

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Firmsite: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 BRADLEY LUTAT, an individual, on
15 behalf of herself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 BARRY'S BOOTCAMP, LLC, a
20 California Limited Liability Company;
21 BARRY'S BOOTCAMP SAN DIEGO
22 LLC, a California Limited Liability
23 Company; BARRY'S BAY AREA, LLC,
24 a Limited Liability Company; and Does 1
25 through 50, Inclusive,

26 Defendants.

CASE No. **37-2020-00044771-CU-OE-CTL**

**DECLARATION OF NORMAN BLUMENTHAL
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: January 20, 2023

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated September 16,
2022]

Judge: Hon. Eddie C. Sturgeon
Dept: 67

Action Filed: December 7, 2020

Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiff Bradley Lutat ("Plaintiff") in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of this matter. The following facts are within my own
5 personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.
6 This declaration is being submitted in support to the Plaintiff's motion for final approval of the class
7 settlement.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter at
12 Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience in the
13 areas of employment class actions, unfair business practices and other complex litigation. The attorneys
14 at my firm have extensive experience in cases involving labor code violations and overtime claims. Class
15 Counsel has litigated similar overtime cases against other employers on behalf of employees, including
16 cases against Cigna, Securitas, Okta, Healthnet, See's Candies, El Pollo Loco, Total Renal, Panda
17 Express, Solarcity, Space Exploration, Union Bank, Verizon, Apple, Wells Fargo, Kaiser, Universal
18 Protection Services, and California State Automobile Association. Class Counsel have been approved
19 as experienced class counsel during contested motions in state and federal courts throughout California.
20 It is this level of experience which enabled the firm to undertake the instant matter and to successfully
21 combat the resources of the defendants and their capable and experienced counsel. Class Counsel have
22 participated in every aspect of the settlement discussions and have concluded the settlement is fair,
23 adequate and reasonable and in the best interests of the Class.

24
25 3. Summary of the Proposed Settlement.

26 (a) A true and correct copy of the Class Action Settlement Agreement (the "Agreement") between
27
28

1 the parties is attached hereto as Exhibit #2.¹ Plaintiff and Defendants Barry's Bootcamp, LLC; Barry's
2 Bootcamp San Diego LLC; and Barry's Bay Area, LLC ("Defendants") reached a full and final settlement
3 of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.

4 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants is Seven
5 Hundred Thousand Dollars (\$700,000). (Agreement at ¶¶ I(T) & III(B.) Under the Settlement, the
6 Gross Settlement Amount consists of the following elements: (1) Class Settlement Shares to the
7 Participating Class Members, (2) Settlement Administration Expenses, (3) Class Counsel Fees Payment,
8 (4) Class Counsel Litigation Expenses Payment, (5) Class Representative Service Payment, and (6) the
9 PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Class
10 Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the
11 separate additional obligation of Defendants. (Agreement at ¶ I(T) and III(B).)

12 (b) The Gross Settlement Amount does not include Defendants' share of payroll taxes.
13 (Agreement at ¶ 40.) The Gross Settlement Amount shall be all-in with no reversion to Defendants.
14 (Agreement at ¶ 40.)

15 (c) Following final approval, Defendants shall fund the Gross Settlement Amount and the amount
16 necessary to pay Defendants' share of payroll taxes within fifteen (15) days of the Effective Date.
17 (Agreement at ¶ III(F)(9).) Within fifteen (15) days after Defendants fund the Gross Settlement Amount,
18 the Settlement Administrator will make payment of all Class Settlement Shares to Participating Class
19 Members. (Agreement at ¶ III(F)(9).)

20 (d) The Net Settlement Amount shall equal the Gross Settlement Amount less the Court approved
21 amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel
22 Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses..
23 (Agreement at ¶ I(V).) The Net Settlement Amount will be distributed as the Class Settlement Shares
24 to each Participating Class Member defined at ¶ I(Z) as a Class Member who does not submit a valid and
25 timely Election Not to Participate in Settlement. (Agreement at ¶¶ III(D)(1).) The Class Settlement Share
26 will be calculated as follows: (i) Defendants shall provide the Settlement Administrator with the Class
27

28 ¹ Capitalized terms are defined in the Agreement.

1 Data; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number
2 of pay periods included in the Class Data to determine a dollar amount per pay period (“Pay Period
3 Rate”); and (iii) the Settlement Administrator shall then take the number of pay periods worked by each
4 Participating Class Member and multiply it by the Pay Period Rate to calculate their Class Settlement
5 Share. (Agreement at ¶ III(D)(2).)

6 (e) Class Members were sent the Court approved Class Notice using the procedure approved by
7 the Court by mailing the notice packets after updating class members’ addresses using the National
8 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
9 notices to any forwarding address provided or updated address located. See Declaration of Madely Nava
10 (“Nava Decl.”). Class Members were provided with the opportunity to opt-out of the Settlement by
11 following the directions in the Class Notice. (Agreement at ¶ III(F)(4)), Ex. A.) Currently, there have
12 been no Class Members who submitted valid requests for exclusion and no objections. That said, at this
13 time all Class Members are deemed Participating Class Members who are bound by the Settlement and
14 will be entitled to receive a Settlement Share. (Agreement at ¶ III(F)(4)), Ex. A.) The Class Notice also
15 advised the Class Members of their right to object to the Settlement and/or dispute their Pay Periods.
16 (Agreement at ¶ III(F)(4)(b)), Ex. A; Nava Decl., Exh. A.) The final results of the notice process will
17 be documents in the forthcoming Declaration of Nava to be filed after the December 27, 2022 deadline
18 and in advance of the final approval hearing.

19 (f) A Participating Class Member must cash his or her Class Settlement Share check within 180
20 days after it is mailed. (Agreement at ¶ III(F)(10).) The Settlement Administrator will send a reminder
21 to Participating Class Members who have not cashed their checks within 120 days after its last mailing
22 to the affected individual. (Agreement at ¶ III(F)(10).) Any settlement checks not cashed within 180
23 days will be voided and any the funds from such uncashed checks will be paid to the California State
24 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
25 cash their check. (Agreement at ¶ III(F)(10).)

26 (g) ILYM Group was appointed by the Court as the Settlement Administrator for the Settlement.
27 (Preliminary Approval Order at ¶10, Agreement at ¶III(E).) From the Gross Settlement Amount, the
28 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not

1 to exceed \$15,000. (Agreement at ¶ III(C)(2).) The Settlement Administration Expenses, including fees
2 and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement
3 administration, will be set forth in the Declaration of Nava.

4 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
5 not to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
6 (Agreement at ¶ III(C)(2).) Class Counsel will also be allowed to apply separately for an award of Class
7 Counsel Litigation Expenses Payment in an amount not to exceed \$15,000. (Agreement at ¶ III(C)(2).)
8 Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff
9 as the Class Representative Service Payment. (Agreement at ¶ III(C)(1).) In support of this separate
10 motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
11 evidentiary support, for these requests, including lodestar.

12 (i) Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
13 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
14 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code §
15 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$18,750) to the LWDA as the LWDA's
16 share of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to the Aggrieved
17 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
18 III(C)(3).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
19 to the release of the PAGA Released Claims, whether or not they opt out of the Settlement. (Agreement
20 at ¶ III(C)(3).) As set forth in the accompanying proof of service, the LWDA has been served with this
21 motion and the Agreement.

22 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
23 for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the
24 settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 13.) In sum, the
25 Settlement valued at \$700,000 is an excellent result for the Class. This result is particularly favorable
26 in light of the fact that liability and class certification in this case were far from certain in light of the
27 defenses asserted by Defendants. Given the complexities of this case, the defenses asserted, the
28 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed

1 settlement is fair, reasonable and adequate, and should be finally approved.

2
3 4. Procedural status of the settlement - In accordance with the Preliminary Approval Order
4 dated September 16, 2022 ("Preliminary Approval Order"), the approved Class Notice has been
5 disseminated to the Class. The reaction of the Class unequivocally supports approval of the Settlement.
6 On November 10, 2022, the Settlement Administrator mailed the Court-approved Class Notice to the
7 Class Members, which provided each class member with the terms of the Settlement, including notice
8 of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and
9 service award that were being sought, how individual settlement awards would be calculated, and the
10 specific, estimated payment amount to that individual. In disseminating the notice, the Settlement
11 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order.
12 As of the date of this motion, there have been no objections and no valid requests to opt-out. The final
13 results and details of the notice process will be documented in the Declaration of Nava to be filed after
14 the December 27, 2022 response deadline and in advance of the final approval hearing.

15
16 5. Description of Plaintiff's claims - The Action generally alleges that Plaintiff and other
17 Class Members were not properly paid all overtime wages for hours worked, were not provided meal and
18 rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses,
19 were not provided accurate itemized wage statements, were not paid all wages at the time of termination.
20 The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
21 relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims.

22
23 6. Procedural History of the Litigation

24 (a) On December 7, 2020, Plaintiff filed a Complaint against Defendants in the Superior Court
25 of the State of California, County of San Diego. Plaintiff asserted a single claim against the Defendants
26 alleging violations of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA") due
27 to violations of Labor Code §§ 201, 202, 203, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
28 1197, 1198, 2802, California Code of Regulations, Title 9, Sections 11040, Subd.5(A)-(B).

1 (b) On February 17, 2021, the Court granted the Parties stipulation to stay the Action pending
2 mediation, which also stayed the Defendants deadline for a responsive pleading.

3 (c) As part of the Settlement, on March 15, 2022 Plaintiff submitted a stipulation for leave to s
4 filed a First Amended Complaint to allege class claims based upon the theories and violations alleged
5 in the Complaint and PAGA letter. The First Amended Complaint alleges that Defendant: (1) Violated
6 California Business and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation
7 of California Labor Code §§ 1194, 1197, and 1197.1; (3) Failed to pay overtime wages in violation of
8 California Labor Code § 510; (4) Failed to provide required meal periods in violation of California Labor
9 Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failed to provide required rest periods
10 in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) Failed
11 to reimburse employees for necessary business-related expenses and costs in violation of California
12 Labor Code § 2802; (7) Failed to provide accurate itemized wage statements in violation of California
13 Labor Code § 226; (8) Failed to provide wages when due in violation of California Labor Code §§ 201,
14 202, and 203; and, (9) Violated the PAGA.

15 (d) Over the course of litigation, the Parties engaged in the investigation of the claims, including
16 production of documents, class data, and other information, allowing for the full and complete analysis
17 of liabilities and defenses to the claims in the Action. The information for mediation obtained by
18 Plaintiff included: (1) data showing employees and their employment pay periods; (2) time punch data
19 and payroll data for a sampling of employees covering 4,556 shifts; (3) Defendants' employee wage and
20 hour policies; (5) the employment files for the Plaintiff; and, (7) samples of wage statements provided
21 by Defendants. Plaintiff and Defendants agreed to discuss resolution of the Action through a mediation.

22 (e) Prior to mediation, the Parties engaged in the above investigation and the exchange of
23 documents and information in connection with the Action. On August 12, 2021, the Parties participated
24 in an all-day mediation presided over by Jeffrey Krivis, Esq., a respected and experienced mediator of
25 wage and hour class actions. Following the mediation, each side, represented by its respective counsel,
26 were able to agree to settle the Action based on a mediator's proposal which was memorialized in the
27 form of a Memorandum of Understanding. At all times, the negotiations were arm's length and
28 contentious.

1 (f) The Parties continued to negotiate the terms of the settlement and prepared the final
2 Agreement which was signed by the Parties and is now presented to this Court for preliminary approval.
3 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who worked for
4 Defendants in California as non-exempt employees at any time during the Class Period." (Agreement
5 at ¶ I(C).) The Class Period is from October 1, 2019 through August 12, 2021. (Agreement at ¶ I(J).)
6 The Class consists of an estimated 679 Class Members who worked 9,079 pay periods during the Class
7 Period.

8 (g) Class Counsel has conducted a thorough investigation into the facts of the class action. Over
9 the course of over a year, Class Counsel has diligently evaluated the Class Members' claims against
10 Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with
11 access to necessary information for the Class. In addition, Class Counsel previously negotiated
12 settlements with other employers in actions involving nearly identical issues and analogous defenses.
13 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
14 Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is fair,
15 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
16 circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential
17 appellate issues.

18 19 7. History of Settlement Discussions

20 (a) This Settlement is the result of extensive and hard-fought litigation as well as negotiations
21 before an experienced and well-respected mediator. Defendants have expressly denied and continues to
22 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
23 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
24 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate
25 the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement,
26 and Class Counsel are experienced in wage and hour class actions, as Class Counsel has previously
27 litigated and certified similar claims against other employers.

28 (b) The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendants provided Class Counsel with necessary information for the members of
3 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
4 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
5 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
6 agreed to this Settlement.

7 (c) From September 2021 to February 2022, the Agreement and exhibits thereto were drafted,
8 finalized and executed. The Agreement was thereafter finalized and executed and then presented by
9 motion to this Court for preliminary approval. On September 16, 2022, the Court issued its Order
10 granting preliminary approved of the settlement as fair and reasonable to the Class.

11 (d) Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate. In
12 my judgment as experienced Class Counsel, this Settlement should be finally approved.

13

14 8. The outcome of this case would have been uncertain and fraught with risks.

15 (a) Here, a number of defenses asserted by Defendants present serious threats to the claims of
16 the Plaintiff and the other Class Members, including that the Class Members all signed arbitration
17 agreements and, as a result, the class claims would be have been dismissed if this case proceeded with
18 litigation. There is also a question of collectability, as pandemic-related shut downs and business
19 slowdowns impacted the fitness industry significantly, including Defendants. Defendants also asserted
20 that Defendants' practices complied with all applicable Labor laws. Defendants contended that their
21 meal and rest period policies fully complied with California law and that although Defendants'
22 timekeeping system recorded meal periods, all meal periods were provided and many facial violations
23 seemed to have been paid by a penalty. Further, Defendants argued that Defendants were not required
24 to record rest periods. Finally, Defendants could argue that the Supreme Court decision in *Brinker v.*
25 *Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class
26 certifiability as to the meal and rest period claims. Defendants also argue that based on their facially
27 lawful practices, they acted in good faith and without willfulness, which if accepted would negate the
28 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of

1 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
2 and rest period violations. If successful, Defendants' defenses could eliminate or substantially reduce
3 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants
4 maintain these defenses have merit and therefore present a serious risk to recovery by the Class.

5 (b) There was also a significant risk that, if the Actions were not settled, Plaintiff would be
6 unable to obtain class certification and thereby not recover on behalf of any employees other than
7 themselves. Defendants also argued that the individual experience of each putative class member varied
8 with respect to the claims. Defendants could also contest class certification by arguing injury and good
9 faith were case by case determinations that precluded class certification. Plaintiff is aware of cases where
10 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885,
11 256 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendants also
12 contended that individual differences in work experiences not only impacted damages but would also
13 impact certification. Finally, even if class certification was successful, as demonstrated by the California
14 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant
15 hurdles to overcome for a class wide recovery even where the class has been certified. While other cases
16 have approved class certification in wage and hour claims, class certification in this action would have
17 been hotly disputed and was by no means a foregone conclusion.

18 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
19 cannot be overstated. There is little doubt that Defendants would post a bond and appeal in the event of
20 an adverse judgment. A post-judgment appeal by Defendants would have required many more years to
21 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
22 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
23 an uncertain result three or more years in the future. Plaintiff and Class Counsel recognize the expense
24 and length of a trial against Defendants through possible appeals which could take at least another two
25 or three years. Class Counsel also have taken into account the uncertain outcome, the risk of litigation,
26 especially in complex actions such as this one. Class Counsel are also mindful of and recognize the
27 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Moreover,
28 post-trial motions and appeals would have been inevitable. Costs would have mounted and recovery

1 would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and
2 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon their
3 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
4 is in the best interest of the Class.

5 (d) The calculations to compensate for the amount due to the Class Members at the time this
6 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
7 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
8 putative class members and determined the potential maximum damages for the class claims. For the
9 Class, Plaintiff determined that the unpaid wages due to the alleged failure to pay overtime wages based
10 on off the clock allegations to be \$630,661, the maximum rest period damages were estimated to be
11 \$2,002,739, maximum meal period damages were estimated to be \$406,459 at a 17.8% violation rate, and
12 the maximum damages for unreimbursed expenses were estimated to be \$142,106 at a rate of \$30 of
13 unreimbursed expenses incurred each month. In total, the damages for the Class were calculated to have
14 a maximum total value of \$3,181,965. In addition, Plaintiff calculated that the maximum value of the
15 waiting time penalties were \$2,963,690 and the maximum value of the wage statement penalties to be
16 \$873,950, however, these wage statement and waiting time penalties claims potentially have a much
17 smaller value, even if damages were awarded, to the extent that they are only derivative of the meal and
18 rest break claims.² Consequently, the Gross Settlement Amount represents more than 22% of the value
19 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
20

21
22 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by
24 Defendants, including, but not limited to, a good faith dispute defense as to whether any premium
25 wages for meal or rest periods or other wages were owed given Defendants' position that Plaintiff were
26 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
27 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
28 and when the wages were due."). Additionally, prior to the mediation in this case, Courts have held
that violations of the meal and rest period regulations, which require payment of a "premium wage" for
each improper meal period, do **not** give rise to claims under sections 203 and 226. *See Ling v. P.F.*
Chang's China Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics,*
Inc., 22 Cal. App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiff's claims on these
theories was uncertain at the time of mediation.

1 be proven in full at trial.³ The above maximum calculations should then be adjusted in consideration for
2 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
3 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
4 certainly fair and reasonable.⁴ Clearly, the goal of this litigation has been met.

5 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
6 recovery, particularly when viewed in light of the fact that the Defendants asserted serious and substantial
7 defenses both to liability and to class certification. The maximum and average class member allocations
8 will be documented in the Declaration of Nava. Given the complexities of this case, the defenses, along
9 with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and
10 should be finally approved.

11 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiff would
12 prevail against the Defendants' factual and legal defenses. While Plaintiff and Class Counsel believe in
13 the merits of the claims, Defendants have asserted real and substantial defenses to these claims and to
14 class certification. Settlement in this case clearly benefits the Class when measuring the strengths of
15 Plaintiff's case and the risk of establishing class wide liability and damages.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this 23rd day of December 2022, at San Diego, California.

18
19 /s/ Norman Blumenthal
20 NORMAN B. BLUMENTHAL

21
22 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
23 PAGA claim in this discussion. The PAGA claim was addressed in the Declaration of Nordrehaug in
Support of the Motion for Preliminary Approval at ¶ 33.

24 ⁴ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmann

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

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Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

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County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Bradley Lutat (“Plaintiff”), and Defendants Barry’s Bootcamp, LLC; Barry’s Bootcamp San Diego, LLC; Barry’s Bay Area, LLC (“Defendants”). Plaintiff and Defendants collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the representative Labor Code Private Attorneys General Act (“PAGA”) Complaint that was filed in California state court on December 7, 2021 and any amendments thereto (including those contemplated herein), which is captioned *Bradley Lutat v. Barry’s Bootcamp, LLC, et al.*, Case No. 37-2020-00044771-CU-OE-CTL pending in Superior Court of the State of California, County of San Diego.
- B. “Aggrieved Employees” means all individuals who worked for Defendants in California as non-exempt employees at any time during the PAGA Period.
- C. “Class” means all individuals who worked for Defendants in California as non-exempt employees at any time during the Class Period.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Christine T. LeVu, and Andrew G. Ronan of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and his or her dates of employment and/or pay periods worked during the Class Period/PAGA Period.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.

- I. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
- J. “Class Period” means the period of time from October 1, 2019 through August 12, 2021.
- K. “Class Representative Service Payment” means the service payment made to Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendants’ expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
- L. “Class Settlement” means the portion of this Settlement resolving, releasing and disposing of Class Member claims.
- M. “Court” means the Superior Court of California, County of San Diego.
- N. “Defendants” mean Barry’s Bootcamp, LLC; Barry’s Bootcamp San Diego, LLC; Barry’s Bay Area, LLC.
- O. “Defendants’ Counsel” means John R. Richards, Charles O. Thompson, and Ryan C. Bykerk of Greenberg Traurig, LLP.
- P. “Effective Date” means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(Q) of this Agreement.
- Q. “Election Not to Participate in Class Settlement” means the written request by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with the instructions in the Class Notice.
- R. “Final” means the last of the following dates, as applicable:
1. Sixty-one (61) calendar days after the date the Judgment is entered.
 2. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- S. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- T. “Gross Settlement Amount” means Seven Hundred Thousand Dollars (\$700,000) to be paid by Defendants as provided by this Agreement. This Gross Settlement

Amount is an all-in amount without any reversion to Defendants and shall be inclusive of all payments of Class Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Class Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendants. The Gross Settlement Amount is all in with no reversion to Defendants and shall be paid without the need to submit a claim form.

- U. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- V. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- W. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in the Class Settlement.
- X. “PAGA Period” means the period of time from October 1, 2019 through August 12, 2021.
- Y. “PAGA Settlement” means the portion of this Settlement resolving, releasing and disposing of PAGA claims
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in the Class Settlement.
- AA. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- BB. “Released Parties” collectively mean: Defendants, Defendants’ respective past, present and future parents, subsidiaries, corporations, divisions, and successors and assigns, and the past, present and future shareholders, managers, officers, partners, members, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns of Defendants.
- CC. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement, comprised of the Class Settlement and PAGA Settlement.
- DD. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.

- EE. “Class Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On December 7, 2020, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of San Diego. Plaintiff asserted claims that Defendant:
1. Violated the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq.* (“PAGA”) due to violations of Labor Code §§ 201, 202, 203, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1198, 2802, California Code of Regulations, Title 9, Sections 11040, Subd.5(A)-(B).
 2. Upon execution of this Settlement Agreement, the Parties will stipulate to the filing of a First Amended Complaint, which will allege as class claims all theories of recovery asserted in the Complaint and PAGA letter, as well as all PAGA claims in the Complaint and PAGA letter.
- B. On August 12, 2021, the Parties participated in an all-day mediation presided over by Mr. Jeffrey Krivis, Esq., a respected mediator of wage and hour representative and class actions. At mediation, each side, represented by its respective counsel, were able to agree to settle the Action, which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- C. 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 Defendants that the claims in the Action of Plaintiff or the Class have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants’ defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

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

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Amended Pleading.** The parties shall stipulate that, for purposes of settlement only, Plaintiff shall file a First Amended Complaint (“FAC”) to allege class claims. The FAC shall include as class claims all claims alleged in the original Complaint and PAGA letter. The FAC shall also include PAGA claims for all theories asserted in Complaint and PAGA Letter.
- B. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendants will pay under this Settlement is Seven Hundred Thousand Dollars (\$700,000). This amount is all-

inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Class Settlement Share allocated to wages which shall be separately paid by Defendants to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendants.

C. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiff:** In addition to the Class Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000 as a Class Representative Service Payment. Defendants will not oppose a Class Representative Service Payment of no more than \$10,000 for Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000 for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment, and instead a Form 1099 will be issued to Plaintiff with respect to the payment. Plaintiff will assume full responsibility and liability for the taxes due on his Class Representative Service Payments.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$233,333, as their Class Counsel Fees Payment, and an amount not more than \$15,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendants will not oppose the request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$233,333 and \$15,000, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.
3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the Labor and Workforce

Development Agency (“LWDA”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$6,250) (the “Aggrieved Employee Portion”) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (their “PAGA Settlement Share”). Specifically, a Class Member’s PAGA Settlement Share will be calculated as follows: (i) Defendants shall provide the Settlement Administrator with the Class Data; (ii) the Settlement Administrator shall then divide the Aggrieved Employee Portion by the total number of pay periods included in the Class Data to determine a dollar amount per pay period (“Pay Period Rate”); and (iii) the Settlement Administrator shall then take the number of pay periods worked by each Class Member and multiply it by the Pay Period Rate to calculate the PAGA Settlement Share. If the Court approves a PAGA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$15,000 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$15,000 the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

D. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Class Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation of Class Settlement Share.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Class Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendants shall provide the Settlement Administrator with the Class Data; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of pay periods included in the Class Data to determine a dollar amount per pay period (“Pay Period Rate”); and (iii) the Settlement

Administrator shall then take the number of pay periods worked by each Participating Class Member and multiply it by the Pay Period Rate to calculate their Class Settlement Share.

3. **Withholding.**

- a. Subject to approval by the Court, ten percent (10%) of each Participating Class Member's Class Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and the employee's share of payroll taxes shall be paid for from the Gross Settlement Amount. The employer-side payroll taxes shall be separately paid by Defendants to the Settlement Administrator. The Settlement Administrator shall be responsible for remitting to the tax authorities the employees' and employer's share of all payroll taxes on the Wage Portion.
- b. Subject to approval by the Court, the remaining ninety percent (90%) of each Participating Class Member's Class Settlement Share is in settlement of claims penalties and interest allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.
- c. The Participating Class Members agree to hold harmless Defendants, Class Counsel, and Defendants' Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members' failure to pay taxes on any amounts paid pursuant to this Settlement.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Class Settlement Share (but will receive their PAGA Settlement Share), and their Election Not to Participate in the Class Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Class Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Class Settlement Shares.

5. **Class Size Modification.** Defendants have represented that the class consists of an estimated total of 679 Class Members who collectively worked 9,079 pay periods during the Class Period. In regard hereto, Defendants will provide a declaration under oath prior to the filing of the motion for preliminary approval as to the number of Class Members during the Class Period. Should the number of pay periods in the Class Period increase by more than 10% (908 pay periods) or exceed a total of 9,987 pay periods, Defendant will have the option to increase the Gross Settlement Amount by a proportionate additional amount for each additional pay period or, if Defendant declines to exercise this option, the

Gross Settlement Amount will cover no more than 9,987 pay periods (10% more than 9,079, the number of pay periods disclosed in advance of the mediation) and the Release date will be moved back to only cover the Class and PAGA Periods during which no more than 9,987 pay periods were worked by the Class Members.

- E. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint ILYM Group as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement (without disclosing to Class Counsel the identity of Non-Participating Class Members); calculating Class Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Class Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. Specifically, the Settlement Administrator may, without seeking or obtaining the approval of Class Counsel or Defendants' Counsel, resolve any dispute regarding a Participating Class Member's Class Settlement Share where the value of the total Settlement Share, as adjusted by the Settlement Administrator, does not exceed to \$300. For avoidance of doubt, the Settlement Administrator shall seek and obtain approval of Class Counsel and Defendants' Counsel to resolve any dispute for which the Settlement Share, as adjusted, will exceed \$300. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

- F. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval of Settlement by the Court.**

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Motion for Preliminary Approval”). Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval and will provide these papers to Defendant at least five (5) business days in advance of such filing. Defendant may review and suggest revisions to Plaintiff’s Motion for Preliminary Approval, which Plaintiff will consider. Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
 - b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
 - c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court’s approval.
2. **Notice to the LWDA.** Class counsel represent and agree that they have complied with and will comply with all notice requirements to the LWDA, including that they (a) complied with California Labor Code section 2699(I)(1) by, within 10 days following commencement of this Action, providing the LWDA with a file-stamped copy of the complaint including the case number assigned by the Court, and (b) will comply with California Labor Code section 2699(I)(2) by submitting the proposed settlement to the LWDA at the same time that it is submitted to the Court.
 3. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member’s Class Settlement Share) as follows:
 - a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendants will provide to the Settlement Administrator, and only the Settlement Administrator (and not Class Counsel), an electronic database containing each Class Member’s Class Data. If any or all of the Class Data is unavailable to Defendants, Defendants will so inform

Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone but the Settlement Administrator, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendants' express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose and shall not be disclosed to Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if disclosures are necessary, Class Counsel will obtain written authorization of Defendants and/or an order from the Court.

- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendants to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days, and the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the

date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which the Plaintiff file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and stating the total number of the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. **Objections to Settlement; Disputes as to Pay Periods allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to pay periods allocated to them and Elections Not to Participate in Class Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

- b. **Disputes as to Pay Periods.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the pay periods the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendants' Counsel, where applicable. If a Class Notice Packet is re-mailed, the response date for disputes will be extended an additional 15 days.
- c. **Election Not to Participate in the Class Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in the Class Settlement. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended an additional 15 days. To be valid, an Election Not to Participate in the Class Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in the Class Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their PAGA Settlement Share (their allocation of the PAGA Payment) and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion. Defendants will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendants have or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in the Class Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in the Class Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in the Class Settlement will receive a Class Settlement Share, without the need to file a claim

form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide Class Counsel and Defendants' Counsel with a complete and accurate list of all Participating Class Members and the number (but not the identity) of Non-Participating Class Members.

- 5. **Right of Defendants to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds five percent (5%) of the Class, Defendants, at their sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendants shall exercise its revocation rights, if at all, within fourteen (14) days of the deadline for submission of Elections Not to Participate in Settlement by providing written notice to Class Counsel. If Defendants exercises their revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Settlement Administration Expenses as of the date that Defendants exercises the right to void the Settlement pursuant to this Paragraph will be paid by Defendants.
- 6. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
- 7. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiff file the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses. Class Counsel will be responsible for drafting all documents necessary to obtain final approval and will provide these papers to Defendant at least five (5) business days in advance of such filing. Defendant may review

and suggest revisions to Plaintiff's Motion for Preliminary Approval, which Plaintiff will consider.

- c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

- 8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen (14) days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A

vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Settlement Funding and Provision of Class Settlement Shares and Other Payments.** Defendants shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendants shall fund the Gross Settlement Amount and the amount necessary to pay Defendants' share of payroll taxes within fifteen (15) days of the Effective Date. Within fifteen (15) days after Defendants fund the Gross Settlement Amount, the Settlement Administrator will make payment of all Class Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the PAGA Payment in accordance with this Agreement.
10. **Uncashed Class Settlement Share Checks.** A Participating Class Member or Aggrieved Employee must cash his or her Class Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, Social Security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Settlement Administrator will also send the individual a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check, and the Participating Class Member or Aggrieved Employee will remain bound by the Settlement. Checks for PAGA Settlement Shares shall be handled in the same manner. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members or Aggrieved Employees, whether or not they all cash their Class Settlement Share checks.
11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount,

the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

G. Release of Claims.

1. **Participating Class Members.** Upon the Effective Date, Defendants shall receive a release from the Participating Class Members of any and all claims that were pled or could have been pled based on the factual allegations contained in the operative FAC, including claims under the Fair Labor Standards Act, which occurred during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period ("Released Class Claims").
2. **State of California.** Upon the Effective Date, Defendant shall receive a release from the State of California of all Released PAGA Claims. "Released PAGA Claims" means the claims for civil penalties under California Labor Code Sections 2698 *et. seq.*, predicated on the applicable California Labor Code violations that were pled or that could have been pled based on the factual allegations contained in the LWDA Notice and/or the operative FAC which occurred during the PAGA Period. The period of the Release Claims shall be for the PAGA Period. The Released PAGA Claims do not include underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period, and do not include any claims that cannot be released as a matter of law. The Released PAGA Claims are released against all Released Parties.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the Released PAGA Claims. Upon entry of the Order and Final Judgment approving payment of the payment of PAGA penalties as described in this Agreement, Plaintiff, the Aggrieved Employees and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided in this Agreement. Plaintiff, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall fully, finally, and forever release, relinquish, and discharge each and all of the Released Parties from the Released PAGA Claims that arose during the PAGA Period. As a result of this release, the Aggrieved Employees will be unable to bring a civil penalties claim under the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any of the Released PAGA Claims that occurred during the PAGA Period. The Released PAGA Claims are extinguished and may not be brought by a successor, spouse, heir, agent or other person entity.

3. **Plaintiff.** Upon the Effective Date, Plaintiff generally, releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period (“Plaintiff’s Released Claims”). This release of Plaintiff’s Released Claims releases the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party that occurred during the Class Period. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that he may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

4. **Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payments, the Plaintiff’s Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff’s Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff’s Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

5. **Class Counsel.** Upon the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys’ fees and expenses against Defendants arising from or related to the Action.

- H. **No Effect on Other Benefits.** The Class Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by

this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

- I. **Limitation on Public Statements About Settlement.** Neither Class Counsel nor Defendants' Counsel shall publicize the Settlement, other than filing documents with the Court. Plaintiff and Class Counsel and Defendants and Defendants' Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or Class Counsel or Defendants or Defendants' Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendants or Plaintiff from making any required disclosures.

J. **Miscellaneous Terms.**

1. **No Admission of Liability or Class Certification for Other Purposes.**

- a. Defendants and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendants of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendants specifically disclaim any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by

Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.

- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendants or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

- 2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 3. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
- 4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and

portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

5. **No Tax Advice:** Neither Class Counsel nor Defendants' Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in section III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendants the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of

the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendants:

John R. Richards
Charles O. Thompson
Ryan C. Bykerk
Greenberg Traurig, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Tel.: (310) 586-7700
Fax: (310) 586-7800
Email: richardsjr@gtlaw.com
thompsoncha@gtlaw.com
bykerkr@gtlaw.com

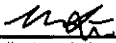
14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that, subject to court approval, which the parties agree to cooperate in seeking, upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with the Jeffrey Kravis on August 12, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.

16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Feb 4, 2022



Bradley Lutat (Feb 4, 2022 12:31 PST)
Plaintiff Bradley Lutat

Dated: _____

[name]
For Defendant Barry's Bootcamp, LLC

Dated: _____

[name]
For Defendant Barry's San Diego LLC

Dated: _____

[name]
For Defendant Barry's Bay Areas, LLC

Dated: 2/4/22



Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

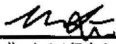
Ryan C. Bykerk
Greenberg Traurig, LLP Attorney for Defendants

16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Feb 4, 2022


Bradley Lutat (Feb 4, 2022 12:31 PST)
Plaintiff Bradley Lutat

Dated: Feb 7, 2022


J.J. Gantt (Feb 9, 2022 07:27 EST)
J.J. Gantt, President [name]
For Defendant Barry's Bootcamp, LLC

Dated: Feb 7, 2022


J.J. Gantt (Feb 9, 2022 07:27 EST)
J.J. Gantt, President [name]
For Defendant Barry's San Diego LLC

Dated: Feb 7, 2022


J.J. Gantt (Feb 9, 2022 07:27 EST)
J.J. Gantt, President [name]
For Defendant Barry's Bay Areas, LLC

Dated: 2/4/22


Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: Feb. 9, 2022


Ryan C. Bykerk
Greenberg Traurig, LLP Attorney for Defendants

EXHIBIT A

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

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

**(Lutat v. Barry's Bootcamp, LLC, Superior Court of the State of California,
County of San Diego, Case No. 37-2020-00044771)**

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. If you do nothing, you will be considered a Participating Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will be considered a Participating Class Member and will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. However, if you are an Aggrieved Employee who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to do so, you must notify the Settlement Administrator as explained in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendants will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Diego (the "Court") has been reached between Plaintiff Bradley Lutat ("Plaintiff") and Defendants Barry's

Bootcamp, LLC; Barry's Bootcamp San Diego, LLC; Barry's Bay Area, LLC ("Defendants") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

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

All individuals who worked for Defendants in California as non-exempt employees at any time during the Class Period.

The Class Period is October 1, 2019 through August 12, 2021.

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

2. What is this class action lawsuit about?

On December 7, 2020, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of San Diego (the “Action”). The Action alleges that the Defendants violated the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”) due to violations of Labor Code §§ 201, 202, 203, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1198, 2802, California Code of Regulations, Title 9, Sections 11040, Subd.5(A)-(B). On [REDACTED], Plaintiff filed a First Amended Complaint (“FAC”) which added class claims against Defendants for: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to timely pay wages at termination.

Defendants deny and dispute all such claims. Specifically, Defendants contends that Plaintiff and the Class Members were properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendants did not fail to provide required reimbursement, that Defendants complied with California wage statement requirements; that Defendants is not liable for any of the penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Seven Hundred Thousand Dollars (\$700,000) (the “Gross Settlement Amount”) to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Settlement Shares to Class Members, the Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment

for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendants.

Within fifteen (15) days of the Effective Date, Defendants will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The Effective Date is the date that is sixty-one (61) calendar days after the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Fifteen (15) days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The proposed payments subject to Court approval will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,000, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$233,333 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$15,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. Class Representative Service Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Payment. A payment of \$25,000 relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”), \$18,750 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$6,250 will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (October 1, 2019 through August 12, 2021). “Aggrieved Employees” are all individuals who worked for Defendants in California as non-exempt employees at any time during the PAGA Period. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the

“Net Settlement Amount”, shall be distributed as Settlement Shares to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ [REDACTED], based upon the above proposed deductions. Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member, which shall be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the total number of pay periods included in the Class Data to determine a dollar amount per pay period (“Pay Period Rate”); and (b) the Settlement Administrator shall then take the number of pay periods worked by each Participating Class Member and multiply it by the Pay Period Rate to calculate their Class Settlement Share.

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

Tax Matters. Ten percent (10%) of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Ninety percent (90%) of each Participating Class Member’s Settlement Share is in settlement of claims for interest and penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants’ Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the Effective Date, Defendants shall receive a release from the Participating Class Members of any and all claims that were pled or could have been pled based on the factual allegations contained in the operative FAC, including claims under the Fair Labor Standards Act, which occurred during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, and workers’ compensation, and claims outside of the Class Period (“Released Class Claims”).

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

Released PAGA Claims. Upon the Effective Date, Defendants shall receive a release from the State of California of all Released PAGA Claims. “Released PAGA Claims” means the claims for civil penalties under California Labor Code Sections 2698 *et. seq.*, predicated on the applicable California Labor Code violations that were pled or that could have been pled based on

the factual allegations contained in the LWDA Notice and/or the operative FAC which occurred during the PAGA Period. The period of the Released Claims shall be for the PAGA Period. The Released PAGA Claims do not include underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period, and do not include any claims that cannot be released as a matter of law. The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

5. How much will my payment be?

The Pay Period Rate is estimated to be <<\$_____>>. Defendants' records reflect that you have worked <<_____>> pay periods for Defendants during the Class Period (October 1, 2019 through August 12, 2021).

Based on this information, your estimated Settlement Share from the Net Settlement Amount is <<_____>>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

6. How can I get a payment?

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

The Court will hold a Final Approval Hearing on _____, at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service award to the Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendants for Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Payment and will remain subject to the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing]. The

request to opt-out must be received by the Settlement Administrator by the deadline and should: (1) contain a clear statement that you are requesting to opt out of, or be excluded from the Class and Released Class Claims in the *Lutat v. Barry's Bootcamp* lawsuit; (2) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; (3) state the Class Member's request to exclude himself or herself from the Settlement and to opt out of the Settlement; and (4) be signed by the Class Member. Please include the name and number of the case, which is *Lutat v. Barry's Bootcamp*, Case No. 37-2020-00044771. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain subject to the release of the PAGA Released Claims regardless of their request for exclusion.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service award, either in writing or in person. Objections that are in writing should state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendants, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Lutat v. Barry's Bootcamp*, in the Superior Court of the State of California, County of San Diego, Case No. 37-2020-00044771.

All written objections must be mailed to the Settlement Administrator at _____, no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

Alternatively, Class Members may appear remotely at the Final Approval Hearing on _____ at _____ a.m. to make an oral objection without submitting a written objection. Check the Court's website for the most current information on how to appear.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

John R. Richards
Charles O. Thompson
Ryan C. Bykerk
Greenberg Traurig, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

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

The Court will hold a Final Approval Hearing at _____ on _____, at the San Diego County Superior Court, located at 330 West Broadway, San Diego, CA 92101, in Department 67 before Judge Eddie C Sturgeon. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. Because the hearing may be conducted remotely, you should consult the Court's website at <http://www.sdcourt.ca.gov/>.

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

You may call the Settlement Administrator at _____ or write to *Lutat v. Barry's Bootcamp* Settlement Administrator, c/o _____; or contact Class Counsel as noted above.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval, or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Lutat v. Barry's Bootcamp*. You may also get more details by examining the Court's file via the Register of Action for the California Superior Court for the County of San Diego at: <https://roa.sdcourt.ca.gov/roa/> and entering the Case No. 37-2020-00044771. If you wish to view the Court files in person, documents may be reviewed during regular office hours at the Office of the Clerk, located at 1100 Union Street, San Diego, CA 92101.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date will be printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds to the paid to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member where the funds can be claimed.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRADLEY LUTAT, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BARRY'S BOOTCAMP, LLC, a California
Limited Liability Company; BARRY'S SAN
DIEGO LLC, a California Limited Liability
Company; BARRY'S BAY AREA, LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00044771-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date:
Hearing Time:

Judge: Hon. Eddie C. Sturgeon
Dept.: 67

Action Filed: December 7, 2020
Trial Date: None Set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable Eddie C. Sturgeon of the Superior Court of
2 the State of California, in and for the County San Diego, on _____[DATE], for the motion
3 by Plaintiff Bradley Lutat (“Plaintiff”) for preliminary approval of the class settlement with
4 Defendants Barry’s Bootcamp, LLC; Barry’s Bootcamp San Diego, LLC; Barry’s Bay Area, LLC
5 (“Defendants”). The Court, having considered the briefs, argument of counsel and all matters
6 presented to the Court and good cause appearing, hereby GRANTS Plaintiff’s Motion for
7 Preliminary Approval of Class Action Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action Settlement Agreement
11 (“Agreement”) attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in Support of
12 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
13 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
14 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
15 and California Rules of Court, rule 3.769.

16 2. The Court hereby grants the parties’ stipulation to allow Plaintiff, for settlement
17 purposes only, to file a First Amended Complaint (“FAC”) to allege as class claims all claims
18 alleged in the original Complaint and PAGA letter and allege PAGA claims for all theories
19 asserted in Complaint and PAGA Letter, which Plaintiff shall file forthwith.

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

22 4. The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000). It
23 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate
24 and reasonable as to all potential Class Members when balanced against the probable outcome of
25 further litigation and the significant risks relating to certification, liability and damages issues. It
26 further appears that investigation and research have been conducted such that counsel for the
27 Parties are able to reasonably evaluate their respective positions. It further appears to the Court
28

1 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
2 the delay and risks that would be presented by the further prosecution of the Action. It further
3 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
4 length negotiations. The Court therefore preliminarily finds that the Settlement is fair, adequate,
5 and reasonable when balanced against the probable outcome of further litigation and the
6 significant risks relating to certification, liability, and damages issues.

7 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$15,000, and
9 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
10 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
11 any service award, until the Final Approval Hearing.

12 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to
13 certification of a class for settlement purposes only. This stipulation will not be deemed
14 admissible in this or any other proceeding should this Settlement not become final. For settlement
15 purposes only, the Court conditionally certifies the following Class: "all individuals who worked
16 for Defendants in California as non-exempt employees at any time during the Class Period." The
17 Class Period is October 1, 2019 through August 12, 2021.

18 7. The Court concludes that, for settlement purposes only, the Class meets the
19 requirements for certification under section 382 of the California Code of Civil Procedure in that:
20 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
21 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
22 community of interest amongst the members of the Class with respect to the subject matter of the
23 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
24 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
25 action is superior to other available methods for the efficient resolution of this controversy; and (f)
26 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
27 representative of the Class.

1 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
2 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
3 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

4 9. The Court hereby approves, as to form and content, the Notice of Proposed
5 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
6 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
7 accurately inform the Class of all material elements of the proposed Settlement, of the Class
8 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
9 member’s right and opportunity to object to the Settlement. The Court further finds that the
10 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
11 and this Order meets the requirements of due process, is the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
13 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
14 the Agreement.

15 10. The Court hereby appoints ILYM Group as Settlement Administrator. No later
16 than fourteen (14) calendar days after preliminary approval of the Settlement by the Court,
17 Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the Class
18 Data. The Settlement Administrator will perform address updates and verifications as necessary
19 prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no
20 event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the
21 Class Notice Packets to all Class Members via first-class U.S. Mail.

22 11. The Court hereby preliminarily approves the proposed procedure for exclusion
23 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
24 from the Class as provided in the Class Notice by following the instructions for requesting
25 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
26 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
27 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
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1 response date for requests for exclusion will be extended an additional 15 days. Any such person
2 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
3 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
4 comment thereon. Class Members who have not requested exclusion shall be bound by all
5 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
6 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
7 of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of
8 the Settlement, the Aggrieved Employees will be paid their allocation of the PAGA Payment and
9 will remain subject to the release of the Released PAGA Claims in the Agreement regardless of
10 their request for exclusion.

11 12. Any Class Member who has not opted out may appear at the final approval hearing
12 and may object or express the Member's views regarding the Settlement, and may present
13 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
14 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
15 calendar days from the date of the mailing of the Class Notices to submit their written objections
16 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
17 Class Notice Packet is re-mailed, the response date for written objections will be extended an
18 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
19 make an oral objection.

20 13. A Final Approval Hearing shall be held before this Court on _____
21 _____ at _____ in Department 67 at the San Diego County Superior Court to
22 determine all necessary matters concerning the Settlement, including: whether the proposed
23 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
24 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
25 Order and Judgment should be entered herein; whether the plan of allocation contained in the
26 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
27 finally approve attorneys' fees and costs, the service award, and the expenses of the Settlement
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1 Administrator. All papers in support of the motion for final approval and the motion for attorneys'
2 fees, costs and service award, both to be heard at the Final Approval Hearing, shall be filed with
3 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

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

16 15. In the event the Settlement does not become effective in accordance with the terms
17 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
18 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
19 and the Parties shall revert to their respective positions as of before entering into the Agreement,
20 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
21 including all available defenses and affirmative defenses, and arguments that any claim in the
22 Action could not be certified as a class action and/or managed as a representative action. In such
23 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
24 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
25 the Agreement with respect to the effect of the Agreement if it is not approved.

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

3 17. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. EDDIE C. STURGEON
JUDGE, SUPERIOR COURT OF CALIFORNIA

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EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRADLEY LUTAT, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BARRY'S BOOTCAMP, LLC, a California
Limited Liability Company; BARRY'S SAN
DIEGO LLC, a California Limited Liability
Company; BARRY'S BAY AREA, LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00044771-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date:
Hearing Time:

Judge: Hon. Eddie C Sturgeon
Dept.: 67

Action Filed: December 7, 2020
Trial Date: None Set

1 The motion of Plaintiff Bradley Lutat (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendants Barry’s Bootcamp, LLC; Barry’s
3 Bootcamp San Diego, LLC; Barry’s Bay Area, LLC (“Defendants”) attorneys’ fees and costs,
4 service payment, and the fees of the Settlement Administrator duly came on for hearing on
5 _____ before the Honorable Eddie C. Sturgeon.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Seven Hundred Thousand
16 Dollars (\$700,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount the
20 Settlement, the significant risks relating to certification, liability, and damages issues, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

- 24 5. On _____, the Court granted preliminary approval of the Settlement. At
25 this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

27 **Notice to the Class**

1 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
2 by first class mail to members of the Class at their last known addresses on or about
3 _____. Mailing of the Class Notice to their last known addresses was the best notice
4 option under the circumstances and was reasonably calculated to communicate actual notice of the
5 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
6 fully and accurately informed the Class Members of all material elements of the proposed
7 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
8 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
9 laws of the State of California, the United States Constitution, due process and other applicable
10 law. The Class Notice fairly and adequately described the Settlement and provided Class
11 Members adequate instructions and a variety of means to obtain additional information.

12 7. The deadline for opting out of the Class or submitting written objections to the
13 Settlement was _____. There was an adequate interval between mailing of the Class
14 Notice and the response deadline to permit Class Members to choose what to do and act on their
15 decision. A full opportunity has been afforded to the Class Members to participate in this hearing,
16 and all Class Members and other persons wishing to be heard have been heard. Class Members
17 also have had a full and fair opportunity to exclude themselves from the proposed Settlement and
18 Class. Accordingly, the Court determines that all Class Members who did not timely and properly
19 submit a request for exclusion are bound by the Settlement and this Final Approval Order and
20 Judgment.

21 **Fairness Of Settlement**

22 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
23 48 Cal.App.4th 1794, 1801 (1996).

24 a. The settlement was reached through arm's-length bargaining between the
25 parties during an all-day mediation before Jeffrey Krivis, a respected and experienced mediator of
26 wage and hour class actions. There has been no collusion between the parties in reaching the
27 proposed settlement.

1 b. Plaintiff's investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. ____
6 objections were received. _____ requests for exclusion were received.

7 e. The participation rate was high. _____ Class Members will be mailed a
8 settlement payment, representing ____% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Attorneys' Fees and Costs**

17 11. An award of \$_____ for attorneys' fees, representing one-third of the
18 Gross Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable,
19 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
20 the results achieved by Class Counsel. The requested award has been supported by Class
21 Counsel's lodestar and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
25 Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in light
26 of the risks and burdens undertaken by the Plaintiff in the litigation, for his time and effort in
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1 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Settlement Administrator has documented \$ _____ in
9 fees and expenses, and this amount is reasonable in light of the work performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
15 Aggrieved Employees based on their respective pay periods worked during the PAGA Period
16 (October 1, 2019 through August 12, 2021). The Aggrieved Employees are all individuals who
17 worked for Defendants in California as non-exempt employees at any time during the PAGA
18 Period, which is December 3, 2018 through June 11, 2021. The Court finds this PAGA Payment
19 to be reasonable. All Aggrieved Employees will be sent their share of the PAGA Payment and
20 will be subject to the release of the Released PAGA Claims as set forth below, whether or not they
21 opt out of the Settlement.

22 **II.**

23 **ORDERS**

24 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

25 1. The certification of the Class for the purposes of settlement is confirmed. The
26 Class is defined as follows:

27 All individuals who worked for Defendants in California as non-exempt employees
28 at any time during the Class Period (October 1, 2019 through August 12, 2021).

2. All persons who meet the foregoing definition are members of the Class, except for those individuals who filed a valid request for exclusion (“opt out”) from the Class. [If there are opt outs - INSERT REFERENCE TO LIST OF PARTICIPATING CLASS MEMBERS (to be attached to the Settlement Administrator Declaration)].

3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the best interest of the Class.

4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and costs in the amount of \$_____. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendants, Plaintiff or members of the Class.

5. The payment of the Class Representative Service Payment in the amount of \$ _____ to the Plaintiff is approved.

6. The payment of \$_____ to the Settlement Administrator for their fees and expenses is approved.

7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance with the Agreement.

8. The Agreement and this Settlement are not an admission by Defendants, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,

1 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
2 Claims and/or the Released PAGA Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
7 to individual Class Members.

8 10. If the Agreement does not become final and effective in accordance with the terms
9 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
10 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
11 revert to their respective positions as of before entering into the Agreement, and expressly reserve
12 their respective rights regarding the prosecution and defense of this Action, including all available
13 defenses and affirmative defenses, and arguments that any claim in the Action could not be
14 certified as a class action and/or managed as a representative action.

15
16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiffs, and all members of the Class, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with the distribution of settlement benefits.

23 3. The Parties are authorized, without further approval from the Court, to agree to and
24 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
25 attached thereto which are consistent with this Final Approval Order and Judgment and as
26 approved by the Court.

1 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 5. Upon the Effective Date, Defendants shall receive a release from the Participating
4 Class Members of any and all claims that were pled or could have been pled based on the factual
5 allegations contained in the operative FAC, including claims under the Fair Labor Standards Act,
6 which occurred during the Class Period, and expressly excluding all other claims, including claims
7 for wrongful termination, unemployment insurance, disability, social security, and workers'
8 compensation, and claims outside of the Class Period ("Released Class Claims").

9 6. Upon the Effective Date, Defendant shall receive a release from the State of
10 California of all Released PAGA Claims. "Released PAGA Claims" means the claims for civil
11 penalties under California Labor Code Sections 2698 *et. seq.*, predicated on the applicable
12 California Labor Code violations that were pled or that could have been pled based on the factual
13 allegations contained in the LWDA Notice and/or the operative FAC which occurred during the
14 PAGA Period. The period of the Release Claims shall be for the PAGA Period. The Released
15 PAGA Claims do not include underlying wage and hour claims, claims for wrongful termination,
16 discrimination, unemployment insurance, disability and worker's compensation, and claims
17 outside of the PAGA Period, and do not include any claims that cannot be released as a matter of
18 law. The Released PAGA Claims are released against all Released Parties. The release of the
19 Released PAGA Claims shall be effective, regardless of whether an Aggrieved Employee
20 submitted a request for an exclusion from the Class.

21 7. As of the Effective Date, Plaintiff generally, releases and discharges the Released
22 Parties from all claims arising from their employment by Defendants ("Plaintiff's Released
23 Claims") as set forth fully in the Agreement.

24 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

25
26 Dated: _____

27
28 HON. EDDIE C. STURGEON
JUDGE, SUPERIOR COURT OF CALIFORNIA

FINAL APPROVAL ORDER AND JUDGMENT