

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
Website: www.zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 559-8292
Facsimile: (619) 559-8291
Website: www.jcl-lawfirm.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO**

JESSICA BARACKMAN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

TEAZ N PLEAZ, INC., a California
Corporation dba SEDUCTIONS; and DOES 1
through 50, inclusive,

Defendant.

Case No: SC 20200179

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

Date: February 25, 2022
Time: 1:30 p.m.
Dept.: 4

*[Assigned for All Purposes to Judge Michael J.
McLaughlin]*

Action Filed: December 21, 2020

I, SHANI O. ZAKAY, declare as follows:

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

2. Over the course of the litigation during the last 16 months, a number of attorneys from two firms have worked on this matter. The credentials of counsel in this action are reflected

1 in the Zakay Law Group, APC firm resumes a true and correct copy of which is attached hereto as
2 Exhibit #1, and the declaration of Jean-Claude Lapuyade filed concurrently herewith. Some of
3 the major cases those two firms have undertaken are also set forth in Exhibit #1 and the Lapuyade
4 declaration. The attorneys involved in this matter at have had substantial class litigation
5 experience, mostly in the area of employment class actions, unfair business practices and other
6 complex litigation. These attorneys have extensive experience in cases involving labor code
7 violations and wage and hour claims. Class Counsel has litigated similar wage and hour cases
8 against other employers on behalf of employees. Class Counsel have been approved as
9 experienced class counsel during contested motions in state and federal courts throughout
10 California. It is this level of experience which enabled the firm to undertake the instant matter and
11 to successfully combat the resources of the defendants and their capable and experienced counsel.

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

13 a. A true and correct copy of the Class Action Settlement Agreement (hereinafter the
14 “Agreement”) is attached hereto as Exhibit #2.¹ Plaintiff and Defendant reached a full
15 and final Settlement of the above-captioned action, which is embodied in the
16 Agreement filed concurrently with the Court. As consideration for this Settlement,
17 Defendant has agreed to pay the all-in, non-reversionary amount of Two Hundred
18 Twenty-Five Thousand Dollars (\$225,000) (“Gross Settlement Amount”). The Gross
19 Settlement Amount includes all Settlement Shares to Participating Class Members, the
20 Class Representative Service Payment to Plaintiff, Settlement Administration
21 Expenses, the PAGA Payment, and Court-approved attorneys’ fees and costs.
22 Defendant will separately pay the employer’s share of payroll taxes to the qualified
23 settlement fund, per the Agreement. (Agreement at ¶ I(GG)).

24 b. The relief provided in the settlement will benefit all members of the Class. The
25 settlement does not grant preferential treatment to Plaintiff or segments of the Class in
26 any way. Payments to the Class Members are all determined under a neutral
27 methodology. All Class Members will receive the same opportunity to participate in

28 ¹ Capitalized terms are defined in the Agreement.

1 and receive payment through a neutral formula that is based upon the weeks worked
2 for that individual. The Net Settlement Amount shall equal the net amount available
3 for Settlement shares to Participating Class Members from the Gross Settlement
4 Amount after deducting the Court-approved amounts for the Class Representative
5 Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
6 Expenses Payment, the PAGA Payment, and the fees and expenses of the Settlement
7 Administrator. The Settlement Administrator will pay a Settlement Share from the Net
8 Settlement Amount to each Participating Class Member. The submission of a claim
9 form is not required to be paid. The Settlement Share for each Participating Class
10 Member will be calculated based on the workweeks worked by each Participating
11 Class Member during the Class Period. The entire Net Settlement Fund shall be
12 distributed.

13 c. Class Members were sent the Court approved Class Notice, using the procedure
14 approved by the Court, by mailing the notice packets after updating class members'
15 addresses using the National Change of Address database and, for any notice packets
16 returned as undeliverable, re-mailing such notices to any forwarding address provided
17 or updated address located through skip tracing. Class Members were provided with
18 the opportunity to exclude themselves ("opt out") if they did not want to participate in
19 the Settlement. Class Members who did not "opt out" are deemed Participating Class
20 Members who are bound by the Settlement and will be mailed a settlement payment.
21 The Class Notice also advised Class Members of their right to object to the Settlement.
22 This notice process is documented in the accompanying Declaration of Madely Nava
23 (the Settlement Administrator), which is filed concurrently herewith.

24 d. The administration process, including details regarding the mailing of the Notice
25 Packet, notices returned as undeliverable, the administrator's efforts to locate class
26 members and remail notices, and the final administration results, are all documented in
27 the Declaration of Madely Nava, which is filed concurrently herewith. (See Decl. of
28 Madely Nava).

- 1 4. If a Participating Class Member's Settlement Share check is not cashed within 180 days after
2 its last mailing to the Participating Class Member, the funds from such uncashed checks will
3 be paid to the Children Advocacy Institute in accordance with California Code of Civil
4 Procedure section 384 in the name of the Participating Class Member and the Participating
5 Class Member will remain bound by the Settlement.
- 6 5. The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
7 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will also be
8 allowed to apply separately for an award of litigation expenses incurred in the prosecution and
9 settlement of the Action in an amount not exceeding \$15,000. **In support of this request,**
10 **Class Counsel is providing evidentiary support, including lodestar, in the declarations**
11 **submitted concurrently herewith.** The Agreement provides for payment of Class
12 Representative Service Payment of no more than \$10,000 for Plaintiff, or such lesser amount
13 as may be approved by the Court in compensation for his services. Defendant does not
14 oppose a motion for approval of attorneys' fees, costs and a service award consistent with the
15 Agreement.
- 16 6. The Parties allocated \$10,000 from the Gross Settlement Amount for settlement of civil
17 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of
18 Labor Code §2699(i) the PAGA Payment shall be allocated \$7,500 to the LWDA (the
19 "LWDA Payment" or the "PAGA Payment") as the LWDA's share of the settlement of civil
20 penalties and \$2,500 to the Net Settlement Amount for distribution to the Participating Class
21 Members. (Agreement at ¶III(M)(4)).
- 22 7. The Settlement was reached through arm's length negotiations. On March 10, 2021, the
23 Parties participated in an all-day mediation presided over by (Ret.) Hon. Carl West, a
24 respected jurist and mediator of wage and hour class and PAGA actions. Prior to the
25 mediation, the Parties prepared by exchanging data, calculating damages, and submitting
26 mediation briefs to the Mediator. Defendant provided Class Counsel with necessary records
27 and information for the members of the Class. Defendant produced a sample consisting of pay
28 records and time records for some of the Class Members for the entire Class Period.

1 Defendant also produced Defendant's relevant employment policies, including compensation
2 policies and timekeeping policies. Plaintiff analyzed the data with the help of an expert and
3 prepared and submitted a mediation brief to Judge West. At the conclusion of the mediation,
4 the Parties reached a settlement, which was supported by Judge West. The Parties
5 documented the agreement in the form of a Memorandum of Understanding. The Parties then
6 prepared the full Agreement which was signed by the Parties and received preliminary
7 approval from the Court by Order dated October 12, 2021.

8 8. The Settlement is fair, adequate and reasonable to the Class and should be finally approved for
9 the same reasons the Court granted preliminary approval to the Settlement, finding that it is
10 fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
11 valued at \$225,000 is an excellent result for the Class. This result is particularly favorable in
12 light of the fact that liability in this case was far from certain in light of the defenses asserted
13 by Defendants. There have been no objections and no opt outs. Given the complexities of
14 this case, the defenses asserted, the uncertainty of class certification, along with the
15 uncertainties of proof at trial and appeal, the proposed Settlement is fair, reasonable and
16 adequate, and should be finally approved.

17 9. **Procedural Status of the Settlement** - The Court preliminarily approved the
18 Agreement via its Preliminary Approval Order dated October 12, 2021 ("Preliminary Approval
19 Order"); and pursuant to the Preliminary Approval Order the approved Class Notice has been
20 disseminated to the Class. On November 2, 2021, the Settlement Administrator Court-approved
21 Class Notice to the Class Members, which provided each Class Member with the terms of the
22 Settlement, including notice of the claims at issue and the financial terms of the settlement,
23 including the attorneys' fees, costs, and service awards that were being sought, how individual
24 settlement awards would be calculated, and the specific, estimated payment amount to that
25 individual. In disseminating the Class Notice, the Settlement Administrator followed the notice
26 procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have
27 been no objections and no opt outs. (See Declaration of Madely Nava at ¶¶ 11-12.) As a result,
28 the entire Class has elected to participate in the Settlement and will be sent a settlement check.

1 10. **Description of Plaintiff's Claims** - The Action generally alleges that Plaintiff and
2 other non-exempt employees of Defendant were not paid for all time worked, including overtime,
3 and did not receive off-duty meal and rest periods in accordance with California law. The Action
4 further alleges that Plaintiff and other employees of Defendant received incomplete wage
5 statements. The Action seeks unpaid wages, penalties, civil penalties, attorney fees, litigation
6 costs, and any other equitable or legal relief allegedly due and owing to Plaintiff and the other
7 Class Members by virtue of the foregoing claims.

8 11. **Procedural History of the Litigation**

9 a. On October 12, 2020, Plaintiff served Defendant and the Labor and Workforce
10 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice").
11 Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's
12 alleged violations of various provisions of the California Labor Code and applicable
13 Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue
14 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code
15 Sections 2698 et seq ("PAGA"). On December 21, 2020, Plaintiff filed a class action
16 complaint in the El Dorado Superior Court for: (1) Unfair Competition in Violation of
17 Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of
18 California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime
19 wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide
20 required meal periods in violation of California Labor Code sections 226.7 and 512;
21 (5) failure to provide required rest periods in violation of California Labor Code
22 sections 226.7 and 512; (6) failure to reimburse employees for required business
23 expenses in violation of California Labor Code sections 2802; (7) failure to provide
24 accurate itemized wage statements in violation of California Labor Code section 226;
25 (8) failure to provide wages when due in violation of California Labor Code sections
26 201, 202 and 203; and (9) violations of the California Labor Code Private Attorney
27 General Act ("PAGA"). After the Action was filed, the Parties met and conferred and
28 agreed to mediate this action as deemed in the best interest of the parties in particular

1 in light of the many anticipated factual disputes. In anticipation of mediation, the
2 Parties engaged in formal and informal discovery. To prepare for mediation,
3 Defendant agreed to informally produce certain documents and data points subject to
4 the mediation privilege, including but not limited to, a sample of the Class Members'
5 time and payroll data. As discussed *infra*, Plaintiff's counsel retained the Berger
6 Consulting Group, to analyze Defendant's time and payroll data. Defendant, on the
7 other hand, served Plaintiff with formal written discovery, to which Plaintiff responded
8 in advance of the mediation. Class Counsel has conducted a thorough investigation
9 into the facts of the class action. Class Counsel has diligently evaluated the Class
10 Members' claims against Defendant. Class Counsel engaged in informal discovery in
11 preparation for the mediation, and received significant responses and documents to the
12 discovery requests. Defendant produced a large sample consisting of employee file
13 and pay records, hiring/review and separation documents, payroll and time records for
14 some of the Class Members for the entire Class Period. Defendant also produced
15 Defendant's relevant employment policies, including compensation policies and
16 timekeeping policies. Class Counsel conducted extensive review of time records and
17 data with the help of an expert. Based on the foregoing data and their own
18 independent investigation, evaluation and experience, Class Counsel believe that the
19 settlement with Defendant on the terms set forth in the Agreement is fair, reasonable,
20 and adequate and are in the best interest of the Class in light of all known facts and
21 circumstances, including the risk of significant delay, the defenses asserted by
22 Defendant, and potential appellate issues.

- 23 b. Prior to mediation, the Parties engaged in investigation and the exchange of documents
24 and information in connection with the Action. As part of this process, Defendant
25 provided documents and information to Class Counsel to review and analyze.²
26

27 ² Defendant produced a sample consisting of pay records and time records for some of the Class
28 Members for the entire Class Period. Defendant also produced Defendant's relevant employment
policies, including compensation policies and timekeeping policies.

12. History of Settlement Discussion

- a. This Settlement was the result of arm's-length negotiations as well as informal settlement conferences between the Parties through their respective attorneys. After comprehensive legal and factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel reviewed and outlined the case based upon the information for the Class, and determined the conditions of settlement which would be fair and reasonable to the Class with the assistance of an expert. Class Counsel was experienced in the types of settlement appropriate to resolve these wage and hour claims on behalf of employees.
- b. On March 10, 2021, the Parties participated in an all-day mediation presided over by (Ret.) Hon. Carl West, a respected jurist and mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties prepared by exchanging data, calculating damages, and submitting mediation briefs to the Mediator. Defendant provided Class Counsel with necessary records and information for the members of the Class. Defendant produced a sample consisting of pay records and time records for some of the Class Members for the entire Class Period. Defendant also produced Defendant's relevant employment policies, including compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an expert and prepared and submitted a mediation brief to Judge West. At the conclusion of the mediation, the Parties reached a settlement, which was supported by Judge West. The Parties documented the agreement in the form of a Memorandum of Understanding. The Parties then prepared the full Agreement which was signed by the Parties and received preliminary approval from the Court by Order dated October 12, 2021.
- c. The Order dated October 12, 2021 preliminarily approved the Class Settlement contained in the Agreement as fair, reasonable and adequate.
- d. Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate. In my judgment as experienced Class Counsel, this Settlement should be finally approved.

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

- 2 a. Here, a number of defenses asserted by Defendant presented serious threats to the
3 claims of the Plaintiffs and the other Class Members. Defendant asserted that the
4 employment practices complied with all applicable Labor Laws. With respect to the
5 unpaid wages claim, Defendant maintains that it paid Plaintiff for every minute that
6 they claimed they worked, and that it instructed Plaintiff to clock in as soon as she
7 arrived at the store and refrain from performing any work unless clocked-in.
- 8 b. With respect to the meal break claim, Defendant maintains that it paid Plaintiff for
9 every minute that they claimed they worked. Defendant argued that it fully complied
10 with California meal period laws and maintained legally compliant policies and
11 practices as outlined in its Handbook and other policies. Courts have found that where
12 an employer's meal period policies are compliant, individualized issues exist as to the
13 reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the*
14 *Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only
15 11.1% of the employees' time punches for meal periods were within the first 5 hours,
16 the claim was not certifiable because individualized issues existed as to the reasons for
17 the late meal periods). Defendant argued that it not only provided meal and rest breaks
18 but also installed technical enhancements that reminded employees to timely take their
19 meal-and rest breaks.
- 20 c. With respect to the rest break claim, Defendant denied liability and asserted that they
21 maintained legally compliant rest period policies and practices throughout the Class
22 Period. Moreover, Defendant argued that it not only provided all rest breaks but reminded
23 Plaintiff and employees to take them. Plaintiff recognizes the evidentiary burdens
24 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost
25 entirely, on Class Member testimony, making it a riskier claim at class certification and
26 liability stages. Defendant likely would have argued that only a small number of Class
27 Members missed their rest breaks. Certification likely would have required depositions of
28 Class Members who provided declarations, and Defendant surely would have obtained

opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, the rest break claim was subject to significant defenses.

- d. With respect to the reimbursement claim, Defendant vigorously denied any liability for this claim. Defendant maintains that employees were never required to use their personal cell phone for work at the store, which offered telephone service for any employees work related use, if any. Instead, Defendant argued that any cell phone use was completely voluntary and for their own personal not work-related use.
- e. With respect to the wage statement and waiting time claim, Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because of wage statement violations, as required by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest period violations do not entitled employees like Plaintiff and the Settlement Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Settlement Class arguably could have seen a payout of more than \$645,000 for these penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. *See, e.g.,*

1 *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9,
2 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus,*
3 *Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence
4 of bad faith or actual injury). Plaintiff could not give the penalty claims great weight
5 given that they depended on proving the underlying claims, which according to
6 Defendant were not supported by the facts. If successful, these defenses could
7 eliminate or substantially reduce any recovery to the Class. While Plaintiff believes
8 that these defenses, and others, could be overcome, Defendant maintains these
9 defenses have merit and therefore present a serious risk to recovery for the Class.

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

19 g. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
20 and trying the Action against Defendant through possible appeals which even if
21 successful could take several years. Class Counsel have also taken into account the
22 uncertain outcome and risk of litigation, especially in complex actions such as this
23 Action. Class Counsel are also mindful of and recognize the inherent problems of
24 proof under, and alleged defenses to, the claims asserted in the Action. As
25 demonstrated by the decision in *Duran*, the complexities and duration of further
26 litigation cannot be overstated. There is little doubt that Defendant would post a bond
27 and appeal in the event of an adverse judgment. A post-judgment appeal by Defendant
28 would have required many more years to resolve, assuming the judgment was

1 affirmed. If the judgment was not affirmed in total, then the case could have dragged
2 on for years after the appeal. The benefits of a guaranteed recovery today outweigh an
3 uncertain result three or more years in the future. Moreover, post-trial motions and
4 appeals would have been inevitable. Costs would have mounted and recovery would
5 have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
6 Plaintiff and Class Counsel believe that the Settlement confers substantial benefits
7 upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have
8 determined that the Settlement set forth in the Agreement is in the best interest of the
9 Class Members.

10 h. In sum, the Settlement is a fair and reasonable result, and provides the Class with a
11 significant recovery, particularly when viewed in light of the fact that Defendant
12 asserted serious and substantial defenses both to liability and to class certification.
13 Given the complexities of this case, the defenses, along with the uncertainties of proof
14 and appeal, the proposed Settlement is fair, reasonable and adequate, and should be
15 finally approved.

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

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

23 a. The Settlement in this case is fair, reasonable and adequate considering Defendants'
24 significant defenses, which it believes to be valid, to Plaintiff's claims. As detailed
25 during preliminary approval, the Gross Settlement Amount compares favorably to the
26 value of the claims. Class Members will receive immediate and certain payments of
27 considerable amounts under the Settlement. Currently, the overall maximum and
28

1 average Participating Class Member allocations are estimated to be \$3,871.88 and
2 \$707.79 respectively (Decl. Nava at ¶ 14).

3 b. Faced with the serious doubts as to recovery, the Settlement of \$225,000 plus the
4 employer's share of payroll taxes compares favorably to the damage estimates alleged
5 to have been suffered by the Class. Considered as a whole, the \$225,000 in Settlement
6 represents between 33.7% of Defendant's liability exposure for damages, and 17.1% of
7 Defendant's liability exposure for damages and penalties, as estimated by Class
8 Counsel's expert at the time of mediation, which Class Counsel calculated to be
9 \$666,867 for damages and \$1,312,493 for damages and civil penalties.

10 15. If he could prove the claims, Plaintiff estimates that Defendant was subject to maximum
11 liability for damages in the amount of \$666,867, consisting of \$59,379 for unpaid wages,
12 \$570,038 for meal and rest break periods, and \$37,450 for unreimbursed expenses. In
13 addition, Plaintiff calculated that Defendant could be liable for \$45,050 for wage statement
14 penalties and \$600,576 waiting time penalties. Finally, Plaintiff's expert calculated that
15 Defendant's exposure for PAGA penalties up to \$802,450.

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

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed this 9th day of February 2022, at San Diego, California.

22
23 By: 
24 Shani O. Zakay
25
26
27
28

EXHIBIT 1

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

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

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

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

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

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

• **PROFESSIONAL EXPERIENCE**

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

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

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

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

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

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

SAN DIEGO STATE UNIVERSITY, San Diego, CA

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

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

- **COMMUNITY SERVICE**

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

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

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

- **PRACTICE AREAS**

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

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

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

- **PROFESSIONAL EXPERIENCE**

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

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

- **EDUCATION**

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

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

Academic Achievement Awards: Advanced Prosecution Function.

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

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

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

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

2. Henry v. InMotion Entertainment Group, LLC

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

3. Moore v. Zirx Transportation

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

4. Pasallo v. GSG Protective Services

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

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

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

6. Flores v. Plastic Express

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

7. Tressler v. Spoonful Management

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

8. Leymaster v. Toms Sierra Company, Inc.

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

9. Murphy v. Rockler Retailer Group, Inc.

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

10. Bruemmer v. Tempur Retail Stores, LLC.

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

11. Christina Cummings v. G6 Hospitality, LLC

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

12. Nicolai Laguatan v. Prevent LSS

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

13. Lisa Ramirez v. Carefusion Resources, LLC

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

14. Charles Ornelas v. C&A Transportation Services

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

15. Luz Marin v. California Marine Cleaning

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

16. Christian Van Cleave v. Sunrise Senior Living Management

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

17. Heather McIntyre v. JRR Enterprises

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

18. Lori Phipps v. Soapy Joe's

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

19. Heather Broughton v. NFG San Francisco, LLC

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

20. Marcos Antonios v. Interface Rehab, LLC

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

21. Tiffany Rodriguez v. Circle K

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

22. Derik Scott et al. v. Ultimate Performance

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

23. Raymond Frazier v. Asa Carlton

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

24. John Moreno v. Da Kitchen

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

25. Penny Lane v. International Aero Clubs, LLC

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

26. Amber Price v. DMSD Restaurants

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

27. Jamaal Johnson v. Volt Management Corp

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

28. Ezzat Menias v. All American Private Security

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

29. Mark Connor v. Ascendant Marketing

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

30. Niki Nunez v. Home Depot

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

31. Alma Salazar v. Frontier Toyota

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

32. Josefina Garces v. Kar Auction Services

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

33. Madison Weiss v. Niznik Behavior

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

34. Jimmy Mack v. ERM Enterprises

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

35. Josefina Garces v. DriverDo

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

36. Perseus Porras v. Tantalum Restaurant

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

37. Dorcena Deutsch v. Scripps

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

38. Josalyn O'Quinn v. Laugh Factory

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

39. Nicholas Leon v. Miller Event Management

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

40. Aaris Watts v. TRL Systems

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

41. Faith Smith v. Island Pizza

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

42. Johnathan Roa v. Otay Mesa Sales

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

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

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

45. Curtis Edwards v. Resolve Group

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

46. Elena Kiseleva v. TotalMed Staffing, Inc

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

47. Richard Jer Vang v. Bridge Property Management

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

48. Madison Marrero v. Stat Med

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

49. Brian Reyes v. Stowasser Buick-GMC

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

50. Erik Foss v. Anderson Hospitality, Inc.

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

51. Griselda Duran v. EmployBridge

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

52. Luis Rendon v. Healthcare Investments, Inc.

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

53. Richard Melead v. TVI, Inc.

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

54. David Spencer v. Asset Gas, Inc.

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

55. Thomas Haven v. California Vocations, Inc.

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

56. Estefania Renteria v. Love's Country

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

57. Rachel Latin v. OneMain General Services Corp.

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

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

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

59. Jie Xu v. HT Multinational

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

60. Yvette Molina v. Hawaiian Airlines

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

61. Reinald Pillsbury v. T & T Restaurants CA

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

62. Luis de Jesus v. Guardian Angel Home Care

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

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

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

64. Gabriel Mendez v. Bondz, Inc.

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

65. James Conley v. Siskiyou Forest Products

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

66. Alex Castellanos v. Southwest Patrol

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

67. Damien Hampton v. Pegasus Investors

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

68. Tamara Perkins v. FSEI

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

69. Rodney Stovall v. Javelin Logistics Company

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

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

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

71. Elias Kaser v. Aviation Consultants, Inc.

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

72. Christopher Chacon v. Panda Motors, Inc.

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

73. Willie Lang v. Pathways

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

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

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

75. Daniel Jacobs v. Rush Media Company

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

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

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

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

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

78. Hector Avitia v. LAZ Parking

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

79. Sukhraj Kaur v. ACES 2020, LLC

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

80. Boaventura v. Rei Do Gado

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

81. James Rachal v. ELG Metals, Inc.

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

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

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

83. Michael Ashlock v. Advantis Medical Staffing

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

84. Moe Popal v. Ameriprise Auto & Home Insurance

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

85. Mark Williams v. Web to Door

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

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

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

87. Nicolas Neutall v. Urban Alchemy

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

EXHIBIT 2

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 3990 OLD TOWN AVENUE, SUITE C204
10 SAN DIEGO, CA 92110
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO

JESSICA BARACKMAN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

TEAZ N PLEAZ, INC., a California
corporation d.b.a. SEDUCTIONS; and
DOES 1 through 50, Inclusive;
DEFENDANTS.

Case No. SC 20200179

[Action Filed 12/21/2021]

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

Judge: Honorable Michael J. McLaughlin
Dept.: 12

STIPULATION OF SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff JESSICA BARACKMAN (hereinafter "Plaintiff"), individually and on behalf of
3 the Putative Class, and Defendant E.B.S. ENTERPRISES, INC., a Texas Corporation d.b.a. TEAZ
4 N PLEAZ , (hereinafter "Defendant"):

5 **I. DEFINITIONS**

- 6 A. "Action" shall mean the putative class action lawsuit designated *Barackman v. Teaz*
7 *N Pleaz, Inc.*, El Dorado County Superior Court, Case No. SC 20200179, filed
8 December 21, 2020 (hereinafter "the Action")
9
- 10 B. "Aggrieved Employees" shall mean all non-exempt employees who are or previously
11 were employed by Defendant in California during the PAGA Period.
12
- 13 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
14 Class Action and Release of Claims.
15
- 16 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
17 Shani Zakay of Zakay Law Group, APLC.
18
- 19 E. "Class Counsel Award" means the award of fees and expenses that the Court
20 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
21 and the Class in the Actions, consisting of attorneys' fees currently not to exceed
22 one-third of the Total Settlement Amount currently estimated to be \$75,000 out of
23 \$225,000 plus costs and expenses \$15,000. Class Counsel's award for attorneys'
24 fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC
25 and 50% to Zakay Law Group, APLC).
26
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- 1 F. "Class Data" means information regarding Class Members that Defendant will in
2 good faith compile from its records and provide to the Settlement Administrator. It
3 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
4 Member's full name; last known address; Social Security Number; start dates and end
5 dates of employment.
- 6
- 7 G. "Class Members" or the "Class" means all non-exempt employees who are or
8 previously were employed by Defendant in California during the Class Period.
- 9
- 10 H. "Class Period" means the period between October 12, 2016 until May 10, 2021.
- 11
- 12 I. "Class Representative Service Award" means the amount that the Court authorizes to
13 be paid to the Class Representative, in addition to her Individual Settlement Payment
14 and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
15 in assisting with the prosecution of the Actions and in exchange for executing a
16 General Release of Defendant.
- 17
- 18 J. "Class Representative" shall mean plaintiff JESSICA BARACKMAN.
- 19
- 20 K. "Court" means the Superior Court for the State of California, County of El Dorado
21 currently presiding over the Action.
- 22
- 23 L. "Defendant" shall mean E.B.S. ENTERPRISES, INC., a Texas Corporation d.b.a.
24 TEAZ N PLEAZ.
- 25
- 26 M. "Effective Date" means the earliest date, following entry by the Court of an order
27 and judgment finally approving this Settlement, upon which one of the following have
28 occurred: (i) if no objection is filed to the settlement and no objector appears at the

1 hearing on final approval, the date of the Court's entry of the order granting final
2 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
3 hearing on final approval, then the earlier of the following: (a) the expiration of all
4 potential appeal periods without a filing of a notice of appeal of the final approval
5 order or judgment; (b) final affirmance of the final approval order and judgment by
6 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
7 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
8 the final approval order and judgment is no longer subject to further judicial review.
9

10
11 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
12 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
13 with the terms of this Agreement.

14
15 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
16 Amount to each Settlement Class Member and excludes any amounts distributed to
17 Aggrieved Employees pursuant to PAGA.

18
19 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
20 Counsel Award, Class Representative Service Award, PAGA Settlement, and
21 Settlement Administration Costs.

22
23 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the
24 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
25 than formatting changes to facilitate printing by the Settlement Administrator).

26 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
27 Labor Code § 2698 *et seq.*
28

- 1 S. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Workweeks for all
3 Aggrieved Employees during the PAGA Period.
4
- 5 T. "PAGA Period" means the period between October 12, 2019 until May 10, 2021 (the
6 "PAGA Period").
7
- 8 U. "PAGA Settlement" shall mean Ten Thousand Dollars (\$10,000) to be allocated from
9 the Total Settlement Amount.
10
- 11 V. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
12 Plaintiff or Defendant, individually.
13
- 14 W. "Payment Ratio" means the respective Workweeks for each Class Member divided
15 by the sum total Workweeks for all Class Members.
16
- 17 X. "Plaintiff" shall mean JESSICA BARACKMAN.
18
- 19 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
20 by the Settlement Administrator to fund the Total Settlement Amount.
21
- 22 Z. "Released Class Claims" means all class claims alleged in the operative complaint
23 which occurred during the Class Period, and expressly excluding all other claims,
24 including claims for vested benefits, wrongful termination, unemployment insurance,
25 disability, social security, workers' compensation, and class claims outside of the
26 Class Period.
- 27 AA. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint
28

1 and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period,
2 and expressly excluding all other claims, including claims vested benefits, unpaid
3 wages, wrongful termination, unemployment insurance, disability, social security,
4 workers' compensation, and PAGA claims outside the PAGA Period.
5

6 BB. "Released Parties" shall mean Defendant and EBS Enterprises, Inc. d.b.a. Teaz N
7 Pleaz.
8

9 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
10 Administrator mails Notice Packets to Class Members and the last date on which
11 Class Members may submit requests for exclusion or objections to the Settlement.
12

13 DD. "Settlement" means the disposition of the Actions pursuant to this Agreement.
14

15 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
16 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
17 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
18 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
19 of the Total Settlement Amount is deposited for the purpose of resolving the claims
20 of Settlement Class Members. The Settlement Administrator shall maintain the funds
21 until distribution in an account(s) segregated from the assets of Defendant and any
22 person related to Defendant. *All accrued interest shall be paid and distributed to the*
23 *Settlement Class Members as part of their respective Individual Settlement*
24 *Payment.*
25
26
27
28

1 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
2 have not submitted a timely and valid request for exclusion as provided in this
3 Agreement.

4
5 GG. "Total Settlement Amount" means Two Hundred Twenty-Five Thousand Dollars
6 (\$225,000.00) that Defendant must pay into the QSF in connection with this
7 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
8 Representative Service Award, the Class Counsel Award, PAGA Settlement and the
9 Settlement Administration Costs and *exclusive* of the employer's share of payroll tax,
10 if any, triggered by any payment under this Settlement.
11

12 HH. "Workweeks", for purposes of calculating the distribution of the Net Settlement
13 Amount, means the number of weeks of employment during the Class Period that
14 each Class Member was employed by Defendant in California, excluding weeks
15 during which the Class Member did not perform any work for Defendant. For purpose
16 of determining the Individual Settlement Payments and the Settlement Allocation,
17 each Class Member who is a former employee no longer working for Defendant will
18 be assigned four (4) additional Workweeks.
19

20
21 II. "PAGA Workweeks", for purposes of calculating the distribution of the Aggrieved
22 Employee Payment, as defined herein, means the number of weeks of employment
23 during the PAGA Period that each Aggrieved Employee worked in California.
24

25 **II. RECITALS**

26 A. On October 12, 2020, Plaintiff filed a Notice of Violations with the Labor and
27 Workforce Development Agency (LWDA) and served the same on Defendant.
28

1 B. On December 21, 2020, Plaintiff filed the Class Action lawsuit for:

2
3 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

4 2. Failure to pay overtime wages in violation of California Labor Code sections
5 510 *et seq*;

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

9
10 4. Failure to provide required meal periods in violation of California Labor Code
11 sections 226.7 and 512 and the applicable IWC wage order;

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

15 6. Failure to reimburse Plaintiff for required expenses in violation of California
16 Labor Code section 2802;

17
18 7. Failure to provide accurate itemized wage statements in violation of California
19 Labor Code section 226;

20
21 8. Failure to provide wages when due in violation of California Labor Code
22 sections 201, 202 and 203.

23
24 9. Violation of the Private Attorneys General Act [Labor Code section 2698].

25 C. The Class Representative believes she has meritorious claims based on alleged
26 violations of the California Labor Code, and the Industrial Wage Commission
27

1 Orders, and that class certification is appropriate because the prerequisites for class
2 certification can be satisfied in the Action, and this action is manageable as a PAGA
3 representative action.
4

5 D. Defendant denies any liability or wrongdoing of any kind associated with the claims
6 alleged in the Action, disputes any wages, damages and penalties claimed by the
7 Class Representative are owed, and further contends that, for any purpose other than
8 settlement, the Action is not appropriate for class or representative action treatment.
9 Defendant contends, among other things, that at all times they complied with the
10 California Labor Code and the Industrial Wage Commission Orders.
11

12 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
13 an investigation into the facts relevant to the Action, including conducting an
14 independent investigation as to the allegations, reviewing documents and
15 information exchanged through informal discovery, and reviewing documents and
16 information provided by Defendant pursuant to informal requests for information to
17 prepare for mediation. Defendant produced for the purpose of settlement
18 negotiations certain employment data concerning the Settlement Class, which Class
19 Counsel reviewed and analyzed. Based on their own independent investigation and
20 evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
21 fair, reasonable and adequate, and is in the best interest of the Settlement Class in
22 light of all known facts and circumstances, including the risks of significant delay,
23 defenses asserted by Defendant, uncertainties regarding class certification, and
24 numerous potential appellate issues. Although it denies any liability, Defendant is
25 agreeing to this Settlement solely to avoid the inconveniences and cost of further
26
27
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litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

F. On May 10, 2021, the Parties participated in mediation presided over by Hon. Carl J. West (Ret.) a respected jurist and mediator of wage and hour class actions. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU").

G. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Actions of Plaintiff or the Class Members have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Actions have merit.

H. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the

1 right to contest certification of any class for any reason and reserves all available
2 defenses to the claims in the Action.

3
4 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

5
6 **III. TERMS OF AGREEMENT**

7 **A. Settlement Consideration and Settlement Payments by Defendant.**

8 1. Settlement Consideration. In full and complete settlement of the Actions, and
9 in exchange for the releases set forth below, Defendant and the Released
10 Parties will pay the sum of the Individual Settlement Payment, the Class
11 Representative Service Award, the Class Counsel Award, PAGA Settlement,
12 and the Settlement Administration Costs, as specified in this Agreement, equal
13 to the Total Settlement Amount of Two Hundred Twenty-Five Thousand
14 Dollars (\$225,000.00). The Parties agree that this is a non-reversionary
15 Settlement and that no portion of the Total Settlement Amount shall revert to
16 Defendant. Other than the Defendant's share of employer payroll taxes, or as
17 otherwise specified in the Agreement, Defendant shall not be required to pay
18 more than the Total Settlement Amount, except as provided for hereinbelow.

19
20
21 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
22 Class was comprised of 167 individuals who collectively worked
23 approximately 3,100 Workweeks ("Projected Workweeks") during the Class
24 Period. In regard hereto, Defendant will provide a declaration under penalty
25 of perjury confirming the number of Class Members and Workweeks they
26 worked during the Class Period prior to the filing of the motion for preliminary
27

1 approval. The Settlement Amount will increase proportionally with added
2 class members or workweeks if any of these are more than 10% of the estimate
3 set forth herein.
4

5 3. Settlement Payment. Defendant and the Released Parties, and each of them,
6 are jointly and severally liable for payment of the Total Settlement Amount.
7 Defendant shall pay, via wire transfer, the Total Settlement Amount to the
8 Settlement Administrator on the Funding Date.
9

10 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
11 payroll taxes is in addition to the Total Settlement Amount and shall be paid
12 together with the Total Settlement Amount.
13

14 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
15 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
16 release the Released Parties from the Released Class Claims for the Class Period.
17

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

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

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

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

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

1. The Court enters an order granting preliminary approval of the Settlement;

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

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1 3. None of the Parties to this Settlement will be deemed to have waived any
2 claims, objections, defenses or arguments in the Actions, including with
3 respect to the issue of class certification.

4
5 4. If Defendant fails to fully fund the Total Settlement Amount, Defendant shall
6 bear the sole responsibility for any cost to issue or reissue any curative notice
7 to the Settlement Class Members and all Settlement Administration Costs
8 incurred to the date of nullification.

9
10 G. Certification of the Settlement Class. The Parties stipulate to conditional class
11 certification of the Class for the Class Period for purposes of settlement only. In the
12 event that this Settlement is not approved by the Court, fails to become effective, or is
13 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
14 Defendant from obtaining a complete resolution of the Released Claims, the
15 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
16 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or procedural.

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

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

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Plaintiff will provide Defendant with

1 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
2 Defendant an opportunity to propose changes or additions to the Motion.

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

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24 L. Notice Procedure.

25 1. Class Data. No later than ten (10) business days after the Preliminary
26 Approval Date, Defendant shall provide the Settlement Administrator with the
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1 Class Data for purposes of preparing and mailing Notice Packets to the Class
2 Members.

3
4 2. Notice Packets.

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

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

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

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20 5. Disputes Regarding Individual Settlement Payments. Class Members will
21 have the opportunity, should they disagree with Defendant's records regarding
22 the start and end dates of employment to provide documentation and/or an
23 explanation to show contrary dates. If there is a dispute, the Settlement
24 Administrator will consult with the Parties to determine whether an
25 adjustment is warranted. The Settlement Administrator shall determine the
26 eligibility for, and the amounts of, any Individual Settlement Payments under
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1 the terms of this Agreement. The Settlement Administrator's determination
2 of the eligibility for and amount of any Individual Settlement Payment shall
3 be binding upon the Class Member and the Parties.
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5 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
6 by the Settlement Administrator concerning the administration of the
7 Settlement will be resolved by the Court under the laws of the State of
8 California. Before any such involvement of the Court, counsel for the Parties
9 will confer in good faith to resolve the disputes without the necessity of
10 involving the Court.
11

12 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
13 Packet shall state that Class Members who wish to exclude themselves from
14 the Settlement must submit a written request for exclusion by the Response
15 Deadline. The written request for exclusion must state that the Class Member
16 wishes to exclude himself or herself from the Settlement and (1) must contain
17 the name, address, and the last four digits of the Social Security number of the
18 person requesting exclusion; (2) must be signed by the Class Member; (3)
19 must be postmarked or fax stamped by the Response Deadline and returned to
20 the Settlement Administrator at the specified address or fax telephone number;
21 and (4) contain a typewritten or handwritten notice stating in substance: "I
22 wish to opt out of the settlement of the class action lawsuit entitled *Barackman*
23 *v. Teaz N Pleaz Inc.*, currently pending in the Superior Court for the County
24 of El Dorado, Case No. SC 2020179 . I understand that by requesting to be
25 excluded from the settlement, I will receive no money from the Settlement
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1 described in this Notice.” The request for exclusion will not be valid if it is
2 not timely submitted, if it is not signed by the Class Member, or if it does not
3 contain the name and address and last four digits of the Social Security number
4 of the Class Member. The date of the postmark on the mailing envelope or
5 fax stamp on the request for exclusion shall be the exclusive means used to
6 determine whether the request for exclusion was timely submitted. Any Class
7 Member who requests to be excluded from the Settlement Class will not be
8 entitled to an Individual Settlement Payment and will not be otherwise bound
9 by the terms of the Settlement or have any right to object, appeal or comment
10 thereon. However, any Class Member that submits a timely request for
11 exclusion that is also a member of the Aggrieved Employees will still receive
12 his/her pro rata share of the PAGA Settlement, as specified below, and in
13 consideration, will be bound by the Release by the Aggrieved Employees as
14 set forth herein. Settlement Class Members who fail to submit a valid and
15 timely written request for exclusion on or before the Response Deadline shall
16 be bound by all terms of the Settlement and any final judgment entered in this
17 Action if the Settlement is approved by the Court. No later than fourteen (14)
18 calendar days after the Response Deadline, the Settlement Administrator shall
19 provide counsel for the Parties with a final list of the Class Members who have
20 timely submitted written requests for exclusion. At no time shall any of the
21 Parties or their counsel seek to solicit or otherwise encourage members of the
22 Class to submit requests for exclusion from the Settlement.
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1 8. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who wish to object to the Settlement
3 may submit to the Settlement Administrator a written statement of objection
4 ("Notice of Objection") by the Response Deadline. The postmark date of
5 mailing shall be deemed the exclusive means for determining that a Notice of
6 Objection was served timely. The Notice of Objection must be signed by the
7 Settlement Class Member and state: (1) the case name and number; (2) the
8 name of the Settlement Class Member; (3) the address of the Settlement Class
9 Member; (4) the last four digits of the Settlement Class Member's Social
10 Security number; (4) the basis for the objection; and (5) if the Settlement Class
11 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
12 Class Members who fail to make objections in writing in the manner specified
13 above may still make their objections orally at the Final Approval/Settlement
14 Fairness Hearing with the Court's permission. Settlement Class Members will
15 have a right to appear at the Final Approval/Settlement Fairness Hearing to
16 have their objections heard by the Court. At no time shall any of the Parties
17 or their counsel seek to solicit or otherwise encourage Class Members to file
18 or serve written objections to the Settlement or appeal from the Order and
19 Final Judgment. Class Members who submit a written request for exclusion
20 may not object to the Settlement. Class Members may not object to the PAGA
21 Settlement
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1 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
2 the Total Settlement Amount on or before the Funding Date, plus any employer's share
3 of payroll taxes as mandated by law within the time specified herein.
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5 1. Individual Settlement Payments. Individual Settlement Payments shall be
6 paid from the Net Settlement Amount and shall be paid pursuant to the
7 formula set forth herein. Using the Class Data, the Settlement Administrator
8 shall add up the total number of Workweeks for all Class Members. The
9 respective Workweeks for each Class Member will be divided by the total
10 Workweeks for all Class Members, resulting in the Payment Ratio for each
11 Class Member. Each Class Member's Payment Ratio will then be multiplied
12 by the Net Settlement Amount to calculate each Class Member's estimated
13 Individual Settlement Payments. Each Individual Settlement Payment will be
14 reduced by any legally mandated employee tax withholdings (e.g., employee
15 payroll taxes, etc.). Individual Settlement Payments for Class Members who
16 submit valid and timely requests for exclusion will be redistributed to
17 Settlement Class Members who do not submit valid and timely requests for
18 exclusion on a pro rata basis based on their respective Payment Ratios.
19
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21 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
22 Class Data, the Settlement Administrator shall add up the total number of
23 PAGA Workweeks for all Aggrieved Employees during the PAGA Period.
24 The respective PAGA Workweeks for each Aggrieved Employee will be
25 divided by the total PAGA Workweeks for all Aggrieved Employees,
26 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
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1 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
2 Aggrieved Employee Payment to calculate each Aggrieved Employee's
3 estimated share of the PAGA Settlement.
4

5 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
6 Settlement Payments shall be allocated and treated as follows: 10% as wages
7 ("Wage Portion"); 90% as penalties and interest ("Non-Wage Portion"). The
8 Wage Portion is subject to wage withholdings and shall be reported on IRS
9 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
10 and shall be reported on IRS Form 1099.
11

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

16 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
17 individual shares of the PAGA Settlement made to Settlement Class Members
18 and/or Aggrieved Employees under this Settlement Agreement, as well as any
19 other payments made pursuant to this Settlement Agreement, will not be
20 utilized to calculate any additional benefits under any benefit plans to which
21 any Class Members may be eligible, including, but not limited to profit-
22 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
23 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
24 Parties' intention that this Settlement Agreement will not affect any rights,
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1 contributions, or amounts to which any Class Members may be entitled under
2 any benefit plans.

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4 6. All monies received by Settlement Class Members under the Settlement which
5 are attributable to wages shall constitute income to such Settlement Class
6 Members solely in the year in which such monies actually are received by the
7 Settlement Class Members. It is the intent of the Parties that Individual
8 Settlement Payments and individual shares of the PAGA Settlement provided
9 for in this Settlement agreement are the sole payments to be made by Defendant
10 to Settlement Class Members and/or Aggrieved Employees in connection with
11 this Settlement Agreement, with the exception of Plaintiff, and that the
12 Settlement Class Members and/or Aggrieved Employees are not entitled to any
13 new or additional compensation or benefits as a result of having received the
14 Individual Settlement Payments and/or their shares of the PAGA Settlement.
15

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17 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
18 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
19 and/or Aggrieved Employees last known mailing address no later than fifteen
20 (15) calendar days after the Funding Date.
21

22 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
23 Employees shall remain valid and negotiable for one hundred and eighty (180)
24 days from the date of their issuance. If a Settlement Class Member and/or
25 Aggrieved Employee does not cash his or her settlement check within 90 days,
26 the Settlement Administrator will send a letter to such persons, advising that
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1 the check will expire after the 180th day, and invite that Settlement Class
2 Member and/or Aggrieved Employee to request reissuance in the event the
3 check was destroyed, lost or misplaced. In the event an Individual Settlement
4 Payment and/or Aggrieved Employee's individual share of the PAGA
5 Settlement check has not been cashed within one hundred and eighty (180)
6 days, all funds represented by such uncashed checks, plus any interest accrued
7 thereon, shall be distributed consistent with California Code of Civil
8 Procedure Section 384 as follows: to The Children's Advocacy Institute
9 (CAI), founded at the nonprofit University of San Diego School of Law in
10 1989. Class Counsel ,Defendant's counsel, nor any of the Parties, have any
11 interest, pecuniary or otherwise, in CAI.
12
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14 9. Class Representative Service Award. In addition to the Individual Settlement
15 Payment and her individual share of the PAGA Settlement to be paid to
16 Plaintiff, Plaintiff will apply to the Court for an award of not more than
17 \$10,000, as the Class Representative Service Award. Defendant does not
18 presently intend to oppose a Class Representative Service Award of not more
19 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
20 Representative Service Award, either in the amount stated herein if approved
21 by the Court or some other amount as approved by the Court, to Plaintiff from
22 the Total Settlement Amount no later than ten (10) calendar days after the
23 Funding Date. Any portion of the requested Class Representative Service
24 Awards that are not awarded to the Class Representative shall be part of the
25 Net Settlement Amount and shall be distributed to Settlement Class Members
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1 as provided in this Agreement. The Settlement Administrator shall issue an
2 IRS Form 1099 — MISC to Plaintiff for her Class Representative Service
3 Award. Plaintiff shall be solely and legally responsible to pay any and all
4 applicable taxes on her Class Representative Service Award and shall hold
5 harmless the Released Parties from any claim or liability for taxes, penalties,
6 or interest arising as a result of the Class Representative Service Awards. The
7 Class Representative Service Award shall be in addition to Plaintiff's
8 Individual Settlement Payment as a Settlement Class Member. Approval of
9 this Settlement shall not be conditioned on Court approval of the requested
10 amount of the Class Representative Service Award. In the event that the Court
11 reduces or does not approve the requested Class Representative Service
12 Award, Plaintiff shall not have the right to revoke the Settlement, and it will
13 remain binding.
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- 16 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
17 attorneys' fees not to exceed one-third of the Total Settlement Amount
18 currently estimated to be \$75,000.00 plus costs and expenses supported by
19 declaration not to exceed Fifteen Thousand Dollars (\$15,000), from the Total
20 Settlement Amount will be filed. Any portion of the requested Class Counsel
21 Award that is not awarded to Class Counsel shall be part of the Net Settlement
22 Amount and shall be distributed to Settlement Class Members as provided in
23 this Agreement. The Settlement Administrator shall allocate and pay the
24 Class Counsel Award to Class Counsel from the Total Settlement Amount no
25 later than five (5) calendar days after the Funding Date. Class Counsel shall
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1 be solely and legally responsible to pay all applicable taxes on the payment
2 made pursuant to this paragraph. The Settlement Administrator shall issue an
3 IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to
4 this paragraph. In the event that the Court reduces or does not approve the
5 requested Class Counsel Award, Plaintiff and Class Counsel shall not have
6 the right to revoke the Settlement, or to appeal such order, and the Settlement
7 will remain binding.
8

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10 11. PAGA Settlement. Ten Thousand Dollars (\$10,000) shall be allocated from
11 the Total Settlement Amount for settlement of claims for civil penalties under
12 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
13 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
14 Settlement (\$7,500) to the California Labor and Workforce Development
15 Agency no later than twenty-five (25) calendar days after the Funding Date
16 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
17 (\$2,500) will be distributed to the Aggrieved Employees as described in this
18 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
19 distributing the PAGA Settlement to the Aggrieved Employees, each
20 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
21 Employee Payment using the PAGA Payment Ratio as defined above.
22

23
24 12. Settlement Administration Costs. The Settlement Administrator shall be paid
25 for the costs of administration of the Settlement from the Total Settlement
26 Amount. The estimate of the Settlement Administration Costs is \$8,500. The
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1 Settlement Administrator shall be paid the Settlement Administration Costs
2 no later than twenty-five (25) calendar days after the Funding Date.

3
4 N. Defendant's Option to Revoke Settlement. Defendant has the right to revoke the
5 Settlement and Defendant shall have the option to terminate this Settlement if, after
6 the Responsive Deadline, the number of Settlement Class Members who submitted
7 timely and valid written requests for exclusion from the Settlement is at least ten
8 percent (10%) of all Settlement Class Members. If Defendant exercises the option to
9 terminate this Settlement, Defendant shall: (a) provide written notice to Class Counsel
10 within five (5) calendar days after (i) providing the Class Date to the Settlement
11 Administrator or (ii) the Settlement Administrator provides information regarding opt
12 outs (which can occur no later than fourteen (14) calendar days after the Response
13 Deadline, and (b) pay all Settlement Administration Costs incurred up to the date or
14 as result of the termination; and the Parties shall proceed in all respects as if this
15 Agreement had not been executed.

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18 O. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
19 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
20 twenty-eight (28) days following the expiration of the Response Deadline, which
21 motion shall request final approval of the Settlement and a determination of the
22 amounts payable for the Class Representative Service Award, the Class Counsel
23 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
24 provide Defendant with a draft of the Motion at least 3 business days prior to the filing
25 of the Motion to give Defendant an opportunity to propose changes or additions to
26 the Motion
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1 1. Declaration by Settlement Administrator. No later than fourteen (14) days
2 after the Response Deadline, the Settlement Administrator shall submit a
3 declaration in support of Plaintiff's motion for final approval of this
4 Settlement detailing the number of Notice Packets mailed and re-mailed to
5 Class Members, the number of undeliverable Notice Packets, the number of
6 timely requests for exclusion, the number of objections received, the amount
7 of the average Individual Settlement Payment and highest Individual
8 Settlement Payment, the Settlement Administration Costs, and any other
9 information as the Parties mutually agree or the Court orders the Settlement
10 Administrator to provide.

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13 2. Final Approval Order and Judgment. Class Counsel shall present an Order
14 Granting Final Approval of Class Action Settlement to the Court for its
15 approval, and Judgment thereon, at the time Class Counsel files the Motion
16 for Final Approval.

17
18 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
19 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
20 Final Approval, including the Order Granting Final Approval of Class Action
21 Settlement, and Judgment before filing with the Court. The Parties and their counsel
22 will cooperate with each other and use their best efforts to affect the Court's approval
23 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
24 Judgment.

- 1 O. Cooperation. The Parties and their counsel will cooperate with each other and use
2 their best efforts to implement the Settlement.
- 3
- 4 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
5 except such proceedings necessary to implement and complete the Settlement, pending
6 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
7
- 8 Q. Amendment or Modification. This Agreement may be amended or modified only by
9 a written instrument signed by counsel for all Parties or their successors-in-interest.
10
- 11 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
12 Agreement among these Parties, and no oral or written representations, warranties or
13 inducements have been made to any Party concerning this Agreement or its Exhibit
14 other than the representations, warranties and covenants contained and memorialized
15 in this Agreement and its Exhibit.
16
- 17 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate
19 this Agreement and to take all appropriate Action required or permitted to be taken by
20 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
21 documents required to effectuate the terms of this Agreement. The persons signing
22 this Agreement on behalf of Defendant represents and warrants that he/she is
23 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
24 warrants that she is authorized to sign this Agreement and that she has not assigned
25 any claim, or part of a claim, covered by this Settlement to a third-party.
26
27
28

1 T. No Public Comment: The Parties and their counsel agree that they will not issue any
2 press releases, initiate any contact with the press, respond to any press inquiry, or have
3 any communication with the press about the fact, amount or terms of the Settlement
4 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
5 of its terms for any marketing or promotional purposes. Nothing herein will restrict
6 Class Counsel from including publicly available information regarding this settlement
7 in future judicial submissions regarding Class Counsel's qualifications and experience.
8 Further, Class Counsel will not include, reference or use the Settlement Agreement for
9 any marketing or promotional purposes, , either before or after the Motion for
10 Preliminary Approval is filed.
11

12
13 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
14 to the benefit of, the successors or assigns of the Parties, as previously defined.
15

16 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
17 shall be governed by and interpreted according to the laws of the State of California.
18

19 W. Counterparts. This Agreement may be executed in one or more counterparts. All
20 executed counterparts and each of them shall be deemed to be one and the same
21 instrument provided that counsel for the Parties to this Agreement shall exchange
22 among themselves copies or originals of the signed counterparts.
23

24 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
25 is a fair, adequate and reasonable settlement of this Action and have arrived at this
26 Settlement after extensive arms-length negotiations, taking into account all relevant
27 factors, present and potential.
28

1 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
2 respect to the interpretation, implementation and enforcement of the terms of this
3 Agreement and all orders and judgments entered in connection therewith, and the
4 Parties and their counsel submit to the jurisdiction of the Court for purposes of
5 interpreting, implementing and enforcing the settlement and all orders and judgments
6 entered in connection with this Agreement.

7
8 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
9 the Court shall first attempt to construe the provisions valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this
11 Agreement valid and enforceable.

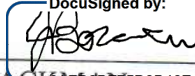
12
13 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
14 intend to pursue any claims against the Released Parties, including, but not limited to,
15 any and all claims relating to or arising from Plaintiff's employment with Defendant,
16 regardless of whether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

22
23
24 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
25 certification for purposes of this settlement only.
26
27
28

1 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
 2 Released Claims have merit and give rise to liability on the part of Defendant.
 3 Defendant claims that the Released Claims have no merit and do not give rise to
 4 liability. This Agreement is a compromise of disputed claims. Nothing contained in
 5 this Agreement and no documents referred to and no action taken to carry out this
 6 Agreement may be construed or used as an admission by or against the Defendant or
 7 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
 8 than as may be specifically set forth herein, each Party shall be responsible for and
 9 shall bear its/his own attorney's fees and costs.
 10

11
 12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

13
 14 DATED: 8/24/2021

15 DocuSigned by:

 16 JESSICA BARACKMAN 16AFD9BF75D9B46F...

17
 18 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

19
 20 DATED: 8/19/21

21  PRESIDENT
 22 EBS ENTERPRISES, INC. d.b.a. TEAZ N PLEAZ

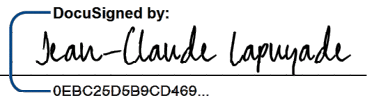
23 ROBERT B. COSTA PRESIDENT
 24 Printed Name

25 President
 26 Title

27
 28 IT IS SO AGREED AS TO FORM BY COUNSEL:

1 DATED: 8/24/2021
2
3
4

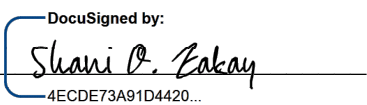
JCL LAW FIRM, A.P.C.

By: 
0EBC25D5B9CD469...

Attorneys for Plaintiff and the Settlement Class
Members

7 DATED: 8/24/2021
8
9

ZAKAY LAW GROUP, APLC

By: 
4ECDE73A91D4420...

Attorneys for Plaintiff and the Settlement Class
Members

13 DATED: 8/24/2021
14
15

SCOTT E. GIZER
BRETT G. MOORE
EARLY SULLIVAN WRIGHT GIZER & McRAE

LLP.

By: 

Attorneys for Defendants

EXHIBIT 3