

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ,
an individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon.
Sunil R. Kulkarni in Dept. 1]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: TBD

Time: TBD

Dept.: 1

Complaint Filed:	September 22, 2020
FAC Filed:	November 30, 2020
Trial Date:	None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. Recon360, LLC is a construction company that provides services such as maintenance, roofing, painting, and electrical work.

5. Plaintiff began performing work for Defendant from 2018 to on or about April 4, 2020 in Santa Clara County. Plaintiff contends that Defendant failed to provide lawful meal periods, failed to provide lawful rest periods, failed to reimburse Plaintiff and the proposed class for work-related expenses, and failed to pay all wages due at the time of termination.

6. On September 22, 2020, Plaintiff submitted a notice letter to the Labor and Workforce Development Agency (“LWDA”) and Defendant regarding his intent to file an action seeking civil penalties under the Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (“PAGA”).

7. That same day, Plaintiff filed a Class Action Complaint on behalf of himself and the proposed class in the California Superior Court, in and for the County of Santa Clara, thereby initiating the civil action entitled *CARLOS HUMBERTO CARRILLO DIAZ an individual, on*

1 *behalf of himself and others similarly situated v. RECON360, LLC; and Does 1 thru 50, inclusive.*
2 (hereinafter, the “Action”) Specifically, the Action alleges that Defendant failed to provide meal
3 breaks pursuant to Labor Code §§ 226.7 and 512, failed to provide rest breaks pursuant to Labor
4 Code § 226.7, failed to reimburse expenses pursuant to Labor Code § 2802, failed to provide all
5 wages due at the time of termination pursuant to Labor Code § 203, and violated of Business &
6 Professions Code § 17200.

7 8. On November 30, 2020, Plaintiff amended his complaint, adding an additional
8 cause of action for penalties under the California Labor Code’s Private Attorneys General Act
9 (“PAGA”) based upon the facts previously alleged in the Complaint.

10 **THE DISCOVERY PROCESS AND MEDIATION**

11 9. After the matter was at issue, the Parties began to engage in informal discovery to
12 understand the nature of the allegations and the scope of potential liability.

13 10. Through this discovery, Plaintiff sought numerous documents and substantial
14 amounts of data that were needed to evaluate the case.

15 11. These documents included requests for time and wage records for the Class,
16 policies and practices in place during the class period, including any policies regarding meal
17 breaks, rest breaks, the payment of wages, and employee training in place during the class period,
18 as well as data surrounding the number of current and former employees.

19 12. Defendant provided Plaintiff’s counsel with pertinent documents and data for the
20 Class Members so that the Parties could fully investigate the claims at issue and understand their
21 strengths and weaknesses.

22 13. The Parties began to discuss potential resolution.

23 14. The Parties attended a full-day mediation with experienced class action mediator
24 the Hon. Jamie Jacobs-May (Ret.) on May 13, 2021. The Parties engaged in good faith, arms-
25 length negotiations aided by Judge Jacobs-May and were able to reach a tentative settlement of
26 the Action, subject to finalization of the formal Joint Stipulation of Class Action Settlement and
27 Release of Claims and the approval of the Court. The Parties have since engaged in extensive
28 negotiations about the terms and conditions of the Settlement Agreement. The Parties have now

1 entered into this formalized Settlement Agreement now presented to the Court for Preliminary
2 Approval.

3 15. Defendant denies any liability or wrongdoing of any kind associated with the claims
4 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
5 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
6 representative action treatment. Defendant contends, among other things, that, at all times, it has
7 complied with the California Labor Code, and the Industrial Wage Commission Orders.

8 16. Based on their own independent investigation and evaluation, Class Counsel is of
9 the opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in
10 the best interest of the settlement classes in light of all known facts and circumstances, including
11 the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
12 representative action trial on the merits, and numerous potential appellate issues. Although
13 Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid
14 the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever
15 settle, compromise and discharge all disputes and claims arising from or relating to the Action on
16 the terms set forth here.

17 **CERTIFICATION FOR SETTLEMENT PURPOSES**

18 17. Plaintiff maintains that the proposed Settlement Class is ascertainable for several
19 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
20 Settlement Administrator containing each Settlement Class Member's full name, last known
21 address, last known home telephone number, last four digits of social security number, dates of
22 employment, and Compensable Work Weeks for all putative class members after issuance of the
23 preliminary approval order.

24 18. Settlement Class Members consist of Defendant's hourly employees, and
25 Defendant is required to keep records of its hourly employees' names, home addresses, and social
26 security numbers.

27 19. Defendant informally produced Plaintiff's personnel file and pay statements,
28 relevant documents and policies, and a sampling of shift data and pay data which confirms that all

1 Settlement Class Members may be readily identified based on Defendant's records.

2 20. Plaintiff is confident he will be able to establish that the proposed Settlement Class
3 is ascertainable and sufficiently numerous.

4 21. Plaintiff argues that there are questions of law and fact common to the proposed
5 Settlement Class that predominate over any questions affecting only individual Class Members.

6 22. These common questions include:

- 7 1) Whether Defendant failed to provide lawfully required meal periods and/or failed
8 to compensate employees one (1) hour's wages in lieu thereof;
- 9 2) Whether Defendant failed to provide lawfully required rest periods and/or failed to
10 compensate employees one (1) hour's wages in lieu thereof;
- 11 3) Whether Defendant failed to reimburse business-related expenses;
- 12 4) Whether Defendant failed to pay compensation due and owing upon termination
13 of employment;
- 14 5) Whether Defendant engaged in unfair competition; and,
- 15 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
16 acts previously alleged.

17 23. Plaintiff's challenge to Defendant's uniform policies and practices involves
18 common factual and legal issues that are amenable to class treatment.

19 24. Plaintiff maintains that the proposed Settlement Class Members suffered the same
20 injuries, in the same manner: (1) Settlement Class Members did not receive their meal and rest
21 periods as required; (2) Settlement Class Members were not reimbursed for business-related
22 expenses; and (3) Settlement Class Members were not paid all wages owed upon
23 termination/resignation.

24 25. For purposes of settlement, certification for settlement purposes is appropriate.

25 26. Plaintiff worked as an hourly employee for Defendant from 2018 to on or about
26 April 4, 2020 in Santa Clara County.

27 27. He also alleges that he experienced derivative claims for unfair business
28 competition (B&P Code §17200) and Labor Code §2699, et seq.

29 28. Plaintiff also contends that his claims are typical of those of the Settlement Class.

1 29. Plaintiff believes that he is capable of fairly representing and adequately protecting
2 the interests of the proposed Settlement Class Members.

3 30. The members of the proposed Settlement Class all worked for Defendant during
4 the relevant time period and incurred the same type of alleged damages with regard to Defendant's
5 alleged violations of the law.

6 31. Plaintiff has agreed to serve as Named Plaintiff and has retained qualified Counsel
7 who is experienced in prosecuting wage and hour class actions.

8 32. This demonstrates his commitment to bringing about the best possible results for
9 the benefit of the proposed Settlement Class.

10 33. Plaintiff has provided his Counsel with all necessary and pertinent information.

11 34. He has been a very active participant in the litigation including having frequent
12 contact with Settlement Class Members and working closely with Class Counsel to develop the
13 theories of liability.

14 35. Plaintiff has provided his Counsel with all necessary and pertinent information.

15 36. Plaintiff believes that he has and will continue to adequately represent the proposed
16 Settlement Class Members.

17 37. Plaintiff has provided his Counsel with all necessary and pertinent information.

18 38. The superiority of class treatment is evident here because individual pursuit of class
19 members' claims may not be economically viable.

20 39. The only alternative to certification would be to force over 265 employees to join
21 this action, file individual, uniform actions, or abandon their legal rights altogether.

22 40. Plaintiff maintains that this economic reality would result in a windfall for
23 Defendant if this case were not certified.

24 **THE PROPOSED SETTLEMENT**

25 41. For purposes of Settlement Agreement, the settlement class is defined as: "all
26 persons who are employed or have been employed as hourly, non-exempt employees by
27 RECON360, LLC, in the State of California during the Covered Period." ("Settlement Class
28 Members" or "Class Members") The "Settlement Class Members" shall not include any person

1 who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person
2 who previously released the Released Claims under a separate agreement.

3 42. The Covered Period is September 22, 2016 to July 30, 2021.

4 43. As of May 13, 2021 (the date of mediation) and based on documents and other
5 information produced by Defendant, there are approximately 265 Settlement Class Members.

6 44. As detailed fully in the Settlement Agreement, the Settlement provides for
7 Defendant to pay a Gross Settlement Amount of \$700,000.00, which includes the sum of the
8 Individual Settlement Amounts, the Named Plaintiff service award, the Class Counsel Award¹,
9 PAGA Payment, and the Settlement Administration Costs.

10 45. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel
11 Award, Named Plaintiff Enhancement, PAGA Payment, and Settlement Administration Costs.

12 46. This is a cash, checks-mailed Settlement. Class Members will not be required to
13 submit a claim form.

14 47. The Agreement provides that Individual Settlement Payments will be allocated as
15 one-third wages, one-third penalties, and one-third interest.

16 48. Defendant shall separately pay any employer-side payroll taxes associated with the
17 Individual Settlement Payments. This allocation makes sense in light of the claims at issue and
18 the risks discussed below as arguably meal and rest penalties are deemed “wages”,² while
19 reimbursement of expenses and penalties and interest are not.

20 49. It is Class Counsel’s understanding that any funds allocated to the settlement
21 administrator, but not paid will be included in the Net Settlement Amount and distributed to the
22 Class pursuant to the settlement payment formula.

23 50. Class Counsel believes this provision is fair and reasonable as it makes the money
24 allocated to an Individual but for some reason uncashed available to them via the Unclaimed
25

26 ¹ Kingsley and Kingsley, APC and Davtyan Law Firm, Inc. have entered into a written fee
sharing agreement that was also signed by the named Plaintiff.

27 ² In *Murphy v. Kenneth Cole Prod.*, the California Supreme Court ruled that payments
28 mandated by California Labor Code § 226.7 for meal and rest period violations are “wages” and
not “penalties.” (2007) 40 Cal.4th 1094, 1102.

Property Fund. However, if the Court is inclined to disallow this provision, the Agreement provides that monies shall be sent to cy pres recipient Bet Tzedek.

51. Class Counsel's firm has no interest in Bet Tzedek and believe this is an appropriate cy pres recipient as they provide free legal services to low-income individuals including representation in wage and hour matters.

KULLAR ANALYSIS

52. This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

53. Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement Agreement.

54. Defendant produced a sampling of both handwritten and electronic time records for class members from approximately August 2017 to present.

55. Plaintiff contends that the handwritten time records are facially very similar generally showing that class members clocked in at 8:00 am, clocked out for lunch from 12-12:30 pm, and clocked out for the day at 4:30pm.

56. At some point in mid-2019, Defendant switched over to electronic timekeeping.

57. Again, these records are quite remarkably similar for all class members.

58. As with the handwritten notes, the majority of electronic time records show similar time punches of working 8:00 am – 12:00 pm, Lunch 12:00-12:30pm, and Out 4:30pm.

59. Though Plaintiff acknowledges that there are some punches where the person clocked in at perhaps 7:59 am or 8:01 am, Plaintiff argues that often those punch records show meals periods that are not 30 minutes in length, are taken late, or missed altogether.

60. Taken together, Plaintiff maintained that Defendant's records are potentially very problematic for Defendant.

61. Plaintiff argues that these records are so specious that they are akin to having no records at all.

62. As a result, Plaintiff asserts that the class can invoke the burden shifting clearly set forth in *Donahue* to successfully argue that nearly identical records are the same as having records

1 rife with violations which will create a presumption of liability.

2 63. The burden would then, in theory, shift to Defendant to prove that in fact all class
3 members got their meal periods at exactly 12-12:30 each day throughout the entire class period
4 without fail.

5 64. Plaintiff was confident that if the burden did shift to Defendant, Defendant would
6 attempt to gather testimonial evidence from class members indicating that the records were
7 accurate and they took their meal breaks as reflected in the records.

8 65. Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it
9 poses risks for the Class.

10 66. There is risk as to both sides as to what declarations and depositions of class
11 members might reveal.

12 67. Apart from the issue above regarding Defendant's records, Plaintiff contends that
13 Defendant failed to provide Plaintiff and the proposed class with proper meal periods of not less
14 than thirty (30) minutes as required by the Labor Code during the relevant time period because he
15 and other class members were required to keep personal cellphones on and be available at all times
16 for calls/texts.

17 68. Plaintiff contends that he was routinely interrupted, was not relieved of all duties
18 and free from Defendant's control, and was sometimes required to clock out for lunch and keep
19 working.

20 69. In response, first and foremost, Defendant argued that Class Members were
21 unquestionably provided with legally compliant meal periods.

22 70. Plaintiff anticipated that Defendant would assert that such an argument would pose
23 individual issues and Defendant would be entitled to inquire of each class member, on each day
24 whether or not they were interrupted, thereby creating individual issues and defeating class
25 certification.

26 71. Taken together, Plaintiff acknowledged some risk but was confident that he could
27 certify the meal period claim and that Defendant faced significant risk and exposure on the meal
28 period claim.

1 72. Plaintiff contends that Defendant therefore owes Plaintiff and proposed class
2 members a rest period penalty for every shift of three and one half hours in length or more.

3 73. Plaintiff maintains that the same factual contentions apply to the rest break claim
4 as discussed above regarding the meal break claim namely that: (1) Plaintiff was not able to take
5 two compliant rest periods each day; and (2) if he was able to take a moment to rest, he was
6 required to keep his cellphone on at all times and therefore not free from employer control; and he
7 was routinely called/interrupted.

8 74. The same risk analysis does not apply as with the meal periods, though, because
9 there generally are no records associated with rest periods.

10 75. Plaintiff does not believe that he would be able to invoke the Donahue burden
11 shifting in the same way.

12 76. Plaintiff had to acknowledge that it could potentially be easier for Defendant to
13 defeat certification of this claim if it was able to gather testimonial evidence from class members
14 indicating that they were able to take all required rest breaks each day.

15 77. Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it
16 poses risks for the Class.

17 78. Just as with meal periods, there is risk as to both sides as to what declarations and
18 depositions of class members might reveal.

19 79. Plaintiff alleges that Defendant failed to reimburse Plaintiff and the proposed class
20 for the cost of personal cellphone usage for work purposes including (1) downloading and using
21 the “Paylocity” application for time clock purposes; and (2) being available and using his phone
22 for calls and texts throughout the day, each day.

23 80. Plaintiff also contends that he was required to use his personal vehicle for work
24 related purposes.

25 81. Plaintiff contends that Defendant owes reimbursement and a PAGA penalty for
26 each pay period worked by each class member/aggrieved employee during the relevant time
27 period.

28 82. Plaintiff anticipated that Defendant would argue that Plaintiff was not required to

1 use his personal cellphone for work purposes and that if he did, it was by choice.

2 83. Defendant would also argue that it did not require class members to use personal
3 vehicles for work related purposes.

4 84. Defendant would also likely argue that if Plaintiff used his phone or personal
5 vehicle those issues were unique to him and not common to the class, thereby defeating
6 commonality.

7 85. Plaintiff and numerous proposed class members are no longer employed by
8 Defendant.

9 86. Plaintiff contends that Defendant was fully aware of its payment policies and
10 practices and intended to carry out said policies and practices.

11 87. Plaintiff maintains that Defendant is liable for damages.

12 88. Prior to review being granted in *Naranjo*, recovery of waiting time penalties on
13 meal and rest claims was admittedly unlikely. However, it is reasonable to assume that the
14 Supreme Court took *Naranjo* to address this issue and overrule the lower court with a clear
15 statement that waiting penalties do flow from meal and rest period violations.

16 89. If this assumption turns out to be correct, there is significant risk and exposure for
17 Defendant on the Section 203 penalties.

18 90. As a result of Defendant's conduct alleged above, Plaintiff seeks PAGA penalties
19 available for violations under Labor Code sections 201, 202, 203, 226.7, 512, and 2802.

20 91. Plaintiff assessed multiple risks associated with the PAGA claim.

21 92. The aggrieved employees' PAGA claims are derivative of all the foregoing class
22 claims. If Plaintiff cannot establish liability on the underlying claim (taking into account the risks
23 discussed above), then the derivative PAGA claim will also necessarily fail.

24 93. A court has discretion to award less than the maximum penalty.

25 94. The likelihood of the Court reducing the PAGA damages awarded to Plaintiffs and
26 the aggrieved employees – assuming liability is proven as to each of Plaintiffs' claims – is also
27 higher in this case where these same individuals will also be receiving money for the same
28 unlawful conduct under the class claims.

1 95. There is significant expense associated with the class certification process, which
2 the Parties can avoid by entering into the contemplated Settlement Agreement now.

3 96. If the Court did eventually certify class, trial of a case involving approximately 265
4 Settlement Class Members would require the retention of expensive expert witnesses, the accrual
5 of extensive litigation costs, and a significant time overlay by the parties.

6 97. Given the complexity and unsettled nature of the issues in this case it is likely that
7 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
8 in further delay for the Settlement Class Members who are waiting for a resolution in this matter.

9 98. This case has not been certified to be tried as a class action. While Plaintiff believes
10 there is strong evidence to support certification of several possible subclasses (especially a rest
11 period class), certification is always hard fought and subject to judicial discretion. Moreover, in
12 class actions, decertification is always a possibility. In attempting to certify a class, the parties
13 would need to conduct multiple depositions, including of the Named Plaintiff and of several
14 person(s) most knowledgeable regarding Defendant's meal and rest policies. There is a risk for
15 both sides as to what these depositions would reveal and whether they would support class
16 certification to the extent expected.

17 99. It was very difficult for the Parties to reach this Settlement of \$700,000.00.

18 100. This Settlement is the result of adversarial, non-collusive, and arms-length
19 negotiations. The Parties arrived at it after extensive investigation and discovery, careful
20 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
21 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
22 of an experienced mediator, Judge Jacobs-May.

23 101. Plaintiff assessed the full value of the meal period claim, without any discount, at
24 approximately \$1,044,051.20.

25 102. This calculation was based upon the assumption that each Settlement Class
26 Members was not provided a complaint meal period for each day worked so a total of 5 meal
27 period penalties per person, per week, at an average rate of pay of \$23.68.

28 103. If the violation rate was reduced from five times per week to two, for purposes of

1 assessing damages, this number would go down.

2 104. If Plaintiff assumed there were two meal period violations per workweek per Class
3 Member for the purposes of assessing maximum potential liability that number drops to
4 \$417,620.48.

5 105. For the reasons above, Plaintiff determined that accepting a discount of the full
6 amount was appropriate.

7 106. The calculations for the maximum potential value of the Rest Period claim are the
8 same as a meal premium is assessed at the same amount as a rest period premium.

9 107. Plaintiff assessed the full value of the rest period claim, without any discount, at
10 approximately \$1,044,051.20.

11 108. This assumes 5 rest period violations per workweek per Settlement Class Members.

12 109. If Plaintiff assumed there were two meal period violations per workweek per Class
13 Member for the purposes of assessing maximum potential liability that number drops to
14 \$417,620.48.

15 110. For the reasons above, Plaintiff determined that accepting a discount of the full
16 amount of the rest period claim was appropriate.

17 111. With regard to the reimbursement claim analysis, Plaintiff believed that it was
18 reasonable to value the potential reimbursement at \$25 per month, per Settlement Class Members,
19 for reimbursement of personal cell phone usage and any incurred mileage from driving personal
20 vehicle.

21 112. This brought the damages for this claim to \$30,650.00.

22 113. Plaintiff assessed the full value of the waiting time claim for penalties pursuant to
23 Labor Code §203 at \$1,360,022.40.

24 114. Considering the derivative nature of Labor Code §203 and the unresolved nature of
25 whether Section 203 penalties are available for alleged meal and rest period violations, Plaintiff
26 determined that accepting a significant discount on this claim was appropriate.

27 115. Plaintiff calculated the value of the PAGA claim at \$302,400.00 for Settlement
28 Class Members (using \$100 per pay period) for one alleged underlying Labor Code violation.

116. As the law is unsettled regarding whether PAGA penalties can be awarded for each of the underlying Labor Code violations (i.e. “stacked”) for the purposes of assessing the maximum penalty amount, Plaintiff calculated the exposure at one penalty of \$100 per person per pay period.

117. If PAGA penalties can be stacked, then the maximum amount increases to \$882,583.33.

118. The main risk taken into account with PAGA is the discretionary nature of the penalty award.

119. A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement.

120. While there is a dearth of available authority, in Plaintiff's view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered.

121. Using the figures set forth above, per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately \$4,361,358.13.

122. If the more conservative estimates are used with only two meal and rest period violations per workweek and one PAGA penalty assessment, this maximum exposure drops significantly to \$2,528,313.36.

123. As a result of the forgoing risks on the merits discussed extensively above, Class Counsel believes the Gross Settlement Amount of \$700,000.00 is fair and reasonable.

ATTORNEY COMPETENCE

124. Kingsley & Kingsley is experienced in prosecuting employment litigation, and since 2000 we have focused our practice on wage, hour, and working condition violations. My firm is well versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court. Below is a small, but representative sampling of wage and hour cases handled by my firm:

- 1 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
2 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
3 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 4 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
5 December 2005, Honorable Rita Miller granted final approval of Settlement in the
6 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 7 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
8 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
9 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 10 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
11 2008, the Honorable Mary Thornton House granted final approval of Settlement in
12 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
13 33 1/3%.
- 14 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
15 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
16 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
17 33.3%.
- 18 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
19 March 2012, the Honorable James P. Kleinberg granted final approval of
20 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
21 fees request of 33.3%.
- 22 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
23 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
24 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
25 court granted attorneys' fees request of 38%.
- 26 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
27 2014, the Honorable William F. Highberger granted final approval of Settlement in
28 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of

33.33%.

- i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.
- j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.
- k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.
- l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.
- m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.
- n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.
- o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The matter was approved for final settlement by the Honorable Anthony W. Ishii in November 2017, in the gross amount of \$6,100,000.00, plus interest, with

attorney's fees benchmark award of \$1,525,000.

- p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-15-101333). The matter was approved for final settlement before the Hon. Stephen D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

125. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2011, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 16 of those cases. A brief sampling of which includes:

- a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*, approved for Class Certification in 2011.
- b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214). contested class certification granted in June 2020.
- f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.
- g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.
- h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),

1 contested class certification granted in August 2020.

2 126. Class Counsel is experienced in the handling of wage and hour class actions and
3 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
4 and reasonable and in the best interest of the Class.

5 127. After factoring in the risks explained above, Class Counsel believes that the
6 proposed settlement is fair and reasonable.

7 128. This allocation distributes Settlement Agreement funds proportionally to each class
8 member's potential damages and should therefore be approved as fair, adequate, and reasonable.

9 **SERVICE AWARD TO THE NAMED PLAINTIFF**

10 129. The Named Plaintiff is entitled to an enhancement for his valiant effort and time
11 expended in this matter. The time spent by Carlos Humberto Carrillo Diaz is significant and
12 includes researching and retaining competent counsel; providing information to Class Counsel
13 regarding the nature of the work at Defendant; compiling relevant documents; working closely
14 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
15 discussing the status of the case with Class Counsel; discussing the case via telephone with many
16 Settlement Class Members; and responding promptly to Class Counsel's communications
17 regarding settlement.

18 130. As set forth in the Settlement Agreement, Plaintiff will also be entering into a
19 general release of liability pursuant to Civil Code Section 1542.

20 131. Class Counsel considers this to be a fair and reasonable enhancement. The
21 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
22 forward to litigate this matter on behalf of all Settlement Class Members. Plaintiff will provide a
23 detailed declaration with the Final Approval Motion detailing his participation and further
24 justification for the enhancement.

25 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

26 132. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
27 email from the LWDA confirming receipt is attached hereto as Exhibit "2."

28 ///

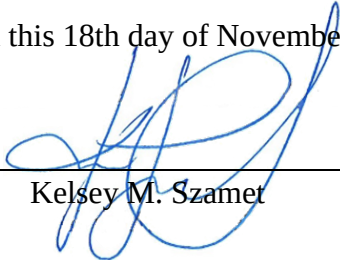
EXHIBITS

133. Attached hereto as Exhibit “1” is a true and correct copy of the fully executed Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”).

134. Attached hereto as Exhibit “2” is a true and correct copy of the proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This Declaration was executed this 18th day of November, 2021, in Altadena, California.



Kelsey M. Szamet

EXHIBIT "1"

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CARLOS HUMBERTO CARRILLO DIAZ
an individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon.
Sunil R. Kulkarni in Dept. 1]

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

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiff CARLOS HUMBERTO CARRILLO DIAZ, individually and on behalf of
3 the Settlement Class and the State of California, as a private attorney general, on the one hand, and
4 Defendant RECON360, LLC on the other hand.

5 This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding
6 on Plaintiff, the current and former employees s/he seeks to represent, the Settlement Class, and
7 on Defendant and subject to the definitions, recitals, and terms set forth herein and the approval of
8 the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
12 California for the County of Santa Clara, entitled CARLOS HUMBERTO CARRILLO DIAZ, an
13 individual, on behalf of himself and others similarly situated, Plaintiff v. RECON360, LLC, and
14 Does 1 thru 50, inclusive, Defendants, Case No. 20CV370603, filed on September 22, 2020.

15 **2. Class Counsel**

16 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
17 act as counsel for the Settlement Class.

18 **3. Class Counsel Award**

19 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
20 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
21 Lawsuit.

22 **4. Class Information**

23 “Class Information” or “Class Data” means information regarding Settlement Class
24 members that Defendant will in good faith compile from their records and provide to the
25 Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include:
26 each Settlement Class Member’s full name; last known address; last known home telephone
27 number; last four digits of social security number; dates of employment, and Compensable Work
28 Weeks.

1 **5. Class Members or Settlement Class Members**

2 “Class Members” or “Settlement Class Members” means all persons who are employed or
3 have been employed as hourly, non-exempt employees by RECON360, LLC, in the State of
4 California during the Covered Period.

5 **6. Covered Period or Release Period**

6 “Covered Period” or “Release Period” means the period from September 22, 2016 to July
7 30, 2021.

8 **7. Named Plaintiff**

9 “Named Plaintiff” means Plaintiff CARLOS HUMBERTO CARRILLO DIAZ.

10 **8. Named Plaintiff Enhancement Award**

11 “Named Plaintiff Enhancement Award” means the amount that the Court authorizes to be
12 paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Amount, in recognition of
13 Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for
14 executing a general release with Defendant.

15 **9. Compensable Work Weeks**

16 “Compensable Work Weeks” means an estimate of the number of weeks in which
17 Settlement Class Member(s) performed work for Defendant in the State of California, excluding
18 vacation, leaves of absence, or any gaps in employment, during the Covered Period based on
19 Defendant’s records.

20 **10. Complaint**

21 “Complaint” means the operative complaint, filed in the Action.

22 **11. Court**

23 “Court” means the Superior Court for the County of Santa Clara, State of California.

24 **12. Defendant**

25 “Defendant” means Defendant RECON360, LLC.

26 **13. Effective Date**

27 “Effective Date” of the Settlement means the date on which the Court’s order granting
28 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the

1 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
2 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
3 withdrawn prior to the Court's Final Approval Hearing; or (ii) in the event there are written
4 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
5 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
6 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
7 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
8 last date for filing a request for further review of the Court of Appeal's decision passes and no
9 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
10 dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's
11 decision is requested, the day after the request for review is denied with prejudice and/or no further
12 review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of
13 the State of California affirms the Settlement.

14 **14. Final Approval Hearing**

15 "Final Approval Hearing" means the final hearing held to ascertain the fairness,
16 reasonableness, and adequacy of the Settlement.

17 **15. Final Approval Order**

18 "Final Approval Order" means the proposed order granting final approval of the Parties'
19 settlement, in a form substantially similar to the order attached hereto as Exhibit C.

20 **16. Final Judgment**

21 "Final Judgment" means a judgment issued by the Court approving this Agreement as
22 binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties
23 within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d,
24 and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v.*
25 *Superior Court*, 46 Cal. 4th 969 (2009).

26 **17. Individual Settlement Amount**

27 "Individual Settlement Amount" means the amount paid from the Net Settlement Amount
28 to a Class Member, based upon his/her Compensable Work Weeks.

1 **18. LWDA**

2 “LWDA” means the California Labor and Workforce Development Agency.

3 **19. Net Settlement Amount**

4 “Net Settlement Amount” means the Gross Settlement Amount, less Court-approved Class
5 Counsel Award, Named Plaintiff Enhancement Award, payment to the LWDA, and Settlement
6 Administration Costs.

7 **20. Notice of Class Action Settlement**

8 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
9 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
10 Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated
11 Individual Settlement Amount. It is the notice approved by the Parties and subject to Court
12 approval explaining the terms of this Agreement and the settlement process, which the Settlement
13 Administrator will mail to each Settlement Class Member.

14 **21. PAGA**

15 “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor
16 Code §§ 2699 et seq.

17 **22. PAGA Payment**

18 “PAGA Payment” means the payment made hereunder to the LWDA pursuant to PAGA.

19 **23. PAGA Period**

20 “PAGA Period” means the period from September 22, 2019 to July 30, 2021.

21 **24. Class Members**

22 “Class Members” or “Settlement Class Members” means those Class Members who did
23 not file a valid and timely Request for Exclusion pursuant to section III, paragraph 11 of this
24 Agreement.

25 **25. Parties**

26 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
27 Plaintiff or Defendant, individually.

28 **26. Payment Ratio**

1 “Payment Ratio” means the respective Compensable Work Weeks during which an
2 employee worked, in proportion to the aggregate number of workweeks worked by all Settlement
3 Class members.

4 **27. Plaintiff**

5 “Plaintiff” means Plaintiff CARLOS HUMBERTO CARRILLO DIAZ.

6 **28. Preliminary Approval Date**

7 “Preliminary Approval Date” means the date on which the Court issues an order granting
8 preliminary approval of the proposed settlement in a form substantially similar to the order
9 attached hereto as Exhibit B.

10 **29. Released Claims**

11 “Released Claims” means any and all claims, debts, liabilities, demands, obligations,
12 penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of
13 whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or
14 that reasonably could have arisen out of the same facts alleged in the Action, including, but not
15 limited to: (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2)
16 Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (3) Failure to Reimburse
17 Expenses Pursuant to Labor Code § 2802; (4) Penalties Pursuant to Labor Code § 203; (5)
18 Violation of Business & Professions Code § 17200; (6) Penalties Pursuant to Labor Code §2699,
19 et seq. (“PAGA”).

20 **30. Released Parties**

21 “Released Parties” means Defendant and any of its former and present parents,
22 subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents,
23 successors, predecessors, assigns, or legal representatives.

24 **31. Request for Exclusion**

25 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
26 address, and a simple statement electing to be excluded from the Settlement.

27 **32. Response Deadline**

28 “Response Deadline” means the date sixty (60) days after the Settlement Administrator

1 mails the Notice of Class Action Settlement to Settlement Class members, which is the last date
2 on which Settlement Class members may: (a) submit a Request for Exclusion; (b) file and serve
3 objections to the settlement; or (c) dispute the information contained in the Notice of Class Action
4 Settlement.

5 **33. Settlement**

6 “Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to
7 this Joint Stipulation of Class Action Settlement and Release of Claims.

8 **34. Settlement Administrator**

9 “Settlement Administrator” means the third-party company that the Parties have selected
10 to be responsible for administering the Settlement. This Settlement Administrator is ILYM Group,
11 Inc.

12 **35. Settlement Administrator Costs**

13 “Settlement Administrator Costs” means the amount to be paid to the Settlement
14 Administrator from the Gross Settlement Amount for administration of this Settlement. The
15 estimated Settlement Administrator Costs are \$15,000.

16 **36. Gross Settlement Amount**

17 “Gross Settlement Amount” means the agreed upon settlement amount totaling
18 \$700,000.00 to be paid by Defendant in full settlement of the Released Claims, and includes
19 without limitation the Class Counsel Award, Named Plaintiff Enhancement Award, Individual
20 Settlement Amounts, PAGA Payment, and Settlement Administrator Costs.

21 **II. RECITALS**

22 **1. Class Certification.**

23 The Parties stipulate to class certification for purposes of settlement only. If the Court does
24 not grant either preliminary or final approval of this Settlement, the Parties agree that this
25 stipulation regarding class certification will be revoked and the Parties will return to a point in
26 litigation prior to the execution of this Agreement.

27 **2. Procedural History.**

28 On September 22, 2020, Plaintiff filed a Class Action Complaint and a notice with

1 California's Labor and Workforce Development Agency ("LWDA") regarding his intent to file an
2 action seeking civil penalties under PAGA. On November 30, 2020, Plaintiff filed a First
3 Amended Complaint ("FAC"), adding the PAGA claim based on the facts previously alleged in
4 the Complaint.

5 The operative Complaint alleges claims for: (1) Failure to Provide Meal Breaks Pursuant
6 to Labor Code §§ 226.7 and 512; (2) Failure to Provide Rest Breaks Pursuant to Labor Code §§
7 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; (4) Penalties Pursuant
8 to Labor Code § 203; (5) Violation of Business & Professions Code § 17200; and (6) Penalties
9 Pursuant to Labor Code § 2699, et seq. ("PAGA").

10 After the matter was at issue, the Parties began to engage in informal discovery to
11 understand the nature of the allegations and the scope of potential liability. Defendant provided
12 Plaintiff's counsel with pertinent data for the Class Members so that the Parties could fully-
13 investigate the claims at issue and understand their strengths and weaknesses.

14 On May 13, 2021, the Parties attended a full-day mediation with experienced mediator
15 Hon. Judge Jacobs-May. With the assistance of the mediator, the Parties reached a settlement, as
16 provided herein, to settle Plaintiff's claims on a class-wide basis.

17 Defendant denies any liability or wrongdoing of any kind associated with the claims
18 asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and
19 further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate
20 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
21 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
22 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
23 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
24 things, that, at all times, it has complied with all applicable state, federal and local laws related to
25 the Settlement Class members' employment.

26 The Named Plaintiff is represented by Class Counsel. Class Counsel conducted an
27 investigation into the facts relevant to the Lawsuit, including reviewing documents and
28 information provided by Defendant. Based on their own independent investigation and evaluation,

1 Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate,
2 and in the best interest of the Settlement Class in light of all known facts and circumstances,
3 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
4 class and representative action trial on the merits, and numerous potential appellate issues.
5 Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid
6 the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
7 forever settle, compromise and discharge all disputes and claims arising from or relating to the
8 Actions on the terms set forth herein.

9 **3. Benefits of Settlement to Class Members.**

10 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
11 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
12 also taken into account the uncertainty and risk of the outcome of further litigation, and the
13 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
14 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
15 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
16 damages for the Settlement Class members. Plaintiff and Class Counsel have also taken into
17 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
18 members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that
19 settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair,
20 reasonable, and adequate and is in the best interest of the putative class in light of all known facts
21 and circumstances, including the risk of significant delay, defenses asserted by Defendant,
22 Defendant's financial condition, numerous potential appellate issues, and other risks inherent in
23 litigation.

24 **4. Defendant's Reasons for Settlement.**

25 Defendant has concluded that any further defense of this litigation would be protracted and
26 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
27 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
28 claims asserted by Plaintiff and Settlement Class members. Defendant has also taken into account

1 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
2 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in
3 this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
4 forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has
5 complied with all applicable state, federal, and local laws.

6 **5. Settlement of Disputed Claims.**

7 This Agreement is a compromise of disputed claims. Defendant has claimed and continues
8 to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class
9 members have claimed and continue to claim that the Released Claims have merit and give rise to
10 liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing
11 contained in this Agreement, no documents referred to herein, and no action taken to carry out this
12 Agreement, may be construed or used as an admission by or against the Settlement Class members
13 or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

14 **III. TERMS OF AGREEMENT**

15 **1. Release as To All Class Members.**

16 As of the Effective Date, the Class Members, including Plaintiff, release the Released
17 Parties from the Released Claims for the Covered Period.

18 **2. Release of Claims by Plaintiff**

19 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released
20 Claims during the Covered Period. Plaintiff, for himself and his heirs, successors and assigns,
21 further waives, releases, acquits and forever discharges the Released Parties from any and all
22 claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether
23 known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
24 including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful
25 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
26 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
27 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
28 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited

1 to, claims for violation of the FLSA, the California Labor Code, the Wage Orders of California's
2 Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities
3 Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
4 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and
5 Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
6 Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any
7 and all claims arising under any federal, state or other governmental statute, law, regulation or
8 ordinance.

9 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
10 Code §1542, which provides:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
12 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
13 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
14 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
THE DEBTOR OR RELEASED PARTY.

15 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
16 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
17 settle and release any and all claims against the Released Parties, known or unknown, suspected
18 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
19 of this Agreement, including, but not limited to, any and all claims relating to or arising from
20 Plaintiff's employment with Defendant.

21 **3. Tax Liability and Medicare.**

22 The Parties make no representations as to the tax treatment or legal effect of the payments
23 called for hereunder, and Settlement Class members are not relying on any statement or
24 representation by the Parties in this regard. Class Member' understand and agree that they will be
25 responsible for the payment of taxes and penalties assessed on the payments described herein and
26 will hold the Parties free and harmless from and against any claims resulting from treatment of
27 such payments as non-taxable damages, including the treatment of such payment as not subject to
28 withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based

1 upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not
2 shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec.
3 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in
4 compliance with both state and federal law. The Parties made every effort to adequately protect
5 Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not
6 a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare
7 recipient as of the date of this Agreement, no conditional payments have been made by Medicare.

8 **4. Circular 230 Disclaimer.**

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

25 **5. Preliminary Approval of Settlement.**

26 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
27 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
28 All Parties agree to work diligently and cooperatively to have this Settlement presented to the

1 Court for preliminary approval. The proposed preliminary approval order shall provide for the
2 Notice of Class Action Settlement to be sent to Settlement Class members as specified herein.

3 **6. Settlement Administrator.**

4 Upon the Court granting preliminary approval of this Agreement, Defendant shall provide
5 the Settlement Administrator with the Class Information for purposes of mailing the Notice of
6 Class Action Settlement to the Settlement Class members. No later than three (3) days after receipt
7 of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the
8 list has been received and state the number of Settlement Class members.

9 **7. Notice by First Class U.S. Mail.**

10 Upon receipt of the Class Information, the Settlement Administrator will perform a search
11 based on the National Change of Address Database to update and correct any known or identifiable
12 address changes. Within fifteen (15) days of preliminary approval of this Settlement, the
13 Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all
14 Settlement Class members via regular First-Class U.S. Mail. The Settlement Administrator shall
15 exercise its best judgment to determine the current mailing address for each Settlement Class
16 Member, including performing a skip-trace to identify any updated addresses. The address
17 identified by the Settlement Administrator as the current mailing address shall be presumed to be
18 the best mailing address for each Settlement Class Member.

19 **8. Undeliverable Notices.**

20 Any Notice of Class Action Settlement returned to the Settlement Administrator as
21 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
22 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
23 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
24 name, address and/or social security number of the Settlement Class Member whose notice was
25 undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of
26 receiving notice that a notice was undeliverable. Settlement Class members who receive a re-
27 mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty
28 (20) days from the original Response Deadline.

1 **9. Disputes Regarding Individual Settlement Amounts.**

2 Settlement Class members will have the opportunity, should they disagree with
3 Defendant's records regarding the dates of employment stated on their Notice of Class Action
4 Settlement, to provide documentation and/or an explanation to show contrary information by the
5 Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties
6 to determine whether an adjustment is warranted. The Settlement Administrator shall determine
7 the eligibility for, and the amounts of, any Individual Settlement Amounts under the terms of this
8 Agreement. The Settlement Administrator's determination of the eligibility for and amount of any
9 Individual Settlement Amount shall be binding upon the Settlement Class members and the Parties.
10 In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records
11 will be given a rebuttable presumption of accuracy.

12 **10. Disputes Regarding Administration of Settlement.**

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

17 **11. Exclusions.**

18 The Notice of Class Action Settlement shall state that Settlement Class members who wish
19 to exclude themselves ("opt-out") from the Settlement must submit a Request for Exclusion by the
20 Response Deadline. The Request for Exclusion: (1) must contain the name, address, and telephone
21 number of the Settlement Class Member requesting exclusion; (2) must contain a statement
22 expressing that the Settlement Class Member elects to be excluded from the Settlement; (4) must
23 be signed by the Settlement Class Member; and (5) must be postmarked or fax stamped by the
24 Response Deadline and returned to the Settlement Administrator at the specified address or fax
25 number. The Request for Exclusion will be deemed invalid if it does not contain a Settlement
26 Class Member's name, address, telephone number, and signature. The date of the postmark on the
27 return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means
28 used to determine whether a Request for Exclusion has been timely submitted. Any Settlement

1 Class Member who requests to be excluded from the Settlement Class will not be entitled to any
2 recovery under the Settlement and will not be bound by the terms of the Settlement or have any
3 right to object, appeal, or comment thereon. Settlement Class members who fail to submit a valid
4 and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms
5 of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by
6 the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement
7 Administrator shall provide counsel for the Parties with a complete list of all members of the
8 Settlement Class who have timely submitted a Request for Exclusion.

9 In the event more than 10 Settlement Class Members opt-out, Plaintiff will have the option
10 to decrease the Gross Settlement amount proportionately. If Plaintiff declines to do so, Defendant
11 will have the option to terminate the settlement in its entirety and the Parties will be returned to
12 their respective positions as if no settlement had been contemplated. Defendant shall not directly
13 or indirectly attempt to influence Settlement Class Members to opt-out.

14 **12. Objections.**

15 The Notice of Class Action Settlement shall state that Settlement Class members who wish
16 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing.
17 Any written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by
18 the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means
19 for determining that a Notice of Objection was timely received. The Notice of Objection must be
20 signed by the Settlement Class Member and state: (1) the full name of the Settlement Class
21 Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the
22 objection; and (4) if the Settlement Class Member intends to appear at the final approval hearing.
23 Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator
24 by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either
25 of the Parties may file a responsive document to any objection before the Final Approval Hearing.
26 Any attorney who will represent an individual objecting to this Settlement who has not filed a
27 written objection must file a notice of appearance with the Court and serve Class Counsel and
28 counsel for Defendant no later than the Response Period Deadline. Class Counsel shall not

1 represent any Settlement Class members with respect to any such objections.

2 Any Class Member who fails to submit a timely written objection or to present an objection
3 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
4 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

5 **13. No Solicitation of Settlement Objections or Exclusions.**

6 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
7 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement
8 Class members to submit either written objections to the Settlement or requests for exclusion from
9 the Settlement, or to appeal from the Court's Final Judgment.

10 **14. Funding and Allocation of Gross Settlement Amount.**

11 No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross
12 Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this
13 Agreement. Defendant will not be obligated to make any payments contemplated by this
14 Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and
15 after the Effective Date of the Agreement.

16 **15. Net Settlement Amount.**

17 The Net Settlement Amount will be determined by the Settlement Administrator by
18 subtracting the Class Counsel Award, Named Plaintiff Enhancement Award, PAGA Payment, and
19 Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net
20 Settlement Amount is \$411,666.67. The Parties estimate the amount of the Net Settlement Amount
21 as follows:

22 Gross Settlement Amount: \$ 700,000.00

23 Named Plaintiff Enhancement Award: \$ 5,000.00

24 Class Counsel Fees: \$ 233,333.33

25 Class Counsel Costs: \$ 10,000.00

26 PAGA Payment \$ 25,000.00

27 *(\$18,750.00 to the LWDA and \$6,250.00*
28 *to be distributed to eligible Settlement*

Class Members as discussed in
paragraph 26 below)

Settlement Administrator Costs: \$ 15,000.00

Net Settlement Amount \$ 411,666.67

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount, which includes, the Class Counsel Award, Named Plaintiff Enhancement Award, Individual Settlement Amounts, PAGA Payment, and Settlement Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant. Defendant's share of payroll taxes and other required withholdings from Individual Settlement Amounts, including but not limited to Defendant's FICA and FUTA contributions, shall be paid separately from, and in addition to, the Gross Settlement Amount.

16. Individual Settlement Amounts.

Individual Settlement Amounts will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Amounts shall be mailed by regular First-Class U.S. Mail to each Class Member's last known mailing address within seven calendar days after Defendant makes the final settlement payment. All Individual Settlement Amounts will be allocated as follows: thirty-three and one-third percent (33.33%) as wages, thirty-three and one-third percent (33.33%) as interest, and thirty-three and one-third percent (33.33%) as statutory penalties.

17. Class Member's Payment Ratio.

Class Members will be paid on a pro-rata basis. A Class Member's Individual Settlement Amount will be based on the number of Compensable Workweeks during which s/he worked in proportion to the aggregate number of workweeks worked by all Settlement Class members.

18. Payment to Class Member.

Checks shall be made payable to each Class Member for payment of each Class Member's Individual Settlement Amount as set forth in Paragraphs 16 and 17 of this Agreement.

19. Form of Payment to Class Member.

The Individual Settlement Amount due to each Class Member shall be paid in the form of

1 a check to each Class Member.

2 **20. Unclaimed Settlement Payment(s).**

3 After one hundred and eighty (180) days of the mailing of the Individual Settlement
4 Amount checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
5 Amount checks will be transmitted to the State of California Office of the Controller Unclaimed
6 Property Fund in the name of the Class Member who did not cash his/her Settlement check. The
7 Parties agree to coordinate their efforts to seek Court approval for such an escheatment process of
8 uncashed funds. If, for some reason, the Court does not approve the escheatment of uncashed
9 funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section 384,
10 distribute uncashed funds as described therein, and agree upon the non-profit Bet Tzedek Legal
11 Services as the cy pres designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

12 **21. Named Plaintiff Enhancement Award.**

13 Plaintiff will request that the Court approve a Named Plaintiff Enhancement Award of up
14 to \$5,000.00. Subject to Court approval, in exchange for the release of all Released Claims and
15 for his time and effort in bringing and prosecuting this matter, Plaintiff shall be paid a Named
16 Plaintiff Enhancement Award of up to \$5,000.00. The Named Plaintiff Enhancement Award shall
17 be paid to Plaintiff from the Gross Settlement Amount within ten (10) calendar days after
18 Defendant makes the final settlement payment. The Settlement Administrator shall issue an IRS
19 Form 1099 – MISC to Plaintiff for his respective Named Plaintiff Enhancement Award. Plaintiff
20 shall be solely and legally responsible to pay any and all applicable taxes on his Named Plaintiff
21 Enhancement Award and shall hold harmless Defendant and Class Counsel from any claim or
22 liability for taxes, penalties, or interest arising as a result of the Named Plaintiff Enhancement
23 Award. The Named Plaintiff Enhancement Award shall be in addition to the Plaintiff's Individual
24 Settlement Amount as a Settlement Class Member. Any amount requested by Plaintiff for the
25 Named Plaintiff Enhancement Award and not granted by the Court shall return to the Net
26 Settlement Amount and be distributed to Class Members as provided in this Agreement.

27 **22. Class Counsel Award.**

28 Class Counsel will request that the Court approve attorneys' fees in the amount of up to

thirty-three and one-third percent (33.33%) (\$233,33.33) of the Gross Settlement Amount (\$700,000.00). Class Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement Amount not to exceed \$10,000.00. So long as there are no objections, Class Counsel shall be paid any Court-approved fees and costs no later than ten (10) calendar days after Defendant makes the final settlement payment. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Class Members as provided in this Agreement.

23. Settlement Administrator Costs.

Up to \$15,000.00 of the Gross Settlement Amount shall be allocated for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

24. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be responsible for the following: processing and mailing payments to Plaintiff, Class Counsel, and Class Members; printing, and mailing the Notice of Class Action Settlement and tax forms to the Class Members as directed by the Court; receiving and reporting the requests for exclusion and objections submitted by Settlement Class members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

1 **25. Settlement Administrator Fees.**

2 The Settlement Administrator shall be paid the Settlement Administrator Costs within ten
3 (10) calendar days after Defendant makes the final settlement payment.

4 **26. Payment to the LWDA.**

5 A total payment of \$25,000.00 from the Gross Settlement Amount will be allocated as the
6 PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
7 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA
8 and the remaining twenty-five (25%) shall be distributed to eligible Settlement Class Members
9 who worked during the PAGA Period on a pro rata basis based on the number of pay periods.

10 **27. Final Approval Hearing and Entry of Final Judgment.**

11 Upon expiration of the Response Deadline, with the Court's permission, a final approval
12 hearing shall be conducted to determine final approval of the Settlement along with the amount
13 properly payable for: (i) the Class Counsel Award; (ii) the Named Plaintiff Enhancement Award;
14 (iii) Individual Settlement Amounts; (iv) the Settlement Administrator Costs; and (v) PAGA
15 Payment.

16 **28. Final Approval Order.**

17 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after
18 the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit B.
19 Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this
20 Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to
21 carry out the provisions of this Agreement.

22 **29. Nullification of Settlement Agreement.**

23 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
24 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
25 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
26 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
27 of this Settlement shall be treated as void from the beginning. To the extent the total number of
28 opt outs exceed 10%, Defendant has the option to nullify this settlement within ten (10) court days

of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or Defendant will be solely responsible for the costs incurred for the settlement administration should it exercise its' option to nullify this agreement. The return of any paid Settlement funds to Defendant shall occur no later than five (5) business days after one or more of the triggering events leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

30. Increase in Class Members.

It was represented to Class Counsel that the Settlement Class is estimated to be 265 people. Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiff that the Class Data is consistent with these representations. To the extent the number of Settlement Class members increases beyond 265 by more than 5%, Defendant shall have the option to increase the Gross Settlement Amount by a proportionate amount. For example, if the number of pay periods increases by 7% then Defendant shall increase the GSA by 7%. Likewise, for example, if the number of Settlement Class members increases by 7%, Defendant shall increase the Gross Settlement Amount by 7%. If the increase causes an increase of the cost of Settlement Administration beyond the amount that has been approved by the Court, Defendant shall separately bear the increased cost of Settlement Administration outside of the Gross Settlement Amount. If Defendant fails to increase the Gross Settlement Amount proportionately or remit payment of the increased cost of Settlement Administration, Plaintiff shall have the right to terminate this Agreement and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

1 **31. No Effect on Employee Benefits.**

2 Amounts paid to Plaintiff or other Settlement Class members pursuant to this Agreement
3 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
4 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
5 of Plaintiff or Settlement Class members.

6 **32. No Admission by Defendant.**

7 Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing
8 whatsoever. This Agreement is not a concession or admission, and shall not be used against
9 Defendant as an admission or indication with respect to any claim of any fault, concession, or
10 omission by Defendant.

11 **33. Exhibits and Headings.**

12 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
13 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
14 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
15 Agreement are inserted for convenience of reference only and do not constitute a part of this
16 Agreement.

17 **34. Interim Stay of Proceedings.**

18 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil
19 Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the
20 proceedings necessary to implement and complete the Settlement.

21 **35. Amendment or Modification.**

22 This Agreement may be amended or modified only by a written instrument signed by
23 counsel for all Parties or their successors-in-interest.

24 **36. Entire Agreement.**

25 Apart from the fully-executed Memorandum of Understanding, which the Parties
26 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
27 entire Agreement among these Parties, and no oral or written representations, warranties, or
28 inducements have been made to any Party concerning this Agreement or its Exhibits other than

1 the representations, warranties, and covenants contained and memorialized in the Agreement and
2 its Exhibits. The Parties are entering in to this Agreement based solely on the representations and
3 warranties herein and not based on any promises, representation, and/or warranties not found
4 herein.

5 **37. Authorization to Enter into Settlement Agreement.**

6 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
7 whom they represent to negotiate this Agreement and to take all appropriate actions required or
8 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
9 execute any other documents required to effectuate the terms of this Agreement. The Parties and
10 their counsel will cooperate with each other and use their best efforts to effect the implementation
11 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
12 any document needed to implement the Settlement, or on any supplemental provisions that may
13 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
14 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
15 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
16 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
17 he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

18 **38. Binding on Successors and Assigns.**

19 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
20 of the Parties hereto, as previously defined.

21 **39. California Law Governs.**

22 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
23 according to the laws of the State of California.

24 **40. Counterparts.**

25 This Agreement may be executed in one or more counterparts. All executed counterparts
26 and each of them shall be deemed to be one and the same instrument.

27 **41. Jurisdiction of the Court.**

28 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain

jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Agreement are subject to approval by the Court.

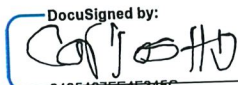
42. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

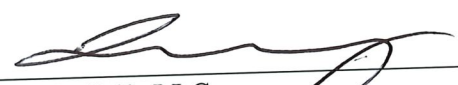
WHEREFORE, Plaintiff, on behalf of himself and the Settlement Class members, and Defendant has executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: August 4, 2021

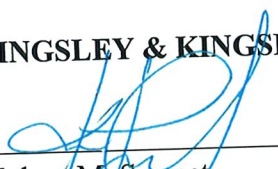
DocuSigned by:

9435467FE4F345C...
By: CARLOS HUMBERTO CARRILLO DIAZ

Dated: 8/18/21

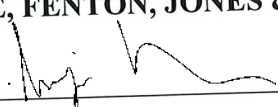

RECON360, LLC
By: General Contractor

APPROVED AS TO FORM AND CONTENT:

Dated: August 5, 2021

KINGSLEY & KINGSLEY APC

By: Kelsey M. Szamet
Attorneys for Plaintiff CARLOS HUMBERTO CARRILLO DIAZ and the Proposed Class

Dated: _____

HOGUE, FENTON, JONES & APPEL, INC.

By: Sarju Narah
Attorneys for Defendant RECON360, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CARLOS HUMBERTO CARRILLO DIAZ
an individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon.
Sunil R. Kulkarni in Dept. 1]

CLASS NOTICE

[CLASS MEMBER NAME]

CARLOS HUMBERTO CARRILLO DIAZ v. RECON360, LLC

**Superior Court of the State of California, County of Santa Clara
Case No. 20CV370603:**

If you are a current or former employee for RECON360, LLC (“RECON360, LLC” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as:

“All persons who are employed or have been employed as an hourly, non-exempt employee by RECON360, LLC, in the State of California from September 22, 2016 to July 30, 2021.”
- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff in this class action alleges that Defendant failed to provide lawful meal and rest periods, failed to reimburse expenses, failed to pay lawful wages upon termination or resignation, engaged in unfair business practices, and is liable for penalties under California’s Private Attorneys General Act or “PAGA.” Defendant denies Plaintiff’s claims, and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or ’s defenses.
- You will not be penalized or retaliated against by RECON360, LLC for participating in this class action settlement. If you are currently employed by RECON360, LLC, your employment will not be affected in any way. Current employees of RECON360, LLC who choose to participate in the settlement will not be required to resign and can continue to work for RECON360, LLC.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for claims pled or arising out of or reasonably related to the transactions and occurrences pled in the Complaint, which are or could be the basis of claims that Defendant failed to provide lawful meal and rest
-------------------	---

	periods; failed to reimburse expenses; failed to pay lawful wages upon termination or resignation; or engaged unfair business practices, or is subject to PAGA penalties during the Covered Period.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against RECON360, LLC. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against RECON360, LLC for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

Your options are explained in this notice.
To opt out or object, you must act by **XXXX.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of RECON360, LLCs' employees. You have received this notice because RECON360, LLC's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on September 22, 2020 on behalf of all persons who are employed or have been employed as an hourly employee by RECON360, LLC in the State of California. The operative complaint alleges class-wide causes of action against RECON360, LLC for failure to provide lawful meal and rest periods under Labor Code §§ 226.7 and 512; failure to reimburse expenses pursuant to Labor Code §2802; failure to pay lawful wages upon termination or resignation under Labor Code § 203; and unfair business practices under Business & Professions Code § 17200 et seq.; and penalties under the Labor Code Private Attorneys General Act, Labor Code § 2698 et seq.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its

employees, Defendant has also concluded that further litigation would be protracted and expensive, and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$700,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$233,333.33
- Litigation Costs: \$10,000.00
- Settlement Administration Costs: \$15,000.00
- Named Plaintiff Enhancement Award to Named Plaintiff: \$5,000.00
- Penalties to the Labor & Workforce Development Agency: \$18,750.00

After these deductions, it is anticipated that \$411,666.67 will be available for payment to the Settlement Class members receiving this notice ("Net Settlement Amount").

Each Class Member's Individual Settlement Amounts shall be determined on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class members.

All Individual Settlement Amounts will be allocated as follows: 1/3 (33%) to settlement of wage claims, 1/3 (33%) to settlement of claims for interest, and 1/3 (33%) to settlement of claims for statutory penalties. There will be normal tax withholdings from the 1/3 portion of your Settlement Amount that is allocated to wage claims.

According to XXX's records, the total number of pay periods that you worked as an employee during the relevant time period is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Settlement Administrator
c/o <<Name.of.Claims.Admin>>

You must submit such information by XXXX. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including: (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2) Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; (4) Penalties Pursuant to Labor Code § 203; (5) Violation of Business & Professions Code § 17200; (6) Penalties Pursuant to Labor Code §2699, et seq. ("PAGA"). (collectively, the "Released Claims")

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, <<Name.of.Claims.Admin>>, by XXXX.

Settlement Administrator
c/o <<Name.of.Claims.Admin>>

If your Request for Exclusion is postmarked after XXXX, it will be rejected, and you will be a Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue RECON360, LLC separately about the claims made in this lawsuit.

10. What if I have an objection?

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number ([*Carlos Humberto Carrillo Carrillo Diaz v. Recon360, LLC*], Case Number [20CV370603]), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firms identified [Kingsley & Kingsley, APC, 16133 Ventura Blvd., Suite 1200, Encino, CA 91436, and HOGE, FENTON, JONES & APPEL, INC., 60 South Market Street, Suite 1400, San Jose, CA 95113.] and (d) be filed or postmarked on or before XXXXXX, 2021."

<u>Class Counsel:</u> Eric B. Kingsley, Esq. Kelsey M. Szamet, Esq.	<u>Counsel for RECON360, LLC</u> HOGE, FENTON, JONES & APPEL, INC. Sarju A. Naran, Esq.
---	---

Kingsley & Kingsley, APC 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: (818) 990-8300 Fax: (818) 990-2903	Jenn M. Protas, Esq. Maysa Saeed, Esq. 60 South Market Street, Suite 1400 San Jose, CA 95113-2396 Telephone: (408) 287-9501 Facsimile: (408) 287-2583
---	--

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 1 of the Santa Clara County Superior Court, Santa Clara Courthouse, located at 191 N. First Street on _____, 2021, at XXXX on _____, 2021, at XXXX (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Enhancement Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may appear in person.

13. How can I receive more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator. Finally, further information is also available at www.scscourt.org.

Please do not telephone the Court, the Office of the Clerk, or Recon 360's counsel for information regarding this settlement or the claim process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ
an individual, on behalf of himself and
others similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon.
Sunil R. Kulkarni in Dept. 1]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: XX
Time: XX
Dept.: 1

Complaint Filed: September 22, 2020
FAC Filed: November 30, 2020
Trial Date: None Scheduled

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement
2 and Release of Claims (“Settlement Agreement”), a copy of which is attached as to the Declaration
3 of Kelsey M. Szamet as Exhibit “1”, came before this Court on XXXX. The Court, having
4 considered the papers submitted in support of the motion of the parties, **HEREBY ORDERS THE**
5 **FOLLOWING:**

6 1. The Court grants preliminary approval of the Settlement Agreement and the
7 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
8 Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement
9 resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
10 notice of the Settlement to persons in the Settlement Class and a full hearing on the final approval
11 of the Settlement.

12 2. Settlement “Class Member(s)” means: “All persons who are employed or have been
13 employed as an hourly employee by RECON360, LLC, in the State of California during the
14 Covered Period .”

15 3. The Covered Period is from September 22, 2016 to July 30, 2021.

16 4. The PAGA Period is September 22, 2019 to July 30, 2021.

17 5. The Settlement falls within the range of reasonableness and appears to be
18 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
19 and final approval by this Court.

20 6. The Court makes the following preliminary findings for settlement purposes
21 only:

22 A. The Settlement Class, which consists of approximately 265 persons, is so
numerous that joinder of all members is impracticable;

23 B. There appear to be questions of law or fact common to the Settlement
24 Class for purposes of determining whether this Settlement should be
approved;

25 C. Plaintiff’s claims appear to be typical of the claims being resolved through
26 the proposed settlement;

27 D. Plaintiff appears to be capable of fairly and adequately protecting the
28 interests of the Settlement Class Members in connection with the proposed
settlement;

1 E. Common questions of law and fact appear to predominate over questions
2 affecting only individual persons in the Settlement Class. Accordingly,
3 the Settlement Class appears to be sufficiently cohesive to warrant
4 settlement by representation; and

5 F. Certification of the Settlement Class appears to be superior to other
6 available methods for the fair and efficient resolution of the claims of the
7 Settlement Class.

8 7. The Court approves, as to form and content, the Notice Packet to Class Members
9 in substantially the form attached to the Settlement Agreement as Exhibit A (Class Notice).

10 8. The Court approves the procedure for Class Members to object to the Settlement as
11 set forth in the Class Notice to Class Members.

12 9. The Court directs the mailing of the Notice Packet to Class Members by first class
13 mail to the Class Members in accordance with the Implementation Schedule set forth below. The
14 Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the
15 Implementation Schedule, meet the requirements of due process and provide the best notice
16 practicable under the circumstances and shall constitute due and sufficient notice to all persons
17 entitled thereto.

18 10. The Court confirms Eric B. Kingsley and Kelsey M. Szamet of Kingsley &
19 Kingsley, APC and Emil Davtyan of Davtyan Law Firm, Inc. as Class Counsel.

20 11. The Court confirms CARLOS HUMBERTO CARRILLO DIAZ as the Named
21 Plaintiff.

22 12. The Court approves <<Name.of.Claims.Admin>> as the Settlement Administrator.

23 13. The Court orders that pursuant to the California Private Attorneys General Act,
24 Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will
25 continue to be given to the Labor & Workforce Development Agency.

26 14. The Court orders the following Implementation Schedule for further proceedings:

27 a.	Preliminary Approval	XXXX
28 b.	Deadline for Defendant to Provide Class Data to Settlement Administrator.	20 business days from Preliminary Approval

c.	Mail Notice to Class Members	14 calendar days from Settlement Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark Any Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ,
an individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon.
Sunil R. Kulkarni in Dept. 1]]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX

Time: XX

Dept.: 1

Complaint Filed: September 22, 2020
FAC Filed: November 30, 2020
Trial Date: None Scheduled

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class action lawsuit brought by Plaintiff CARLOS
3 HUMBERTO CARRILLO DIAZ (“Plaintiff”) against Defendant RECON360, LLC
4 (“Defendant”). The Motion for Final Approval of Class Action Settlement came before this Court
5 on XXXX.

6 **WHEREAS**, Judge Sunil R. Kulkarni granted preliminary approval of the Joint Stipulation
7 of Class Action Settlement and Release of Claims (“Settlement Agreement”), attached to the
8 concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”, on XX.

9 **WHEREAS**, Plaintiff CARLOS HUMBERTO CARRILLO DIAZ has applied to the
10 Court for an order granting final approval of the Settlement Agreement.

11 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed
12 Settlement and for entry of an order of final approval and entry of final judgment thereon. The
13 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
14 Settlement; Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of
15 Kelsey M. Szamet, Carlos Humberto Carrillo Diaz, and XXXX of <<Name.of.Claims.Admin>>;
16 and the supporting documents annexed thereto, now finds:

17 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

18 1. The Court has personal jurisdiction over all Settlement Class Members and that the
19 Court has subject matter jurisdiction to approve the Settlement;

20 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
21 in compliance with California Code of Civil Procedure, the California and United States
22 Constitutions (including the due process clauses), the California Rules of Court and any other
23 applicable law, and in the best interest of each of the Parties and the Class members and is hereby
24 finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement as described
26 in the Settlement Agreement according to its terms and provisions.

27 4. The Settlement Agreement is binding on Plaintiff and all other Settlement Class
28 Members, except those timely and properly filed Requests for Exclusions, as well as their heirs,

executors, and administrators, successors, and assigns.

5. There are XX (XX) valid requests for exclusion.

6. It is ordered that the Settlement Class is certified for settlement purposes only. The Court finds that an ascertainable class exists and a well-defined community of interest exists in the questions of law and fact involved because in the context of the Settlement: (i) there are questions of law and fact common to the Class Members which, as to the Settlement and all related matters, predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of the Class members; and (iii) in negotiating, entering into and implementing the Settlement, Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest of the Class Members.

7. The Court finds that the Notice and notice methodology implemented pursuant to this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the California Code of Civil Procedure, the California and United States Constitution (including the Due Process Clause), the California Rules of Court and any other applicable law.

8. The Settlement Class is hereby made final. The Settlement Class is defined as: "All persons who are employed or have been employed as an hourly employee by RECON360, LLC, in the State of California during the Covered Period." ("Proposed Class").

9. The "Covered Period" or "Release Period" is the period of September 22, 2019 to July 30, 2021.

10. The Settlement Agreement is not an admission by Defendant, nor is this Final Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

1 11. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and
2 each Settlement Class Member shall fully release and discharge the Released Parties pursuant to
3 the following release, which provides:

4 any and all claims, debts, liabilities, demands, obligations, penalties,
5 guarantees, costs, expenses, attorney's fees, damages, action or
6 causes of action of whatever kind or nature, whether known or
7 unknown, contingent or accrued, that are alleged, or that reasonably
8 could have arisen out of the same facts alleged in the Action,
9 including: (1) Failure to Provide Meal Breaks Pursuant to Labor
10 Code §§ 226.7 and 512; (2) Failure to Provide Rest Breaks Pursuant
11 to Labor Code §§ 226.7; (3) Failure to Reimburse Expenses
12 Pursuant to Labor Code § 2802; (4) Penalties Pursuant to Labor
13 Code § 203; (5) Violation of Business & Professions Code § 17200;
14 (6) Penalties Pursuant to Labor Code §2699, et seq. ("PAGA").

15 12. Plaintiff and all Settlement Class Members who have not been timely and properly
16 excluded from the Settlement Class, and any person acting on their behalf, are permanently barred
17 and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
18 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
19 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
20 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members
21 into a separate class for purposes of pursuing as a purported class action (including by seeking to
22 amend a pending complaint to include class allegations, or by seeking class certification in a
23 pending action) any lawsuit based on or relating to the Released Claims;

24 13. The Settlement Agreement provides that the Gross Settlement Amount is seven
25 hundred thousand dollars and zero cents (\$700,000.00). The Net Settlement Amount shall be
26 determined according to the terms of the Settlement Agreement.

27 14. The Court orders the calculations and the payments to be made and administered in
28 accordance with the terms of the Settlement Agreement.

 15. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
Settlement Class for purposes of entering into and implementing the settlement. The Court hereby
confirms Kingsley & Kingsley, APC and Emil Davtyan of Davtyan Law Firm, Inc. as Class
Counsel in the Action.

1 16. The Court hereby finds the unopposed application of Class Counsel for a costs and
2 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
3 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$233,333.33
4 shall be paid for attorney fees and \$10,000.00 shall be paid for litigation costs.

5 17. The unopposed application of Class Counsel for an Enhancement Award is hereby
6 granted. Of the Gross Settlement Amount, a \$5,000.00 Enhancement Award shall be allocated to
7 Named Plaintiff CARLOS HUMBERTO CARRILLO DIAZ.

8 18. The unopposed application of Class Counsel for claims administration fees to
9 <<Name.of.Claims.Admin>> is hereby granted. Of the Gross Settlement Amount, \$15,000.00
10 shall be paid for settlement administration fees.

11 19. The Court approves the PAGA Penalties in the amount of \$25,000.00. The Court
12 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$18,750.00.
13 The Court further directs that the remining 25% of the PAGA Penalties, in the amount of \$6,250.00
14 shall be allocated to the eligible Settlement Class Members who worked during the PAGA period
15 on a per pay period, pro rata basis.

16 20. If a Settlement Class Member does not cash his or her settlement check within 180
17 days, the uncashed funds shall be transmitted by the Settlement Administrator to the non-profit
18 Bet Tzedek pursuant to Cal. Code Civ. Proc. section 384(b)(3)(C). The Court finds there is a
19 strong nexus between the mission of Bet Tzedek and the interests of the Settlement Class members.

20 21. Defendant shall have no further liability for costs, expenses, interest, attorneys'
21 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
22 Agreement.

23 22. The Parties, are authorized, without further approval from the Court, to agree to
24 and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits
25 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of
26 Settlement Class Members under the Stipulation.

27 23. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
28 shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well

1 as the administration and enforcement of the terms of the Settlement of this action to enforce the
2 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
3 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the
4 administration and enforcement of the Settlement. Any disputes or controversies arising with
5 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
6 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict
7 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
8 of the Settlement Agreement.

9 24. This Final Order shall constitute a final judgment.

10 25. The Court hereby dismisses the action (including all individual claims and Released
11 Claims presented thereby) with prejudice, without fees or costs to any party except as provided in
12 the Settlement Agreement.

13
14 **DATED:** _____

JUDGE OF THE SUPERIOR COURT

(Proof of Submission to LWDA)

EXHIBIT "2"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 18, 2021, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

HOGUE FENTON, JONES, & APPEL, INC. Sarju A. Naran Sarju.naran@hoguefenton.com 55 South Market Street, 9 th Floor San Jose, CA 95113-2396	DAVTYAN LAW FIRM, INC. Emil Davtyan emil@davtyanlaw.com 880 E. Broadway Glendale, CA 91205
---	--

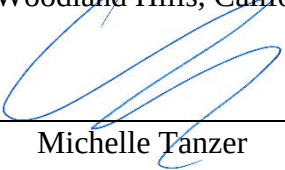
[] (BY MAIL): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2021, at Woodland Hills, California.



Michelle Tanzer