice Packets to the
9 Class Members.

10
11 2. Notice Packets.

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

12
13 b) The Notice Packet's mailing envelope shall include the following
14 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
15 ENTITLED TO PARTICIPATE IN A CLASS ACTION
16 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
17 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
18 NOTICE."
19

20
21 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
22 Settlement Administrator will perform a search based on the National Change
23 of Address Database to update and correct any known or identifiable address
24 changes. No later than fourteen (14) calendar days after receiving the Class
25 Data from Defendant, the Settlement Administrator shall mail copies of the
26 Notice Packet to all Class Members via regular First-Class U.S. Mail . The
27 Settlement Administrator shall exercise its best judgment to determine the
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1 current mailing address for each Class Member. The address identified by the
2 Settlement Administrator as the current mailing address shall be presumed to
3 be the best mailing address for each Class Member.
4

5 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
6 Administrator as non-delivered on or before the Response Deadline shall be
7 re-mailed to any forwarding address provided. If no forwarding address is
8 provided, the Settlement Administrator shall promptly attempt to determine a
9 correct address by lawful use of skip-tracing, or other search using the name,
10 address and/or Social Security number of the Class Member involved, and
11 shall then perform a re-mailing, if another mailing address is identified by the
12 Settlement Administrator. In addition, if any Notice Packets, which are
13 addressed to Class Members who are currently employed by Defendant Rush
14 and/or receiving payroll services from Defendant XLT Management Services,
15 Inc. are returned to the Settlement Administrator as non-delivered and no
16 forwarding address is provided, the Settlement Administrator shall notify
17 Defendants. Defendants will then request that the current Class Member
18 provide a corrected address and transmit to the Administrator any corrected
19 address provided by the Class Member. Class Members who received a re-
20 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
21 days from the original Response Deadline.
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25 5. Disputes Regarding Individual Settlement Payments. Class Members will
26 have the opportunity, should they disagree with Defendants' records regarding
27 the number of Work Shifts to which they have been credited to provide
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1 documentation and/or an explanation to show contrary numbers. If there is a
2 dispute, the Settlement Administrator will consult with the Parties to
3 determine whether an adjustment is warranted. The Settlement Administrator
4 shall determine the eligibility for, and the amounts of, any Individual
5 Settlement Payments under the terms of this Agreement. The Settlement
6 Administrator's determination of the eligibility for and amount of any
7 Individual Settlement Payment shall be binding upon the Class Member and
8 the Parties.
9

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11 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
12 by the Settlement Administrator concerning the administration of the
13 Settlement will be resolved by the Court under the laws of the State of
14 California. Before any such involvement of the Court, counsel for the Parties
15 will confer in good faith to resolve the disputes without the necessity of
16 involving the Court.
17

18 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
19 Packet shall state that Class Members who wish to exclude themselves from
20 the Settlement must submit a written request for exclusion by the Response
21 Deadline. The written request for exclusion must state that the Class Member
22 wishes to exclude himself or herself from the Settlement and (1) must contain
23 the name, address, and the last four digits of the Social Security number of the
24 person requesting exclusion; (2) must be signed by the Class Member; (3)
25 must be postmarked or fax stamped by the Response Deadline and returned to
26 the Settlement Administrator at the specified address or fax telephone number;
27
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1 and (4) contain a typewritten or handwritten notice stating in substance that
2 the Class Member wishes to be excluded from the class action and settlement
3 of the case *Jacobs, et al., v. Rush Media Company LLC*, Case No.
4 20STCV32350. The request for exclusion will not be valid if it is not timely
5 submitted, if it is not signed by the Class Member, or if it does not contain the
6 name and address and last four digits of the Social Security number of the
7 Class Member. The date of the postmark on the mailing envelope or fax stamp
8 on the request for exclusion shall be the exclusive means used to determine
9 whether the request for exclusion was timely submitted. Any Class Member
10 who requests to be excluded from the Settlement Class will not be entitled to
11 an Individual Settlement Payment and will not be otherwise bound by the
12 terms of the Settlement or have any right to object, appeal or comment
13 thereon. However, any Class Member that submits a timely request for
14 exclusion that is also a member of the Aggrieved Employees will still receive
15 their pro rata share of the PAGA Settlement, as specified below, and in
16 consideration, will be bound by the Release by the Aggrieved Employees as
17 set forth herein. Settlement Class Members who fail to submit a valid and
18 timely written request for exclusion on or before the Response Deadline shall
19 be bound by all terms of the Settlement and any final judgment entered in this
20 Action if the Settlement is approved by the Court. No later than fourteen (14)
21 calendar days after the Response Deadline, the Settlement Administrator shall
22 provide counsel for the Parties with a final list of the Class Members who have
23 timely submitted written requests for exclusion. At no time shall any of the
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1 Parties or their counsel seek to solicit or otherwise encourage members of the
2 Class to submit requests for exclusion from the Settlement.

3
4 8. Objections. The Notice of Class Action Settlement contained in the Notice
5 Packet shall state that Class Members who wish to object to the Settlement
6 may submit to the Settlement Administrator a written statement of objection
7 (“Notice of Objection”) shall have forty-five (45) days from the date the notice
8 is first mailed in which to object to the terms of the Settlement. The postmark
9 date of mailing shall be deemed the exclusive means for determining that a
10 Notice of Objection was served timely. The Notice of Objection must be
11 signed by the Settlement Class Member and state: (1) the case name and
12 number; (2) the name of the Settlement Class Member; (3) the address of the
13 Settlement Class Member; (4) the last four digits of the Settlement Class
14 Member’s Social Security number; (4) the basis for the objection; and (5) if
15 the Settlement Class Member intends to appear at the Final
16 Approval/Settlement Fairness Hearing. Class Members who fail to make
17 objections in writing in the manner specified above may still make their
18 objections orally at the Final Approval/Settlement Fairness Hearing with the
19 Court’s permission. Settlement Class Members will have a right to appear at
20 the Final Approval/Settlement Fairness Hearing to have their objections heard
21 by the Court. At no time shall any of the Parties or their counsel seek to solicit
22 or otherwise encourage Class Members to file or serve written objections to
23 the Settlement or appeal from the Order and Final Judgment. Class Members
24 who submit a written request for exclusion may not object to the Settlement.
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28 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

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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.
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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

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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.

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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.

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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
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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
28

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

21 Q. 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 R. 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 Any amendments or modifications to this Agreement must also be approved by the
2 Court.

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

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

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

1 Further, Class Counsel will not include, reference or use the Settlement Agreement for
2 any marketing or promotional purposes, either before or after the Motion for
3 Preliminary Approval is filed.
4

5 V. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
6 to the benefit of, the successors or assigns of the Parties, as previously defined.
7

8 W. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
9 shall be governed by and interpreted according to the laws of the State of California.
10

11 X. Counterparts. This Agreement may be executed in one or more counterparts. All
12 executed counterparts and each of them shall be deemed to be one and the same
13 instrument provided that counsel for the Parties to this Agreement shall exchange
14 among themselves copies or originals of the signed counterparts.
15

16 Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
17 is a fair, adequate and reasonable settlement of this Action and have arrived at this
18 Settlement after extensive arms-length negotiations, taking into account all relevant
19 factors, present and potential.
20

21 Z. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
22 respect to the interpretation, implementation and enforcement of the terms of this
23 Agreement and all orders and judgments entered in connection therewith, and the
24 Parties and their counsel submit to the jurisdiction of the Court for purposes of
25 interpreting, implementing and enforcing the settlement and all orders and judgments
26 entered in connection with this Agreement.
27
28

1 AA. 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 BB. 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 CC. 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 DD. 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: 12/13/2021

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

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

DATED:

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Printed Name

Title

DATED:

XLT MANAGEMENT SERVICES, INC., an Illinois
corporation

Printed Name

Title

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

DATED: _____

DANIEL JACOBS

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

DATED: 12/13/21



RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Tim Eichorst

Printed Name

Managing Member

Title

DATED: _____

XLT MANAGEMENT SERVICES, INC., an Illinois
corporation

Printed Name

Title

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

3 DATED: _____
4

DANIEL JACOBS
5
6

7 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:
8

9 DATED: _____
10

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company
11

12 _____
Printed Name
13

14 _____
Title
15

16 DATED: Dec 13, 2021
17


XLT MANAGEMENT SERVICES, INC., an Illinois
corporation
18

VITO P. LOVERDE
Printed Name
19

CLO
Title
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1 IT IS SO AGREED AS TO FORM BY COUNSEL:
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3 DATED: 12/13/2021

JCL LAW FIRM, A.P.C.

4 By: _____

DocuSigned by:

Jean-Claude Lapuyade

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5 Attorneys for Plaintiffs and the Settlement Class
6 Members
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10 DATED: 12/13/2021

ZAKAY LAW GROUP, APLC

11 By: _____

DocuSigned by:

Shani O. Zakay

4ECDE73A91D4420...

12 Attorneys for Plaintiffs and the Settlement Class
13 Members
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15
16

17 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

23 LERMAN & POINTER LLP
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By: _____

25 Attorneys for Defendant RUSH MEDIA COMPANY LLC
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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: _____ JCL LAW FIRM, A.P.C.

By: _____

Attorneys for Plaintiffs and the Settlement Class Members

DATED: _____ ZAKAY LAW GROUP, APLC

By: _____

Attorneys for Plaintiffs and the Settlement Class Members

DATED: December 13, 2021

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

By: Ryan H. Crosner

Attorneys for Defendant RUSH MEDIA COMPANY LLC

DATED: _____

KAREN E. POINTER
KELLY ANN COLEMAN
LERMAN & POINTER LLP

By: _____

Attorneys for Defendant RUSH MEDIA COMPANY LLC

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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: _____

JCL LAW FIRM, A.P.C.

By: _____

Attorneys for Plaintiffs and the Settlement Class Members

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____

Attorneys for Plaintiffs and the Settlement Class Members

DATED: _____

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

By: _____

Attorneys for Defendant RUSH MEDIA COMPANY LLC

DATED: December 13, 2021

KAREN E. POINTER
KELLY ANN COLEMAN
LERMAN & POINTER LLP

By: Karen E. Pointer

Attorneys for Defendant RUSH MEDIA COMPANY LLC

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DATED: 12/13/21

GREG A. GARBACZ
LINDA M. TOUTANT
KLINEDINST PC

By: 

Attorneys for Defendant XLT MANAGEMENT
SERVICES, INC.

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EXHIBIT 3