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Attorneys for Plaintiff, on a representative basis and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New Jersey
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CVRI2101236
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: September 7, 2022
Time: 8:30 a.m.
Dept: 1

Complaint filed: March 9, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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DECLARATION OF BRIAN MANKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

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8. As set forth in the Declaration of Kevin Lee on behalf of the Settlement Administrator, Phoenix, the Net Settlement Amount is \$115,652.99, after the deductions set forth in the chart below:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 235,000.00
Attorneys' Fees (1/3)	\$ 78,333.33
Litigation Costs	\$ 11,013.68
Administrator Costs	\$ 5,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 115,652.99

10. The response from the Class Members was overwhelmingly positive, as 97.7% of the Class participated in the Settlement and there were no objections.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by an experienced wage and hour mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the fact that all but one Class Member elected to participate and no objections were submitted, the presumption of fairness is justified.

DECLARATION OF BRIAN MANKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL

possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendant vigorously challenged Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled over 250 class and representative actions. I have been appointed as class counsel and have successfully resolved approximately half of those cases (while many are ongoing and will successfully resolve in the future) while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
2 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

3 16. It has been my experience that the benchmark for attorney fee awards in
4 California state cases is one-third of a common settlement fund, which the CA Supreme Court
5 upheld in the *Laffitte v. Robert Half*, 1 Cal.5th 480 case. Here, in accordance with the Settlement
6 Agreement, Class Counsel is seeking a fee of \$78,333.33, which is one-third of the Settlement
7 Amount and multiples less than our lodestar.

8 17. There are several additional factors why I believe that the Court should award
9 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
10 resulted in a common fund settlement amount of \$235,000 on behalf of only 43 Class Members,
11 who will receive more than \$2,700 each on average and up to a maximum of over \$5,200 for
12 those employees that worked the longest during the Class Period. This is a very good result,
13 especially in light of the disputed nature of the claims alleged. This result was achieved by the
14 work and success of my office, who negotiated the settlement after extensive preparation,
15 investigation, mediation, and substantial work thereafter.

16 18. Second, Plaintiff faced significant risks going forward with the litigation. As
17 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
18 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
19 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
20 going forward with this litigation, and it would have taken several more years to realize any
21 recovery in this action along with the possibility of post-trial appeals.

22 19. Third, Class Counsel are experienced class action litigators. This experience and
23 expertise, combined with the high quality of work performed in this case, resulted in the
24 settlement achieved in this case.

25 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
26 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
27 substantial amount of time, money, and resources, and have done so since the inception of this
28 case without any payment or compensation. If Plaintiff had lost this case, we would have

1 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
2 my office, which is a small firm. While some cases result in a positive lodestar and some in a
3 negative lodestar like this case, if, despite these hardships and risks, the best my office could
4 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
5 the hardships and serious risks we face when litigating contingency fee cases, and would not be
6 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
7 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar like
8 this one, often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation-
9 coordination-preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study
10 discussed above, only one-third of class actions are successful, compared to two-thirds that are
11 defeated and result in no payment to the class members.

12 21. Fifth, the request for attorney's fees in the amount of one-third of the common
13 fund falls well within the norms accepted by state and federal courts in California in comparable
14 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
15 recovery under the common fund doctrine was approved by the California Supreme Court in
16 *Laffitte, supra*, 1 Cal.5th 480, 503.

17 22. For all of the above reasons, a common fund fee award here in the amount of one-
18 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

19 23. At my office, this case was primarily handled by my partner, Misty Lauby, while
20 I performed the role of the supervising attorney (although I primarily took over after mediation
21 so that Ms. Lauby can focus on handling pre-litigation cases). Ms. Lauby's experience is set
22 forth in her declaration, but in sum, she works exclusively with me on employment law matters
23 and has been in practice for 14 years. She bills at the hourly rate of \$650/hour. I have been in
24 practice for 21 years, with most of those years handling complex litigation and for over the last
25 15 years, my practice has almost entirely consisted of handling class action wage and hour
26 matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff and
27 Defense attorneys who handle complex class action litigation, if not somewhat lower.

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1 24. The hourly rates above are comparable to those of other attorneys with equal or
2 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
3 indicates that the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-
4 19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer Real
5 Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The
6 Real Rate Report is based on an enormous and statistically significant compilation of data. For
7 instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
8 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
9 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
10 partners and associates in major metropolitan areas. In 2018, for the southern California area,
11 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
12 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
13 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
14 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
15 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
16 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
17 fees billed by law firms.

18 25. The table below includes a summary of the hours worked, plus additional hours
19 that I will bill in finalizing and filing the motion, preparing for and attending the approval
20 hearing, and working with the administrator and defense counsel to issue checks, respond to
21 class members and finalize this matter. Our aggregated lodestar between Ms. Lauby and I is
22 approximately \$154,592.50, resulting in a ***significant negative multiplier***, as follows:

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Attorney/Role	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel</i> (21 years)	\$775	120.3	\$93,232.50
Misty M. Lauby <i>Partner/Handling Atty</i> (14 years)	\$650	94.4	\$61,360.00
Grand Total for All Attorneys		214.7	\$154,592.50

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediation fees, expert fees, and other incidental expenses directly related to this action. My firm's expenses through the final approval hearing are estimated to be \$11,013.68, which includes filing this motion, process/server costs, and service expenses (see the itemized statement of these costs attached hereto as Exhibit "D"). Since we agreed to cap our costs at \$15,000, and the savings will be placed in the Net Settlement Amount for distribution to the Participating Class Members. Defendant does not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARDS

28. I also believe that the service award of \$5,000 to the Class Representative is fair and warranted. Ms. Moreno came forward and worked directly with my office in analyzing the claims and documents, providing valuable information. (See her declaration for supporting information.) Indeed, her participation was an essential element of Defendant's desire to

mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. Of course, Plaintiff also took on various risks, including the risk that she could have been ordered to pay Defendant's costs if she lost and the risk of retaliation and being black-balled in the industry. Defendant does not oppose the requested service award.

SUBMISSION TO THE LWDA

29. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA. (See Exhibit "E").

EXHIBITS AND CONCLUSION

30. A true and correct copy of the Second Amended Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement") is attached hereto as Exhibit "A."

31. A true and correct copy of the Order granting preliminary approval is attached hereto as Exhibit "B."

32. A true and correct copy of the combined billing records for Ms. Lauby and me are attached as Exhibit "C."

33. Attached hereto as Exhibit "D" is a true and correct copy of an itemized statement of my firm's litigation costs.

34. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "E."

35. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys fees, costs, and enhancements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 15, 2022, at Riverside, California.

By: 
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant J.J. Kane Associates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New
Jersey Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CVRI2101236
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**SECOND AMENDED CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Second Amended Class Action Settlement Agreement and Release of Claims is
2 entered into by and between Plaintiff Elizabeth Moreno, individually, and on behalf of all others
3 similarly situated, and on behalf of the State of California, and Defendant J.J. Kane Associates,
4 Inc., and is approved by their respective counsel of record, subject to the terms and conditions
5 hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Moreno v. J.J. Kane*
8 *Associates, Inc., et al.*, Riverside County Superior Court, Case No. CVRI2101236.

9 2. "Aggrieved Employee(s)" means all current and former hourly paid employees
10 employed by Defendant in the State of California at any time during the PAGA Period.

11 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Second
12 Amended Class Action Settlement Agreement and Release of Claims.

13 4. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
14 Lauby LLP.

15 5. "Class Data" means a complete list that Defendant will diligently and in good
16 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
17 which shall include, for each Settlement Class Member, the individual's full name; last known
18 address; Social Security Number; total Weeks Worked during the PAGA Period and the Class
19 Period.

20 6. "Class Period" is deemed to be any time during the period of November 1, 2018,
21 through January 7, 2022.

22 7. "Class Representative" or "Plaintiff" means and refers to Plaintiff Elizabeth
23 Moreno.

24 8. "Complaint" refers to the class action and representative action complaint filed in
25 the Riverside Superior Court on March 9, 2021.

26 9. "Court" (or "Judge") means the California Superior Court, County of Riverside.

27 10. "Defendant" means and refers to J.J. Kane Associates, Inc.

28 11. "Defendant's Counsel" or "Defense Counsel" means and refers to Hill, Farrer &

Burrill LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Settlement Class Member timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.

14. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

15. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 47(c) below.

16. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b) below.

17. “Notice” means the notice of proposed class settlement that will be sent to the Settlement Class Members and which will advise each Settlement Class Member of the settlement and his or her estimated “Individual Settlement Amount” and will further advise of the setting of a Final Approval Hearing.

18. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection Form and the Dispute Form to be sent to all Settlement Class Members.

19. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed to the Settlement Class Members.

20. “Objecting Settlement Class Member” means a Settlement Class Member, other

1 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
2 to Paragraph 67(c) below.

3 21. "PAGA Penalties" means the amount that the Parties have agreed to pay to the
4 Labor and Workforce Development Agency ("LWDA") in connection with the California Labor
5 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"), as well
6 as the individual PAGA payment allocated to each Aggrieved Employee.

7 22. "PAGA Period" is deemed to be any time during the period of November 1, 2019,
8 through January 7, 2022.

9 23. "PAGA Released Claims" means any and all PAGA claims that Plaintiff alleged
10 against the Released Parties, on behalf of herself and State of California, based on the facts stated
11 in the operative Complaint in the Action and in the LWDA notice letter(s), including all PAGA
12 claims seeking civil penalties that premised upon (a) failure to pay minimum wages and regular
13 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods and pay meal period
14 premiums, (d) failure to provide rest breaks and pay rest period premiums, (e) failure to timely
15 pay wages each period, (f) failure to timely pay final wages, (g) failure to provide accurate
16 itemized wage statements; (h) failure to pay vested vacation; (i) failure to maintain employment
17 records; and (j) failure to comply with Labor Code section 1199. The time period governing the
18 PAGA Released Claims shall be any time during the PAGA Period.

19 24. "Participating Class Member" means any and all Settlement Class Members who
20 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
21 submitting timely valid Requests for Exclusion.

22 25. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class and Defendant,
23 collectively.

24 26. "Preliminary Approval Date" means the date the Court approves the Settlement
25 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

26 27. "Preliminary Approval Order" means the judicial Order to be entered by the
27 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
28 and providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt

1 out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
2 final approval hearing on the fairness of the terms of Settlement, including approval of attorneys'
3 fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not
4 object to Plaintiff's motion for preliminary approval but will be provided with an opportunity to
5 review and comment upon the motion before it is filed.

6 28. "QSF" means the Qualified Settlement Fund set up by the Settlement
7 Administrator for the benefit of the Final Settlement Class, and from which the settlement
8 payments shall be made.

9 29. "Released Class Claims" or "Class Claims" by the Participating Class Members
10 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
11 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
12 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
13 provide rest breaks, (e) failure to timely pay vested vacation upon separation of employment, (f)
14 failure to failure to timely pay wages each pay period and upon separation of employment, (g)
15 failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition,
16 and (i) all other claims for statutory penalties based on the facts or claims alleged in the
17 Complaint.

18 30. "Released Parties" means Defendant, and all of its past and present officers,
19 directors, and employees.

20 31. "Release Period" shall be the time period governing the Released Claims, which
21 shall be the same as the Class Period.

22 32. "Release" shall mean the release and discharge of the Released Claims by
23 Plaintiff and all Participating Class Members and their assignees.

24 33. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 67(a)
25 below.

26 34. "Service Payment" or "Service Award" means the amount approved by the Court
27 to be paid to Class Representative Elizabeth Moreno in addition to her Individual Settlement
28 Payment as a Participating Class Member and individual PAGA payment as an Aggrieved

Employee.

35. “Settlement Administrator” means and refers to Phoenix Class Action Administration, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

36. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

37. “Settlement Class” is defined all current and former hourly paid employees employed by Defendant in California at any time during the Class Period.

38. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

39. “Work Weeks” or “Weeks Worked” in the context of a Settlement Class Members means any and all work weeks during the Class Period during which the Settlement Class Member worked at least one day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day for Defendant.

B. General Terms

40. Plaintiff filed her class action and representative complaint in the Court on March 9, 2021. The operative Complaint alleges Class Claims and representative PAGA Claims, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay vested vacation

1 upon separation of employment, (f) failure to failure to timely pay wages each period and upon
2 separation of employment, (g) failure to provide accurate itemized wage statements, and (h)
3 unfair and unlawful competition, and (i) related claims under PAGA.

4 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is
5 not suitable for class certification.

6 42. The Class Representative believes she can proceed with the representative and
7 class claims, that the Action is meritorious, and that class certification is appropriate.

8 43. The Parties have conducted a thorough investigation into the facts of the Action.
9 This includes conducting an extensive exchange of informal discovery, including a sampling of
10 payroll and timekeeping records for Settlement Class Members. Class Counsel is both
11 knowledgeable about and has done extensive research with respect to the applicable law and
12 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
13 investigation of the Class Members' claims against Defendant. Based on the foregoing data and
14 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
15 settlement with Defendant for the consideration and on the terms set forth in this Settlement
16 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
17 light of all known facts and circumstances, including the risk of significant delay and uncertainty
18 associated with litigation, various defenses asserted by Defendant, and numerous potential
19 appellate issues.

20 44. On November 8, 2021, Plaintiff and Defendant participated in a full-day
21 mediation with Todd Smith, a highly regarded and well-respected employment mediator. At the
22 conclusion of mediation and extensive arms-length negotiations, the Parties reached this
23 Settlement.

24 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
25 to be performed or judgment to be entered pursuant to the terms of the Settlement and
26 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
27 any statute or law or liability on the claims or allegations in the Action.
28

1 46. Stipulation for Class Certification. For settlement purposes only, Defendant will
2 stipulate that the Settlement Class Members described herein who do not Request Exclusion
3 from the Settlement Class may be conditionally certified as a settlement class. This stipulation to
4 certification is in no way an admission that class action certification is proper and shall not be
5 admissible in this or in any other action except for the sole purposes of enforcing this
6 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
7 stipulation to class certification as part of the Settlement shall become null and void ab initio and
8 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
9 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
10 rights and declares that it would continue to oppose class certification and the substantive merits
11 of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights
12 and declares that she will continue to pursue class certification and a trial should the Court fail to
13 issue Final Approval.

14 **C. Terms of Settlement**

15 47. The financial terms of the Settlement are as follows:

16 (a) Gross Settlement Amount: The Parties agree to settle this Action for two
17 hundred thirty-five thousand dollars and zero cents (\$235,000.00) (the "Settlement Amount").
18 The Settlement Amount is the maximum amount that will be paid, and includes Individual
19 Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment
20 to the Class Representative, all Settlement Administration Costs, and PAGA Penalties.
21 Defendant will separately pay its share of payroll taxes on the portion of the Individual
22 Settlement Amounts allocated to wages.

23 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
24 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
25 Representative as awarded by the Court, the Settlement Administration Costs, and PAGA
26 Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or
27 Settlement Administrator Costs, or either increases or decreases the amount allocated to the
28 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to

1 the Settlement Class.

2 (c) Individual Settlement Amounts for the Settlement Class: The Individual
3 Settlement Amount for each Settlement Class Member will be calculated by the Settlement
4 Administrator using the Class Data provided by Defendant as follows. Compensable workweeks
5 will be all Weeks Worked by the Settlement Class Members during the Class Period. The
6 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
7 Settlement Class Members into the Net Settlement Amount to determine a per work week value
8 (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks
9 Worked by a Participating Class Member during the Class Period to determine the distribution
10 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
11 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for
12 each Participating Class Member so that the amount actually distributed to Participating Class
13 Members equals 100% of the Net Settlement Amount.

14 (d) Allocation of Individual Settlement Amounts: The Individual Settlement
15 Payments to Participating Class Members will be allocated as follows: One-third (33.33%) will
16 be allocated as wages subject to withholding of all applicable local, state and federal taxes; and
17 two thirds (66.67%) will be allocated for interest and statutory penalties (pursuant to, e.g.,
18 California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The
19 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
20 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
21 1099 with respect to the penalties and interest allocations.

22 (e) Service Payment to Class Representative: The amount, if any, awarded to
23 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
24 exceed \$5,000, in exchange for the service that Plaintiff performed on behalf of the Class.
25 Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of
26 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
27 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
28 applicable taxes on this payment. The Parties agree that any amount awarded as the Service

1 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
2 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
3 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
4 Class Members.

5 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
6 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
7 Settlement Amount (\$78,333.33), plus reasonable litigation costs not to exceed \$15,000
8 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class
9 Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee
10 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
11 Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
12 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
13 difference shall be added to the Net Settlement Amount to be distributed to the Participating
14 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
15 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
16 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
17 of attorneys' fees and costs awarded by the Court.

18 (g) Settlement Administration Costs: The fees and other charges of the
19 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$5,000 unless
20 approved by all Parties and the Court.

21 (h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA
22 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
23 amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
24 Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will be paid to the Aggrieved
25 Employees on a Work Week basis, which will be treated entirely as civil penalties and shall be
26 reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA
27 of the Settlement.

1 (i) Tax Liability: Class Counsel and Defendant make no representations as to
2 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the
3 Settlement Class Members are not relying on any statement or representation by Class Counsel
4 or Defendant in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
5 understand and agree that they will be solely responsible for the payment of any taxes and
6 penalties assessed on their respective Settlement Amounts described herein. Forms 1099 will be
7 distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
8 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
9 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
10 Section may be modified in a manner to bring Defendant into compliance with any such changes.
11 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
12 will be solely responsible for the payment of any taxes and penalties assessed on their respective
13 payments described herein.

14 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
15 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
16 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
17 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
18 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
19 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
20 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
21 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
22 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
23 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
24 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
25 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
26 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
27 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
28 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT

1 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
3 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
4 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
5 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
6 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
7 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
8 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
9 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
11 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
12 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
13 receive an Individual Settlement Amount or a portion of the PAGA Penalties. Distributions, in
14 the form of Individual Settlement Amounts and the portion of the PAGA Penalties payable to the
15 Aggrieved Employees, will be made directly to each Participating Class Member and Aggrieved
16 Employee. The Settlement Administrator shall be responsible for accurately and timely
17 reporting and remittance obligations with respect to unclaimed funds as a result of a Participating
18 Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the
19 Settlement by the check cashing deadline, as set forth herein.

20 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
21 reasonable and will so represent same to the Court.

22 **D. Release by the Participating Class Members**

23 48. Upon entry of the Final Approval Order and Defendant funding of the Settlement
24 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff
25 and the Participating Class Members will forever completely release and discharge the Released
26 Parties from the Released Class Claims for the Release Period.

27 49. Each Participating Class Member will be deemed to have made the foregoing
28 Release as if by manually signing it.

1 50. Class Representative, on behalf of herself and the Settlement Class, acknowledges
2 and agrees that the claims for unpaid wages and untimely payment of wages in the Action are
3 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
4 them. Class Representative, on behalf of herself and the Settlement Class, acknowledges and
5 agrees that California Labor Code Section 206.5 is not applicable to the Parties or Settlement.
6 Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not require the
7 execution of any release of any claim or right on account of wages due, or to become due, or
8 made as an advance on wages to be earned, unless payment of those wages has been made.”

9 **E. Release of PAGA Claims**

10 51. Upon entry of the Final Approval Order and Defendant funding of the Settlement
11 Amount, Plaintiff – in her individual capacity and on behalf of the State of California and
12 LWDA – shall completely release and discharge the Released Parties from the PAGA Released
13 Claims for the PAGA Period.

14 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
15 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
16 releasing the PAGA Released Claims.

17 53. It is the intent of the Parties that the Final Approval Order shall have full
18 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

19 **F. Release by Plaintiff and Class Representative**

20 54. Except for Plaintiff’s separate “Individual Claims” (which shall be released
21 through a separate individual agreement), as a material inducement to Defendants to enter into
22 this Settlement Agreement, Class Representative does hereby, for herself and for her respective
23 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
24 conservators, guardians, personal representatives, and assigns forever and completely release and
25 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
26 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
27 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
28 civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of

any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

55. Without limiting the generality of the foregoing, this general release by Plaintiff includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code, except for the Individual Claims.

56. Plaintiff agrees that there is a risk that any injury that she may have suffered by reason of the Released Parties' relationship with her might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representative expressly
10 acknowledges that this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims that Class Representative knew of, as well as all claims that she does not
12 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
13 period from the beginning of time to the execution of this Settlement Agreement, and that this
14 Settlement Agreement contemplates the extinguishment of any such Class Representative's
15 claims. Notwithstanding the above, the general release by Class Representative shall not extend
16 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
17 that may not be released by law.

18 **G. Interim Stay of Proceedings**

19 58. Pending completion of all of the prerequisites necessary to effectuate this
20 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
21 except such as are necessary to effectuate the Settlement.

22 **H. Notice Process**

23 59. Appointment of Settlement Administrator. The Parties have agreed to the
24 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
25 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
26 independently reviewing and verifying documentation associated with any claims or opt-out
27 requests, resolving any disputes regarding the calculation or application of the formula for
28 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and
performing such other tasks as set forth herein or as the Parties mutually agree or that the Court

orders.

60. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

62. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data. For all Settlement Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection Form and a Dispute Form. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

1 63. Returned Notice Packets. The Settlement Administrator will take steps to ensure
2 that the Notice Packet is received by all Settlement Class Members, including utilization of the
3 National Change of Address Database maintained by the United States Postal Service to review
4 the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
5 Member for whom an updated address is located within ten (10) calendar days following both
6 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
7 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
8 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
9 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

10 64. Presumption Regarding Receipt of Notice Packet. It will be conclusively
11 presumed that if an envelope has not been returned to Settlement Administrator by the Notice
12 Response Deadline that the Settlement Class Member received the Notice Packet.

13 65. Disputes Regarding Class Data. Class Members are deemed to participate in the
14 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA
15 Released Claims. The Notice will inform Class Members of his/her estimated Individual
16 Settlement Amount and the number of weeks he/she worked during the Class Period and the
17 PAGA Period. Class Members may dispute their Weeks Worked if they disagree they worked
18 more weeks in the Class Period and/or PAGA Period in California than Defendant's records
19 show by timely submitting evidence to the Settlement Administrator. Defendant's records will
20 be presumed determinative absent reliable evidence to rebut Defendant's records, but the
21 Settlement Administrator will evaluate the evidence submitted by the Class Member and provide
22 the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in
23 good faith about the evidence to determine the Class Member's actual number of Work Weeks
24 and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable
25 to agree, they agree to submit the dispute to the Court to render a final decision. Class Members
26 and Aggrieved Employees will have until the Notice Response Deadline to dispute Weeks
27 Worked, object or opt out, unless extended by the Court.
28

1 66. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
3 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

4 67. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
6 request exclusion from the Class Claims portion of the Settlement. The Notice Packet will
7 inform the Settlement Class Members of the Court-established deadlines for filing objections or
8 requesting exclusion from the Settlement in accordance with the following guidelines:

9 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
10 Member, other than Plaintiff, may request to be excluded from the Settlement Class by
11 completing the Request for Exclusion Form provided within the Notice Packet. The Request for
12 Exclusion Form must be mailed to the Settlement Administrator and postmarked on or before the
13 Notice Response Deadline in order to be timely, unless the Parties otherwise agree in writing.
14 Any such Request must be made in accordance with the terms set forth in the Notice Packet.
15 The Settlement Administrator shall attach each Request for Exclusion to its declaration of due
16 diligence and file with the Court prior to the Final Approval Hearing. Any Settlement Class
17 Member who timely requests exclusion in compliance with these requirements: (i) will not have
18 any rights under this Agreement, including the right to object, appeal or comment on the
19 Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will
20 not be bound by this Agreement, or the Judgment. Any Settlement Class Member who is an
21 Aggrieved Employee who requests timely exclusion will still be subject to the PAGA Released
22 Claims to the fullest extent permitted by law and receive a share of PAGA Penalties. All Parties
23 and their counsel, including Defendant's respective members, member managers, owners,
24 officers, and directors, shall not encourage or solicit opt-outs or objections, directly or indirectly,
25 through any means.

26 (b) Binding Effect on Final Settlement Class Members. Except for those
27 Settlement Class Members who exclude themselves in compliance with the procedures set forth
28 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for

1 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
2 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
3 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
4 reasonableness, and adequacy of the Settlement.

5 (c) Objections to Settlement. Any Settlement Class Member, other than
6 Plaintiff, who does not submit a valid and timely Request for Exclusion may object to the terms
7 of this Agreement by completing the Objection Form provided within the Notice Packet. Any
8 Settlement Class Member that intends to object must mail the Objection Form to the Settlement
9 Administrator. The Objection Form must be postmarked on or before the Notice Response
10 Deadline in order to be timely, unless the Parties otherwise agree in writing. Additionally, any
11 objection must be made in accordance with the terms set forth in the Notice Packet. The
12 Settlement Administrator shall provide any objections to Class Counsel and Defense Counsel
13 within three (3) days of receipt, and the Settlement Administrator shall attach the same to its
14 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
15 Participating Class Member who files an objection remains eligible to receive monetary
16 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
17 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
18 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
19 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
20 and properly intervening or filing a motion to vacate the judgment under Code of Civil
21 Procedure § 663.

22 (d) Failure to Object. Any Settlement Class Member who does not timely and
23 properly become a party of record by intervening or filing a motion to vacate the judgment
24 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
25 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
26 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

27 (e) Responses to Objections. Counsel for the Parties may file a response to
28 any objections submitted by Objecting Settlement Class Members at least five (5) court days

1 before the date of the Final Approval Hearing.

2 (f) Settlement Class Members will have until the Notice Response Deadline
3 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
4 Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what
5 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
6 request of Class Counsel or Defense Counsel.

7 68. Funding of the Settlement Amount. Defendant shall deposit the Gross Settlement
8 Amount with the Settlement Administrator within fifteen (15) days after the Effective Date.

9 69. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
10 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual
11 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
12 Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment
13 to the LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of the PAGA
14 Penalties, and will pay itself the Settlement Administration Costs.

15 70. Deadline for Cashing Settlement Checks. Participating Class Members and
16 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
17 Administrator to cash their settlement checks. The release will be binding upon all Participating
18 Class Members who do not cash their checks within the 180-day period. In the event that any
19 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
20 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
21 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
22 Counsel of the results. If a new address is located by these means, the Administrator will have
23 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
24 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
25 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
26 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
27 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
28 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop

1 payment on such check. If the check in question has not been negotiated prior to the stop
2 payment order, the Settlement Administrator will issue a replacement check.

3 a. If any Participating Class Member's check is not cashed within the time
4 periods noted above, the check will be void and a stop-payment will be issued,
5 and the Settlement Administrator shall issue the unclaimed funds to the California
6 State Controller's Office in the name of the Class Member.

7 b. If any Aggrieved Employee's check is not cashed within the time periods
8 noted above, the check will be void and a stop-payment will be issued, and the
9 Settlement Administrator shall issue the unclaimed funds to the California Labor
10 Workforce and Development Agency.

11 **I. Duties of the Parties Prior to the Court's Approval**

12 71. Promptly after execution of this Agreement, Plaintiff will move the Court for
13 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
14 accomplishing the following:

15 (a) Scheduling the Final Approval Hearing on the issue of whether this
16 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
17 and a hearing on fees, costs and the Service Payments;

18 (b) Approving as to form and content the proposed Notice Packet;

19 (c) Directing the mailing of the Notice Packet by first class mail to the
20 Settlement Class Members;

21 (d) Preliminarily approving this Settlement;

22 (e) Preliminarily certifying the class for purposes of this Settlement; and

23 (f) Advising the LWDA of the proposed Settlement.

24 **J. Duties of the Parties Following Court's Final Approval**

25 72. In connection with the Final Approval Hearing provided for in this Agreement,
26 Class Counsel shall submit a proposed Final Approval Order:

27 (a) Approving the Settlement, adjudging the terms thereof to be fair,
28 reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

73. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

74. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

75. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

76. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

77. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

78. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and

1 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
2 preliminary and final approval of the settlement, and the final entry of judgment.

3 79. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Agreement.

7 80. No Admission. Defendant denies any and all liability to Plaintiff and/or any
8 Settlement Class Member and/or Aggrieved Employee in this Action, as to any and all causes of
9 action that were asserted or that might have been asserted in this Action. Nonetheless,
10 Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further
11 substantial expense and the inconvenience and distraction of protracted and burdensome
12 litigation. Defendant has taken into account the uncertainty and risks inherent in litigation, and
13 without conceding any infirmity in the defenses that it has asserted or could assert against
14 Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in
15 the manner and upon the terms and conditions set forth in this Agreement.

16 81. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
18 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
19 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Agreement with the intention of avoiding further disputes and litigation with the attendant
21 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
22 related documents such as the notices, and motions for preliminary and final approval, shall,
23 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
24 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
25 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
26 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
27 approved, the stipulation will be of no force or effect.
28

1 82. No Publicity. The Parties will not publicize the Settlement or disclose it to third
2 parties prior to the Court granting Preliminary Approval, except as required or necessary to
3 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
4 Class Representative agree that they will not discuss the Settlement with the media, any
5 settlement and verdict reporting service, any social media postings or other Internet postings.
6 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
7 other case materials in the Action related to seeking and obtaining Court approval of this
8 Settlement and the related awards of attorneys' fees and costs, or to communications with
9 Settlement Class Members or their representatives about this Settlement, including through the
10 posting of Court-filed documents on Class Counsel's websites for access solely by the
11 Settlement Class Members, or to prevent the Parties or their representatives from communicating
12 with financial or legal advisors regarding the Settlement. In response to any media inquiry,
13 Class Counsel may state only that the Action has been settled on terms mutually agreeable to the
14 Parties.

15 83. Notices. Unless otherwise specifically provided herein, all notices, demands or
16 other communications given hereunder shall be in writing and shall be deemed to have been duly
17 given as of the third business day after mailing by United States registered or certified mail,
18 return receipt requested, addressed:

19 *To the Settlement Class:*

20 Brian J. Mankin
21 **brian@lmlfirm.com**
22 Lauby, Mankin & Lauby LLP
23 4590 Allstate Drive
24 Riverside, CA 92501
25 Tel: (951) 320-1444 | Fax: (951) 320-1445
26
27
28

To Defendant:

James A. Bowles
jbowles@hillfarrer.com
Richard S. Zuniga
rzuniga@hillfarrer.com
HILL, FARRER & BURRILL LLP
One California Plaza
300 S. Grand Avenue, 37th Floor
Los Angeles, CA 90071-3147
Tel: (213) 620-0460 | Fax: (213) 624-4840

84. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

85. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

86. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

87. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve

any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

88. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

89. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

90. Binding On Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice Packet will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

92. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

///

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1 Dated: April 20, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

2 

3 Elizabeth Moreno (Apr 20, 2022 10:40 PDT)

4 Elizabeth Moreno

5
6 Dated: April ___, 2022

DEFENDANT J.J. KANE ASSOCIATES, INC.

7
8
9 By: _____

10 **APPROVED AS TO FORM:**

11
12 Dated: April 20, 2022

CLASS COUNSEL

13 LAUBY, MANKIN & LAUBY LLP

14 

15 Brian J. Mankin

16 Attorneys for Plaintiff

17 Dated: April ___, 2022

DEFENSE COUNSEL:

18 HILL, FARRER & BURRILL LLP

19
20 _____
James A. Bowles, Esq.

21 Richard Zuniga, Esq.

22 Attorneys for Defendant

23
24 END OF DOCUMENT

1 Dated: April __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 Elizabeth Moreno

5
6 Dated: April 18th, 2022

DEFENDANT J.J. KANE ASSOCIATES, INC.

7
8 

9 By: General Counsel

10 **APPROVED AS TO FORM:**

11
12 Dated: April __, 2022

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

13
14
15 Brian J. Mankin
Attorneys for Plaintiff

16
17 Dated: April 19, 2022

DEFENSE COUNSEL:
HILL, FARRER & BURRILL LLP

18
19
20 
21 James A. Bowles, Esq.
22 Richard Zuniga, Esq.
Attorneys for Defendant

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24
25
26
27
28
END OF DOCUMENT

EXHIBIT “B”

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 09 2022

 **L. Howell**

1 Brian J. Mankin, Esq. [CSB No. 216228]
2 *brian@lmlfirm.com*
3 Misty M. Lauby, Esq. [CSB No. 243009]
4 *misty@lmlfirm.com*
5 LAUBY, MANKIN & LAUBY LLP
6 4590 Allstate Drive
7 Riverside, CA 92501
8 T: (951) 320-1444
9 F: (951) 320-1445

10 Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF RIVERSIDE
14

15 ELIZABETH MORENO, individually, on a
16 representative basis, and on behalf of all
17 others similarly situated;

18 Plaintiff,

19 vs.

20 J.J. KANE ASSOCIATES, INC., a New
21 Jersey Corporation; and DOES 1 through 10,
22 inclusive;

23 Defendants.
24
25
26
27
28

Case No.: CVRI2101236
[Assigned to Hon. Judge Craig Riemer, Dept 1, for all purposes]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL AND:**

- (1) CONDITIONALLY CERTIFYING
THE CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- (2) ORDERING THE DISTRIBUTION
OF THE NOTICE PACKET TO THE
CLASS; AND**
- (3) SETTING A FINAL FAIRNESS
HEARING FOR FINAL APPROVAL
OF THE SETTLEMENT**

Complaint filed: 3/9/21

1 Having considered the Second Amended Class Action Settlement Agreement and Release
2 of Claims ("Settlement Agreement"), the Memorandum of Points and Authorities in Support of
3 the Motion for Preliminary Approval of Class Action Settlement, all documents and legal
4 authorities in support thereof, and for good cause appearing therefor, IT IS HEREBY
5 ORDERED:

6 1. The class is conditionally certified for settlement purposes only and is defined as
7 follows: all current and former nonexempt (hourly paid) employees employed by Defendant J.J.
8 Kane Associates, Inc., in California at any time from November 1, 2018, through January 7,
9 2022 (the "Class Period").

10 2. The Court has determined that sufficient evidence has been presented to grant
11 preliminary approval of the Settlement Agreement, as the terms appear to be presumptively
12 valid, proper and fall within the range of a fair, reasonable, and adequate settlement, subject to a
13 final determination at the Final Approval Hearing.

14 3. Plaintiff Elizabeth Moreno is appointed as the class representative for settlement
15 purposes only. Brian Mankin and Misty Lauby of Lauby Mankin & Lauby LLP are appointed as
16 Class Counsel.

17 4. The Court approves, as to form and content, the Notice of Settlement of Class
18 Action (the "Class Notice" attached hereto as Exhibit A), as well as the Exclusion Form (Exhibit
19 B), the Objection Form (Exhibit C) and Dispute Form (Exhibit D) that the Class Members may
20 use. The Court further finds the Class Notice, Exclusion Form, Objection Form and Dispute
21 Form fairly apprises^{CR} the Class Members of the terms of the proposed settlement and of their
22 options in connection with the settlement.

23 5. Class Members who wish to request exclusion, object to the Settlement or dispute
24 Weeks Worked via the Exclusion Form and/or Objection Form and/or Dispute Form are directed
25 to mail the appropriate form above to the Settlement Administrator (and not to the Court) within
26 the time periods set forth in the Class Notice.

27 6. Phoenix Class Action Administrators is approved to act as the Settlement
28 Administrator and is directed to fulfill all of the duties and services set forth in the Settlement

1 Agreement, including but not limited to paragraphs 59 through 70. The Settlement
2 Administrator shall file a declaration concurrently with the Motion for Final Approval,
3 authenticating a copy of every Objection Form and Exclusion Form received by the Settlement
4 Administrator. Furthermore, in the event of a continuance of the hearing of the motion for final
5 approval, the Settlement Administrator must give notice of such continuance to any objecting
6 party.

7 7. The Settlement Administrator is directed to mail the Notice, Request for
8 Exclusion Form, Objection Form and Dispute Form by first class mail to the Settlement Class
9 Members in English in accordance with the Settlement Agreement and schedule set forth below.

10 8. The Court finds that the deadlines and method set forth in the Settlement
11 Agreement for the mailing of the Notice and related forms described herein meet the
12 requirements of due process, provide the best notice practicable under the circumstances,
13 constitute due and sufficient notice to all persons entitled to notice, and otherwise satisfy the
14 requirements of California law.

15 9. The Settlement Agreement shall be kept by the Court for review by Settlement
16 Class Members.

17 10. The following dates shall govern for purposes of this settlement:

18 May 10, 2022	Preliminary Approval (PA) hearing
19 June 7, 2022 20 (28 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement 21 Class Members.
22 July 22, 2022 23 (45 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the 24 settlement.
25 16 court days before Final Approval 26 hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service 27 payments.

9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately September 7, 2022 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.

11. A final approval hearing shall be held in this Court on September 7, 2022 at 8:30 a.m. or on _____ at _____ am/pm to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3) the amount of the service awards awarded to the class representatives.

12. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever.

13. The Court may, for good cause shown, extend any of the deadlines set forth in this Order. If any Class Member submits an objection to the settlement and the Final Approval Hearing is continued, either Class Counsel or the Settlement Administrator are directed to give notice of the new hearing date to the objecting party; and

14. In the event that the Settlement Agreement does not receive final approval or the Effective Date of the Settlement does not occur, this Order shall be rendered null and void and shall be vacated.

Date: May 8, 2022


Hon. Craig Riemer

EXHIBIT "A"

NOTICE OF SETTLEMENT OF CLASS ACTION

Elizabeth Moreno v. J.J. Kane Associates, Inc.
Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

To: All current and former hourly paid employees employed by J.J. Kane Associates, Inc., in California at some time between November 1, 2018, and January 7, 2022 (the "Class"):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on INSERT DATE to address whether the proposed settlement should be approved ("Final Approval Hearing"). You may be entitled to receive a payment under the terms of this class action settlement contained in the Amended Class Action Settlement Agreement and Release of Claims ("Settlement Agreement").

IDENTIFYING INFORMATION

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$INSERT AMOUNT as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of weeks during which you worked for J.J. Kane Associates, Inc., ("J.J. Kane" or "Defendant") in California between November 1, 2018, and January 7, 2022 (the "Class Period"), as discussed in more detail in Section IV. Your eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may "opt-out" of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by <u> </u> , 2022 (see Section VI for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section IV, and (2) be barred from filing an objection to the settlement. You may still receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and will release your claims for such civil penalties in exchange for such payment.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by <u> </u> , 2022 (see Section VI for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working below is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Settlement Administrator (see Section IV for more details on how to submit a Dispute Form). Defendant's records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the "Settlement") in *Elizabeth Moreno v. J.J. Kane Associates, Inc.*, Superior Court of the State California, County of Riverside, Case No. CVRI2101236 (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

J.J. Kane's records show that you were employed in California as an hourly paid employee at some time during the Class Period. The Court ordered this Notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by J.J. Kane as an hourly employee in California at some time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On March 9, 2021, Plaintiff and Class Representative Elizabeth Moreno, through her attorneys ("Class Counsel"), filed a class and representative action lawsuit against Defendant for alleged wage and hour violations on behalf of Class Members. The Lawsuit alleges that Defendant violated various California Labor Code provisions, California Business and Professions Code Section 17200, and the applicable Industrial Welfare Commission ("IWC") Wage Order. In summary, Plaintiff alleges that Defendant failed to pay minimum wages, failed to pay overtime wages, failed to provide meal periods, failed to provide rest breaks, failed to timely pay wages each period and upon separation of employment, and failed to provide accurate itemized wage statements. All of these claims are called the "Class Claims." The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency ("LWDA"). The civil penalty claims are called "PAGA Claims" and the relevant period for PAGA claims is November 1, 2019, through January 7, 2022 (the "PAGA Period").

J.J. Kane has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, J.J. Kane is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Rather, J.J. Kane has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff's claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiff have concluded that it is in their respective best interests and the interests of the Class to settle the Lawsuit on the terms summarized in this Notice. After extensive investigation and review of information provided by Defendant to Class Counsel, the Settlement was reached following an arm's length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Defendant, the risk the Court may not certify this case to proceed as a class action, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still performing services for Defendant, this Settlement will not affect your status. California law strictly prohibits unlawful retaliation. Further, Defendant will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who represents the Class?

The Court has designated Plaintiff Elizabeth Moreno to serve as Class Representative in this lawsuit. The attorneys and law firm that serve as Class Counsel are identified and can be reached as follows:

Attorneys for the Class Members

Brian Mankin, Esq.
brian@lmlfirm.com
Misty Lauby, Esq.
misty@lmlfirm.com
Lauby, Mankin & Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court granted preliminary approval of the Settlement. Class Members who do not opt out of the Settlement (the "Settlement Class"), pursuant to the procedures set forth in this Notice, will be mailed a settlement check, and in exchange, will be bound by the terms of the Settlement and release of certain wage and penalty claims against Defendant.

Without admitting any wrongdoing, Defendant have agreed to pay \$235,000 (the "Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration to act as the "Settlement Administrator," who is sending this Notice Packet to you and will perform many other duties relating to the Settlement. Under the Settlement, \$5,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency and Aggrieved Employees. The Labor Code Private Attorneys General Act of 2004 ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$20,000 of the Settlement Amount will be

allocated to Plaintiff's claim under the PAGA. Of this amount, \$15,000 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$5,000 will be divided between all Aggrieved Employees on a Weeks Worked basis. "Aggrieved Employees" is defined to include all current and former hourly paid employees employed by Defendant in the State of California at any time during the PAGA Period of November 1, 2019, through January 7, 2022. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$5,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the lawsuit on behalf of the Class Members on a contingency fee basis (meaning that Class Counsel has not been paid any money to date and would only receive its attorneys' fees if the case succeeded) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will collectively ask for fees of one-third of the Settlement Amount (\$78,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the lawsuit.

Service Payments to Class Representative. Class Counsel will ask the Court to award Class Representative Elizabeth Moreno a service payment in the amount of \$5,000 to compensate her for her service, risks undertaken, and extra work provided on behalf of the Class Members.

Calculation of Individual Settlement Amounts to Class Members. After deducting the amounts above, the balance of the Settlement Amount will form the Net Settlement Amount (or "NSA") for distribution to the "Participating Class Members" (i.e., those who did not timely request to be excluded). The Settlement Administrator will calculate each Class Members' pro-rata share of the NSA based on the number of weeks worked by each Class Member during the Class Period. The dollars per compensable Work Week will be calculated by dividing the total Weeks Worked by Settlement Class Members into the Net Settlement Amount to determine a per pay period value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member during the Class Period to determine the Individual Settlement Amount for each Participating Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100 percent of the Net Settlement Amount. While the range of recovery will differ for Class Members, it is estimated that the average payment will be \$xxx.xx, the high payment will be \$x,xxx.xx, and the low payment will be \$xx.xx. Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Workweeks Worked (i.e., meaning you worked at least one hour during a workweek) during the Class Period and PAGA Period will be calculated from Defendant's records. If you disagree with the numbers reported above, you may submit the enclosed Dispute Form to the Settlement Administrator on or before [INSERT DATE 45 Days After Mailing], with documentation to establish the number of weeks you claim to have worked for Defendant in California between November 1, 2018, through January 7, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member. If the Parties are unable to agree, the Court will render a final decision.

Timing of Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Class Members who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share (if any) of PAGA civil penalties for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. The anticipated payment date (assuming the Settlement receives final approval and there are no objections or appeals, which may delay the payments) is approximately [INSERT DATE 30 Days After Final Approval]. Participating Class Members and/or Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. If a Participating Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date. If an Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and his/her share will be reissued to the California Labor Workforce Development Agency, pursuant to Order of the Court.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, J.J. Kane and its counsel, and Class Counsel cannot provide

tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon Final Approval of the Settlement, all Participating Class Members will release and discharge, for the time period from November 1, 2018, through January 7, 2022, Defendant, and all of its past and present officers, directors, and employees (collectively, the “Released Parties”) from all claims stated in the operative Complaint and those solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay vested vacation upon separation of employment, (f) failure to failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition, and (i) all other claims for statutory penalties based on the facts or claims alleged in the Complaint. The release of Class Claims will be subject to Court Approval.

Release of PAGA Claims. Upon Final Approval of the Settlement, Plaintiff on behalf of herself, the State of California and the LWDA shall release the Released Parties from all claims based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter(s), including all PAGA claims seeking civil penalties that were premised upon (a) failure to pay minimum wages and regular wages, (b) failure to pay overtime wages, (c) failure to provide meal periods and pay meal period premiums, (d) failure to provide rest breaks and pay rest period premiums, (e) failure to timely pay wages each period, (f) failure to timely pay final wages, (g) failure to provide accurate itemized wage statements; (h) failure to pay vested vacation; (i) failure to maintain employment records; and (j) failure to comply with Labor Code section 1199 (“PAGA Released Claims”). The time period governing the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released Claims will be subject to Court approval.

Waiver of Labor Code Sections 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Amounts constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Amounts. These sections provide in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. How do I receive a payment?

You are automatically included as a Settlement Class Member to receive an Individual Settlement Amount, provided that you do not exercise your right to opt-out as explained below. You do not need to take any further action to receive a payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What are my rights and options?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by completing, signing, and mailing the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before **INSERT DATE**. Any person who files a timely Request for Exclusion from the from the Class Claims in the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments from the Net Settlement Amount; (3) will preserve the right to pursue the Released Claims subject to applicable statutes of limitations, and (4) will not be bound by this Settlement, or the Judgment. However, all Aggrieved Employees will receive their respective share of PAGA Penalties regardless of whether they file a Request for Exclusion as a Class Member.
- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations), to the Settlement Administrator. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed on the Objection Form, **postmarked** on or before **INSERT DATE**. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. **Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate. To do so, you should submit the Dispute Form with any supporting evidence. Do not submit the Exclusion or Objection Form if you merely want to dispute the Work Weeks credited.

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you are a Class Member and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. When is the court hearing and what is it for?

On INSERT FINAL APPROVAL HEARING DATE, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service awards. This hearing may be continued or rescheduled by the Court without further notice to the Class. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

IX. Where can I get more information?

If you have questions about this Notice, the enclosed Request for Exclusion Form and Objection Form, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Settlement Administrator for more information or to request that a copy of this Notice and request for Exclusion Form and Objection Form be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted above in Section III. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Second Supplemental Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2022 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2101236) where requested, and click "Search."

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT "B"

REQUEST FOR EXCLUSION FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside

Case No. CVRI2101236

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE – DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing and completing the below, I agree to the following:

I do NOT want to participate in the settlement in *Elizabeth Moreno v. J.J. Kane Associates, Inc.* (Riverside Superior Court Case No. CVRI2101236). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than my share of PAGA Penalties if I qualify as an Aggrieved Employee (with further detail provided in the attached Notice of Settlement of Class Action).

Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

INSERT SETTLEMENT ADMINISTRATOR ADDRESS

EXHIBIT "C"

OBJECTION FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside

Case No. CVRI2101236

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

**YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING
THE REASONS WHY YOU OBJECT TO THE SETTLEMENT.**

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Elizabeth Moreno v. J.J. Kane Associates, Inc.*, on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

INSERT SETTLEMENT ADMINISTRATOR ADDRESS

EXHIBIT "D"

DISPUTE FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.
Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

Please verify and/or complete any missing identifying information:

[NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]

According to the records of J.J. Kane Associates, Inc. ("J.J. Kane"):

- (a) You worked for J.J. Kane for ___ workweeks as a Class Member between November 1, 2018, through January 7, 2022 (the "Class Period"); and
- (b) You worked for J.J. Kane for ___ workweeks as an Aggrieved Employee between November 1, 2019, through January 7, 2022 (the "PAGA Period").

DO YOU DISAGREE WITH ITEMS (a)-(b) AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐ **NO: STOP HERE -- DO NOT RETURN THIS FORM.**

☐ **YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING THE REASONS WHY YOU BELIEVE YOU SHOULD BE CREDITED WITH ADDITIONAL WORKWEEKS WORKED AND INCLUDE COPIES (NOT ORIGINALS) OF SUPPORTING DOCUMENTATION.**

Please state why you believe that you should be credited with more Workweeks Worked than stated on the Notice and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination if you are entitled to additional Workweeks:

Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO
LATER THAN [INSERT DEADLINE].

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “C”

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel</i> <i>(21 years)</i>	\$775	120.3	\$93,232.50
Misty M. Lauby <i>Partner/Handling Attorney</i> <i>(14 years)</i>	\$650	94.4	\$61,360.00
Grand Total for All Attorneys		214.7	\$154,592.50

Moreno vs. JJ Kane

LML Time Records

Date	Attorney	Description	Hours	Rate	Amount
4/29/2021	Brian J. Mankin	Received notification from MML that Def would like to mediate this case and she'd like my participation. Case development evaluation of file, including review of client documents, LWDA letter, Complaint and court files.	2.40	\$775	\$ 1,860.00
7/15/2021	Brian J. Mankin	Case status review.	0.30	\$775	\$ 232.50
11/4/2021	Brian J. Mankin	Review and further draft mediation brief; evaluate numerous communications with expert and expert's analysis in preparation for mediation; further draft and advise regarding the damages analysis.	4.20	\$775	\$ 3,255.00
11/8/2021	Brian J. Mankin	Attend mediation via Zoom; followed by preparation of MOU with all parties.	9.70	\$775	\$ 7,517.50
11/15/2021	Brian J. Mankin	Multiple correspondences with OC re the settlement documents and joint statement.	0.60	\$775	\$ 465.00
12/1/2021	Brian J. Mankin	Begin drafting the long form settlement agreement.	6.40	\$775	\$ 4,960.00
12/2/2021	Brian J. Mankin	Continue drafting the S.A., Class Notice, objection/exclusion forms, and send same to OC.	7.10	\$775	\$ 5,502.50
12/3/2021	Brian J. Mankin	Multiple correspondences with OC re the hearing on the MPA.	0.50	\$775	\$ 387.50
12/20/2021	Brian J. Mankin	Review OC's changes to the settlement documents, and finalize same.	2.30	\$775	\$ 1,782.50
12/21/2021	Brian J. Mankin	Begin drafting Motion for PA; numerous calls/emails with OC and Administrators re: bids, declarations, etc as required by the CMO	8.40	\$775	\$ 6,510.00
12/22/2021	Brian J. Mankin	Continue draftin the Motion for PA, my declaration, compliance chart and other things.	7.80	\$775	\$ 6,045.00
12/30/2021	Brian J. Mankin	Telephone call with OC re the settlement documents and further revise the pertinent papers.	1.70	\$775	\$ 1,317.50
1/4/2022	Brian J. Mankin	Multiple correspondences with OC re further changes to the settlement document; further revise same.	2.10	\$775	\$ 1,627.50
1/28/2022	Brian J. Mankin	Review Court's tentative ruling; multiple correspondences with OC and MML re same.	0.60	\$775	\$ 465.00
1/31/2022	Brian J. Mankin	Attend oral argument; multiple correspondences with OC re same.	0.80	\$775	\$ 620.00
2/23/2022	Brian J. Mankin	Review and revise OC's amended agreement	0.70	\$775	\$ 542.50
2/28/2022	Brian J. Mankin	Draft supplemental declaration, and class notice and order	2.40	\$775	\$ 1,860.00
3/3/2022	Brian J. Mankin	Multiple correspondences with OC re the supplemental documents.	0.50	\$775	\$ 387.50
4/4/2022	Brian J. Mankin	Review Court's tentative ruling; multiple correspondences with OC and MML re same.	0.60	\$775	\$ 465.00
4/12/2022	Brian J. Mankin	Attend oral argument; multiple correspondences with OC re same and prepare second amended versions	2.90	\$775	\$ 2,247.50
4/20/2022	Brian J. Mankin	Prepare second supplemental declaration	1.10	\$775	\$ 852.50
5/9/2022	Brian J. Mankin	Review Court's order; multiple correspondences with OC and administrator re starting the notice process	0.40	\$775	\$ 310.00
7/22/2022	Brian J. Mankin	Review weekly report and status of the notice process	0.30	\$775	\$ 232.50
7/28/2022	Brian J. Mankin	Review admin declaration ISO MFA	0.30	\$775	\$ 232.50
8/2/2022	Brian J. Mankin	Begin preparing Motion for FA.	7.50	\$775	\$ 5,812.50
8/3/2022	Brian J. Mankin	Continue preparing motion, order, my declaration and lodestar summary	8.70	\$775	\$ 6,742.50
	Brian J. Mankin	<i>Estimated (8/4/22 through Final Approval)</i> : Finalize Approval Motion and Related Documents; Respond to questions/comments from the Court and prepare any necessary supplemental briefing; Attend Approval Hearing.	25	\$775	\$ 19,375.00

Moreno vs. JJ Kane

LML Time Records

Date	Attorney	Description	Hours	Rate	Amount
	Brian J. Mankin	<i>Estimated (after Final Approval)</i> : Work with OC and administrator to complete Settlement and mailings of checks/letter; responding to employees questions; submitting final declaration and report of disbursement; attending final disbursement hearing	15	\$775	\$ 11,625.00
Subtotals for Brian J. Mankin			120.3		\$ 93,232.50
10/28/2020	Misty M. Lauby	Review Elizabeth Moreno potential client intake sheet and paystubs; research Ken Porter Auctions and JJ Kane; lengthy call with PNC re claims and nature of the business.	3.20	\$650	\$ 2,080.00
10/29/2020	Misty M. Lauby	Internal call with BJM to discuss claims; draft retainer agreements, mediaiton disclosure, and authorization to inspect.	1.40	\$650	\$ 910.00
10/29/2020	Misty M. Lauby	Legal research re potential Labor Code violations.	2.60	\$650	\$ 1,690.00
11/2/2020	Misty M. Lauby	Draft demand for documents, demand to preserve evidence, and LWDA letter.	5.70	\$650	\$ 3,705.00
11/24/2020	Misty M. Lauby	Review letter from OC and attached client's personnel file.	2.60	\$650	\$ 1,690.00
11/25/2020	Misty M. Lauby	Review email from OC attaching additional payroll records.	1.30	\$650	\$ 845.00
3/5/2021	Misty M. Lauby	Draft Complaint	6.80	\$650	\$ 4,420.00
4/28/2021	Misty M. Lauby	Draft Joint Statement	1.60	\$650	\$ 1,040.00
5/6/2021	Misty M. Lauby	TC with OC re mediation and mediator selection.	0.20	\$650	\$ 130.00
5/6/2021	Misty M. Lauby	TC with client re status and mediation	0.70	\$650	\$ 455.00
7/21/2021	Misty M. Lauby	Draft letter to OC re informal discovery requests for mediation	2.40	\$650	\$ 1,560.00
7/27/2021	Misty M. Lauby	TC with OC re questions related to informal discovery requests	0.30	\$650	\$ 195.00
9/1/2021	Misty M. Lauby	Email to OC re status of informal discovery	0.10	\$650	\$ 65.00
9/13/2021	Misty M. Lauby	Review draft agreement prepared by OC re sharing data for mediation only	0.30	\$650	\$ 195.00
9/28/2021	Misty M. Lauby	Email to client re call re mediaiton	0.10	\$650	\$ 65.00
9/29/2021	Misty M. Lauby	Review letter from OC re data points for mediation	0.70	\$650	\$ 455.00
9/29/2021	Misty M. Lauby	Review documents uploaded by OC for mediation	4.80	\$650	\$ 3,120.00
10/8/2021	Misty M. Lauby	Call with client re mediation	0.60	\$650	\$ 390.00
10/25/2021	Misty M. Lauby	Review additional documents uploaded by OC for mediation	2.20	\$650	\$ 1,430.00
10/26/2021	Misty M. Lauby	Draft email to expert re retention, complaint, data and scope of assignment	0.40	\$650	\$ 260.00
11/2/2021	Misty M. Lauby	Review expert's analysis of defense data in preparation for mediation	3.30	\$650	\$ 2,145.00
11/2/2021	Misty M. Lauby	TC to expert re request for rounding examples	0.20	\$650	\$ 130.00
11/2/2021	Misty M. Lauby	Lengthy telephone conversation with client re mediation and individual claims	1.60	\$650	\$ 1,040.00
11/3/2021	Misty M. Lauby	Review rounding examples provided by expert	0.20	\$650	\$ 130.00
11/3/2021	Misty M. Lauby	Draft Mediation Brief	6.60	\$650	\$ 4,290.00
11/4/2021	Misty M. Lauby	Continue drafting Mediation Brief	7.40	\$650	\$ 4,810.00
11/5/2021	Misty M. Lauby	Prepare damages calculation	4.30	\$650	\$ 2,795.00
11/7/2021	Misty M. Lauby	Review file and prepare for mediation	1.80	\$650	\$ 1,170.00
11/8/2021	Misty M. Lauby	Attend Mediation	8.40	\$650	\$ 5,460.00
11/8/2021	Misty M. Lauby	Draft MOU, call client to go over terms and detailed discussion regarding the approval process, arrange for signatures from all parties	3.10	\$650	\$ 2,015.00
12/23/2021	Misty M. Lauby	Review settelement agreement prepared by BJM for review with client	1.20	\$650	\$ 780.00
12/23/2021	Misty M. Lauby	TC with client re Settlement Agreement	0.60	\$650	\$ 390.00
1/3/2022	Misty M. Lauby	Draft claims and Kullar sections of MPA	5.60	\$650	\$ 3,640.00

Moreno vs. JJ Kane

LML Time Records

Date	Attorney	Description	Hours	Rate	Amount
1/6/2022	Misty M. Lauby	Revise compliance chart for MPA	3.40	\$650	\$ 2,210.00
1/28/2022	Misty M. Lauby	Review tentative ruling on MPA and Brian's email regarding same	1.60	\$650	\$ 1,040.00
1/30/2022	Misty M. Lauby	Extensive review of tentative and MPA papers; draft thorough response to tentative and thoughts on how to handle	4.20	\$650	\$ 2,730.00
3/9/2022	Misty M. Lauby	Draft supplemental declaration in support of MPA	0.60	\$650	\$ 390.00
3/10/2022	Misty M. Lauby	TC to client re amended settlement agreement	0.40	\$650	\$ 260.00
4/4/2022	Misty M. Lauby	Review minute order on MPA	0.10	\$650	\$ 65.00
8/4/2022	Misty M. Lauby	Draft declaration of client and MML ISO MFA	1.80	\$650	\$ 1,170.00
Subtotals for Misty M. Lauby			94.40		\$ 61,360.00

EXHIBIT “D”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00444 Moreno v JJ Kane
Assoc (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Elizabeth Moreno

14000-00444 Moreno v JJ Kane Assoc

11-03-2020	Approved	Non-Billable	E112 Court fees	Aguilera, Sophia J.	75.00	0.00	1.00	75.00
Order #ORD-000086628 to submit case to LWDA Case Number: LWDA-CM-81371-20								
11-30-2020	Approved	Non-Billable	E101 Copying	Aguilera, Sophia J.	0.20	0.00	24.00	4.80
24 copies @ \$0.20 for Letters to employer								
11-30-2020	Approved	Non-Billable	E108 Postage	Aguilera, Sophia J.	8.00	0.00	1.00	8.00
Postage for the month of November 2020								
03-16-2021	Approved	Non-Billable	E112 Court fees	Aguilera, Sophia J.	1,450.00	0.00	1.00	1,450.00
RVSC Submission ID #10643370 to file Complaint								
04-08-2021	Approved	Non-Billable	Attorney Service	Aguilera, Sophia J.	151.70	0.00	1.00	151.70
Bosco Inv 5531351 Serve: J.J. Kane Associates, Inc., a New Jersey Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Counsel; Notice of Case Management Conference (To: Misty Martleigh Lauby); Notice of Case Management Conference (To: Elizabeth Moreno); Notice of Case Management Conference (To: J.J. Kane Associates, Inc.); Notice of Department Assignment; ADR Court: Riverside County Superior Court - Central District								
04-14-2021	Approved	Non-Billable	Attorney Service	Aguilera, Sophia J.	118.45	0.00	1.00	118.45
Bosco Inv 5545869 Serve: J.J. Kane Associates, Inc., a New Jersey Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Counsel; Notice of Case Management Conference (to: Misty Martleigh Lauby); Notice of Case Management Conference (to: Elizabeth Moreno) Notice of Case Management Conference (to: J.J. Kane Associates, Inc.) Notice of Department Assignment; ADR Court: Riverside County Superior Court - Central District								
08-09-2021	Approved	Non-Billable	E125 Mediation fees	Aguilera, Monica A	7,000.00	0.00	1.00	7,000.00
Todd Smith Inv for Mediation 11-8-2021								
11-10-2021	Approved	Non-Billable	E119 Experts	Aguilera, Monica A	1,912.50	0.00	1.00	1,912.50
Berger Consulting Group Inv #5175								
11-16-2021	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	2.00	0.00	1.00	2.00
RVSC Submission ID #10999022 to file joint statement								
01-11-2022	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	78.04	0.00	1.00	78.04
OneLegal Order #17477615 to file MPA								

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00444 Moreno v JJ Kane

Assoc (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Elizabeth Moreno</u> <u>14000-00444 Moreno v JJ Kane Assoc</u>									
01-11-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	16.27	0.00	1.00	16.27
OneLegal Order #17484911 to refile dec and proposed order									
03-18-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	16.27	0.00	1.00	16.27
OneLegal Order #17836751 - file supp decs and prop order									
03-22-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	12.87	0.00	1.00	12.87
OneLegal Order# 17881906 - resubmit proposed order									
04-25-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	16.78	0.00	1.00	16.78
OneLegal Order# 18093823 - file 2nd supplemental docs for MPA									
05-09-2022	Approved		Non-Billable	E112 Court fees	Grossi, Tracie L.	1.00	0.00	1.00	1.00
RV/SC fee for copy of minute order									
08-15-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	150.00	0.00	1.00	150.00

Estimated fees to file MFA and supporting docs via OneLegal.

Project Total 11,013.68
Client Total 11,013.68
Grand Total 11,013.68

EXHIBIT “E”