

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)
lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 NICOLE SHAVER, and all others similarly situated

(Additional attorneys for parties on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

12 **(UNLIMITED JURISDICTION)**

13 NICOLE SHAVER, on behalf of herself and all
14 others similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
16 employees” under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 G & C SWAN, INC., a California corporation;
20 and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. CIVSB2103630

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: February 17, 2021

Dept: S-26, The Honorable Joseph
T. Ortiz

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
NICOLE SHAVER, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

ALLYSON K. THOMPSON (SBN 235933)
athompson@kdvlaw.com
KAUFMAN DOLOWICH & VOLUCK LLP
11111 Santa Monica Bl.
Suite 850
Los Angeles CA 90025
Telephone: (310) 775-6531
Facsimile: (310) 575-9720

Attorneys for Defendant(s),
G & C SWAN, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Nicole Shaver (“Plaintiff”) and defendant G & C Swan, Inc. (“G & C Swan,
3 Inc.”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually
4 as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 G & C Swan, Inc. captioned “Nicole Shaver, on behalf of herself, and all others similarly situated,
8 and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code
9 Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. G & C Swan, Inc., a California
10 corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. CIVSB2103630
11 initiated on February 17, 2021 and pending in Superior Court of the State of California, County
of San Bernardino.

12 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
13 agreed to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be
15 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as an hourly, non-exempt employee who worked for Defendant during the PAGA
19 Period.

20 1.5. “Class” means all of Defendant’s hourly, non-exempt California employees and
21 interns during the Class Period.

22 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
Haines of United Employees Law Group.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
24 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
25 expenses, respectively, incurred to prosecute the Action.

26 1.8. “Class Data” means Class Member identifying information in Defendant’s
27 possession including the Class Member’s name, last-known mailing address, Social Security

number, and number of Class Period Work Weeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from February 17, 2017 to the date of the Court’s preliminary approval of the Settlement or the date the Class Work Weeks reaches 19,924, whichever is earlier.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of San Bernardino.

1.16. “Defendant” means named Defendant G & C Swan, Inc.

1.17. “Defense Counsel” means Allyson K. Thompson of Kaufman Dolowich & Voluck LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the

1 Settlement.

2 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
3 Approval of the Settlement.

4 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
5 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

6 1.22. “Gross Settlement Amount” means \$650,000.00 which is the total amount
7 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
8 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
9 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
Service Payment and the Administrator’s Expenses.

10 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
11 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
during the Class Period.

12 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
13 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during
14 the PAGA Period.

15 1.25. “Judgment” means the judgment entered by the Court based upon the Final
16 Approval.

17 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
agency entitled, under Labor Code section 2699, subd. (i).

18 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
19 LWDA under Labor Code section 2699, subd. (i).

20 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
21 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
22 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
23 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

24 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
25 Settlement by sending the Administrator a valid and timely Request for Exclusion.

26 1.30. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
27 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the

1 Objection form (Exhibit D) in English with Spanish translations.

2 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
3 worked for Defendant for at least one day during the PAGA Period.

4 1.32. "PAGA Period" means the period from December 11, 2019 to the date of the
5 Court's preliminary approval of the Settlement or the date the Class Work Weeks reaches 19,924,
6 whichever is earlier.

7 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

8 1.34. "PAGA Notice" means Plaintiff's December 11, 2020 letter to Defendant and the
9 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

10 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
11 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the
12 75% to LWDA (\$18,750.00) in settlement of PAGA claims.

13 1.36. "Participating Class Member" means a Class Member who does not submit a valid
14 and timely Request for Exclusion from the Settlement.

15 1.37. "Plaintiff" means Nicole Shaver, the named plaintiff in the Action.

16 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
17 of the Settlement.

18 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
19 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
20 attached as Exhibit E.

21 1.40. "Released Class Claims" means the claims being released as described in
22 Paragraph 6.2 below.

23 1.41. "Released PAGA Claims" means the claims being released as described in
24 Paragraph 6.2 below.

25 1.42. "Released Parties" means: Defendant and each of its officers, directors, employees
26 and agents.

27 1.43. "Request for Exclusion" means a Class Member's submission of a written request
28 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
Participate in Settlement form is attached as Exhibit B.

1.44. "Response Deadline" means 60 days after the Administrator mails Notice to Class
Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)

1 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
2 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
3 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
4 the Response Deadline has expired.

5 1.45. “Settlement” means the disposition of the Action effected by this Agreement and
6 the Judgment.

7 1.46. “Workweek” means any week during which a Class Member worked for
8 Defendant for at least one day, during the Class Period.

9 1.47. A Work Week Dispute form is attached as Exhibit C.

10 **2. RECITALS.**

11 2.1. On February 17, 2021, Plaintiff commenced this Action by filing a Complaint
12 alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful
13 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
14 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
15 timely pay wages, failure to maintain required payroll records, and related claims. On February
16 17, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant
17 for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal
18 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
19 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
20 payroll records, and related allegations. The First Amended Complaint is the operative complaint
21 in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative
22 Complaint, denies any failure to comply with the laws identified in in the Operative Complaint
23 and denies any and all liability for the causes of action alleged.

24 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
25 notice to Defendant and the LWDA by sending the PAGA Notice.

26 2.3. On February 03, 2022, the Parties participated in an all-day mediation presided
27 over by The Honorable Jay Gandhi (ret.) and, on August 3, 2023, the Parties participated in an
28 all-day mediation presided over by The Honorable Daniel Buckley (ret.). These mediations led to
this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery,

1 the number of comparable employees, the number of workweeks, the number of pay periods,
2 average rates of pay, sample time records, sample payroll records, sample schedules, written
3 policies, financial records, and related information. Plaintiff's investigation was sufficient to
4 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
5 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
130 ("*Dunk/Kullar*").

6 2.5. The Court has not granted class certification.

7 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
8 of any other pending matter or action asserting claims that will be extinguished or affected by the
9 Settlement.

10 **3. MONETARY TERMS.**

11 3.1. Gross Settlement Amount. Defendant promises to pay \$650,000.00 and no more
12 as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed
13 on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the
14 Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of
15 this Agreement. The Administrator will disburse the entire Gross Settlement Amount without
16 asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as
a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

17 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
18 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
19 the Court in the Final Approval:

20 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
21 Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and any
22 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
23 Member). Defendant will not oppose Plaintiff's request for a Class Representative Service
24 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
25 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
26 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
27 If the Court approves a Class Representative Service Payment less than the amount requested, the
Administrator will retain the remainder in the Net Settlement Amount. The Administrator will

1 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
2 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
4 33.33%, which is currently estimated to be \$216,666.64 and a Class Counsel Litigation Expenses
5 Payment of not more than \$40,000.00. Defendant will not oppose requests for these payments
6 provided that do not exceed these amounts. Payment of Class Counsel Fees comes directly from
7 the Gross Settlement Amount. Plaintiff and/or Class Counsel will file a motion for Class Counsel
8 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
9 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
10 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
11 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
12 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
13 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
14 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
15 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
16 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
17 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
18 division or sharing of any of these Payments.

19 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
20 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
21 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
22 Administrator will retain the remainder in the Net Settlement Amount.

23 3.2.4. To Each Participating Class Member: An Individual Class Payment
24 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
25 by all Participating Class Members during the Class Period and (b) multiplying the result by each
26 Participating Class Member's Work Weeks.

27 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
28 each Participating Class Member's Individual Class Payment will be allocated to settlement of
wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage

1 Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on
2 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
3 employee taxes owed on their Individual Class Payment.

4 3.2.4.2. Effect of Non-Participating Class Members on Calculation
5 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
6 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
7 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

8 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
9 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
10 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
11 Payments.

12 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
13 by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$1,000.00
14 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
15 PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay
16 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
17 Individual PAGA Payment.

18 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
19 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
20 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

21 **4. SETTLEMENT FUNDING AND PAYMENTS.**

22 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
23 its records to date, Defendant estimates there are 112 Class Members who collectively worked a
24 total of 19,924 Work Weeks, and 54 of Aggrieved Employees who worked a total 5,099 of PAGA
25 Pay Periods.

26 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
27 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
28 the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator

1 employees who need access to the Class Data to effect and perform under this Agreement.
2 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
3 Data omitted class member identifying information and to provide corrected or updated Class
4 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
5 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
6 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
omitted Class Data.

7 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
8 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
9 taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

10 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
11 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
12 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
13 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
14 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
15 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
16 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
Payments.

17 4.4.1. The Administrator will issue checks for the Individual Class Payments
18 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
19 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
20 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
21 not cashed by the void date. The Administrator will send checks for Individual Settlement
22 Payments to all Participating Class Members (including those for whom Notice Packet was
23 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
24 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
25 Employees (including those for whom Notice Packet was returned undelivered). The
26 Administrator may send Participating Class Members a single check combining the Individual
Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
must update the recipients' mailing addresses using the National Change of Address Database.

27 4.4.2. The Administrator must conduct a Class Member Address Search for all

1 other Class Members whose checks are returned undelivered without USPS forwarding address.
2 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
3 forwarding address provided or to an address ascertained through the Class Member Address
4 Search. The Administrator need not take further steps to deliver checks to Class Members whose
5 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
6 replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

7 4.4.3. For any Class Member whose Individual Class Payment check or
8 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
9 shall transmit the funds represented by such checks to the California Controller's Unclaimed
10 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
the requirements of California Code of Civil Procedure Section 384, subd. (b).

11 4.4.4. The payment of Individual Class Payments and Individual PAGA
12 Payments shall not obligate Defendant to confer any additional benefits or make any additional
13 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
14 this Agreement.

15 **5. [OMITTED]**

16 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
17 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
18 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
against all Released Parties as follows:

19 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
20 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
21 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
22 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
23 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
24 that were, or reasonably could have been, alleged based on facts contained in the Operative
25 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
26 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
27 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
benefits, social security benefits, workers' compensation benefits that arose at any time, or based

1 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
2 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
3 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
4 notwithstanding such different or additional facts or Plaintiff's discovery of them.

5 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
6 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
7 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

12 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
13 All Participating Class Members, on behalf of themselves and their respective former and present
14 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
15 Parties from all claims stated in the Operative Complaint and those based solely upon the facts
16 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
17 Participating Class Members do not release any other claims, including claims for vested benefits,
18 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
19 insurance, disability, social security, workers' compensation, or claims based on facts occurring
20 outside the Class Period.

21 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
22 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
23 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
24 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

25 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
26 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
27 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
28 attached as Exhibit E.

1 7.1 Defendant's Declaration in Support of Preliminary Approval. Within ten (10)
2 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel
3 a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any
4 actual or potential conflicts of interest with the Administrator. In their Declarations, Defense
5 Counsel and Defendant shall aver that they are not aware of any other pending matter or action
6 asserting claims that will be extinguished or adversely affected by the Settlement.

7 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
8 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
9 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
10 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
11 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
12 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
13 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
14 attesting to its willingness to serve; competency; operative procedures for protecting the security
15 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
16 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
17 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
18 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
19 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
20 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
21 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
22 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
23 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
24 subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to
25 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
26 potential conflict of interest with Class Members, or the Administrator. In their Declarations,
27 Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending
28 matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the

1 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
2 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
3 Approval to the Administrator.

4 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
5 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
6 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
7 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
8 Preliminary Approval or conditions Preliminary Approval on any material change to this
9 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
10 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
11 otherwise satisfy the Court's concerns.

11 **8. SETTLEMENT ADMINISTRATION.**

12 8.1 Selection of Administrator. The Parties have jointly selected Administrator to
13 serve as the Administrator and verified that, as a condition of appointment, Administrator agrees
14 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
15 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
16 represent that they have no interest or relationship, financial or otherwise, with the Administrator
17 other than a professional relationship arising out of prior experiences administering settlements.

18 8.2 Employer Identification Number. The Administrator shall have and use its own
19 Employer Identification Number for purposes of calculating payroll tax withholdings and
20 providing reports state and federal tax authorities.

21 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
22 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
23 Regulation section 468B-1.

24 8.4 Notice to Class Members.

25 8.4.1 No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the number of
27 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

28 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
14 days after receiving the Class Data, the Administrator will send to all Class Members identified

1 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
2 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
3 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
4 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
5 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
6 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
addresses using the National Change of Address database.

7 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
8 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
9 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
10 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
11 the Notice Packet to the most current address obtained. The Administrator has no obligation to
12 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
returned by the USPS a second time.

13 8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
14 Weeks and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional
15 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
16 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
with the re-mailed Notice Packet.

17 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
18 otherwise discovers any persons who believe they should have been included in the Class Data
19 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
20 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
21 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
22 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
23 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

24 **8.5 Requests for Exclusion (Opt-Outs).**

25 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
26 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
27 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an

1 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
2 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
3 the Class Member's election to be excluded from the Settlement and includes the Class Member's
4 name, address and email address or telephone number. To be valid, a Request for Exclusion must
5 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

6 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
7 because it fails to contain all the information specified in the Class Notice. The Administrator
8 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
9 identity of the person as a Class Member and the Class Member's desire to be excluded. The
10 Administrator's determination shall be final and not appealable or otherwise susceptible to
11 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
12 the Administrator may demand additional proof of the Class Member's identity. The
13 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

14 8.5.3 Every Class Member who does not submit a timely and valid Request for
15 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
16 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
17 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
Participating Class Member actually receives the Class Notice or objects to the Settlement.

18 8.5.4 Every Class Member who submits a valid and timely Request for
19 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
20 or have the right to object to the class action components of the Settlement. Aggrieved Employees
21 are eligible for an Individual PAGA Payment.

22 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
23 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
24 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
25 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known
26 as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose
27 but is not required. The Class Member may challenge the allocation by communicating with the
Administrator via fax, email or mail. The Administrator must encourage the challenging Class

1 Member to submit supporting documentation. In the absence of any contrary documentation, the
2 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
3 correct so long as they are consistent with the Class Data. The Administrator's determination of
4 each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not
5 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
6 copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and
7 Class Counsel and the Administrator's determination the challenges.

8 8.7 Objections to Settlement.

9 8.7.1 Only Participating Class Members may object to the class action
10 components of the Settlement and/or this Agreement, including contesting the fairness of the
11 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
12 Litigation Expenses Payment and/or Class Representative Service Payment.

13 8.7.2 Participating Class Members may send written objections to the
14 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
15 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
16 Hearing. A Participating Class Member who elects to send a written objection to the
17 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
18 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
19 The Objection form attached as Exhibit D may be used for this purpose but is not required.

20 8.7.3 Non-Participating Class Members have no right to object to any of the class
21 action components of the Settlement.

22 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
23 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

24 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
25 establish and maintain and use an internet website to post information of interest to Class
26 Members including the date, time and location for the Final Approval Hearing and copies of the
27 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
28 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
Approval and the Judgment. The Administrator will also maintain and monitor an email address
and a toll-free telephone number to receive Class Member calls, faxes and emails.

1 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
2 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
3 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
4 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
5 and other identifying information of Class Members who have timely submitted valid Requests
6 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
7 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
8 Exclusion from Settlement submitted (whether valid or invalid).

9 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
10 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
11 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
12 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks
13 and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments
14 and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide
15 the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all
16 Requests for Exclusion and objections received.

17 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
18 authority to address and make final decisions consistent with the terms of this Agreement on all
19 Class Member challenges over the calculation of Work Weeks and/or Pay Periods. The
20 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

21 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
22 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
23 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
24 for filing in Court attesting to its due diligence and compliance with all of its obligations under
25 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
26 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
27 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
28 number of written objections and attach the Exclusion List. The Administrator will supplement
its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
for filing the Administrator’s declaration(s) in Court.

 8.8.6 Final Report by Administrator. Within 10 days after the Administrator

1 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
2 and Defense Counsel with a final report detailing its disbursements by employee identification
3 number only of all payments made under this Agreement. At least 15 days before any deadline
4 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
5 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
6 payments required under this Agreement. Class Counsel is responsible for filing the
7 Administrator's declaration in Court.

8 **9. CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the
9 date of this Settlement Agreement, (1) there are 112 Class Members and 19,924 Total Work
10 Weeks during the Class period and (2) there were 54 Aggrieved Employees who worked 5,099
11 Pay Periods during the PAGA Period.

12 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
13 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
14 Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree
15 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
16 whatsoever, and that neither Party will have any further obligation to perform under this
17 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
18 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
19 Court of its election to withdraw not later than 7 days after the Administrator sends the final
20 Exclusion List to Defense Counsel; late elections will have no effect.

21 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
22 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
23 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
24 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
25 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
26 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
27 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
28 disagreements concerning the Motion for Final Approval.

1 11.1 Response to Objections. Each Party retains the right to respond to any objection
2 raised by a Participating Class Member, including the right to file responsive documents in Court
3 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
4 by the Court.

5 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
6 Approval on any material change to the Settlement (including, but not limited to, the scope of
7 release to be granted by Class Members), the Parties will expeditiously work together in good
8 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
9 Approval. The Court's decision to award less than the amounts requested for the Class
10 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
11 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
12 modification to the Agreement within the meaning of this paragraph.

13 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
14 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
15 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
16 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

17 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
18 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
19 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
20 respective counsel, and all Participating Class Members who did not object to the Settlement as
21 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
22 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
23 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
24 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
25 Parties' obligations to perform under this Agreement will be suspended until such time as the
26 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
27 the amount of the Net Settlement Amount.

28 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
material modification of this Agreement (including, but not limited to, the scope of release to be
granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless

1 expeditiously work together in good faith to address the appellate court's concerns and to obtain
2 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
3 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
4 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
5 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
6 as long as the Gross Settlement Amount remains unchanged.

7 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
8 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
9 amended judgment.

10 **13. ADDITIONAL PROVISIONS.**

11 13.1 No Admission of Liability, Class Certification or Representative Manageability
12 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
13 claims. Nothing in this Agreement is intended or should be construed as an admission by
14 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
15 has any liability for any claims asserted; nor should it be intended or construed as an admission
16 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
17 certification and representative treatment is for purposes of this Settlement only. If, for any reason
18 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
19 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
20 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
21 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
22 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
23 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
24 Settlement and this Agreement).

25 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
26 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
27 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
28 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
Agreement directly or indirectly, specifically or generally, to any person, corporation, association,

1 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
2 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
3 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
4 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
5 government agency.

6 Each Party agrees to immediately notify each other Party of any judicial or agency
7 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
8 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
9 communication, before the filing of the Motion for Preliminary Approval, any with third party
10 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
11 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
12 communications with Class Members in accordance with Class Counsel's ethical obligations
13 owed to Class Members.

14 13.3 No Solicitation. The Parties separately agree that they and their respective
15 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
16 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
17 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
18 obligations owed to Class Members.

19 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
20 Agreement together with its attached exhibits shall constitute the entire agreement between the
21 Parties relating to the Settlement, superseding any and all oral representations, warranties,
22 covenants, or inducements made to or by any Party.

23 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
24 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
25 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
26 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
27 terms of this Agreement including any amendments to this Agreement.

28 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing
points and authorities as requested by the Court. In the event the Parties are unable to agree upon

1 the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 13.7 No Prior Assignments. The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
6 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
7 action, or right released and discharged by the Party in this Settlement.

8 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
18 be governed by and interpreted according to the internal laws of the state of California, without
19 regard to conflict of law principles.

20 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
28 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,
or rule of court. Not later than 90 days after the date when the Court discharges the

1 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
2 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
3 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
4 makes a written request to Class Counsel for the return, rather than the destructions, of Class
Data.

5 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
6 is inserted for convenience of reference only and does not constitute a part of this Agreement.

7 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
8 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
9 weekend or federal legal holiday, such date or deadline shall be on the first business day
thereafter.

10 13.17 Notice. All notices, demands or other communications between the Parties in
11 connection with this Agreement will be in writing and deemed to have been duly given as of the
12 third business day after mailing by United States mail, or the day sent by email or messenger,
13 addressed as follows:

14
15 To Plaintiff:
16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

19 To Defendant:
20 Allyson K. Thompson, Esq.
21 Kaufman Dolowich & Voluck LLP
22 21515 Hawthorne Blvd.
Suite 450
Torrance, CA 90503
athompson@kdvlaw.com

23
24 13.18 Execution in Counterparts. This Agreement may be executed in one or more
25 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
26 Agreement shall be accepted as an original. All executed counterparts and each of them will be
27 deemed to be one and the same instrument if counsel for the Parties will exchange between

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8
9 Dated: 02 / 15 / 2024

By: 

NICOLE SHAVER

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11
12 Dated: _____

By: _____

GLENN SWANSON
G & C Swan, Inc.

13
14
15 THE SPIVAK LAW FIRM

16 Dated: 02 / 15 / 2024

By: 

DAVID G. SPIVAK, Attorneys for
Plaintiff, NICOLE SHAVER, and all
others similarly situated

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19
20 UNITED EMPLOYEES LAW GROUP

21
22 Dated: _____

By: _____

WALTER L. HAINES, Attorneys for
Plaintiff, NICOLE SHAVER, and all
others similarly situated

23
24
25 KAUFMAN DOLOWICH & VOLUCK LLP

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8
9 Dated: _____

By: _____
NICOLE SHAVER

10
11 Dated: 2-13-2024

By: Glenn Swanson
GLENN SWANSON
G & C Swan, Inc.

13
14
15 THE SPIVAK LAW FIRM

16 Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, NICOLE SHAVER, and all
others similarly situated

18
19
20 UNITED EMPLOYEES LAW GROUP

21
22 Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, NICOLE SHAVER, and all
others similarly situated

23
24
25 KAUFMAN DOLOWICH & VOLUCK LLP

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

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9 Dated: _____

By: _____
NICOLE SHAVER

10
11 Dated: _____

By: _____
GLENN SWANSON
G & C Swan, Inc.

14
15 THE SPIVAK LAW FIRM

16 Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
18 Plaintiff, NICOLE SHAVER, and all
19 others similarly situated

20
21 UNITED EMPLOYEES LAW GROUP

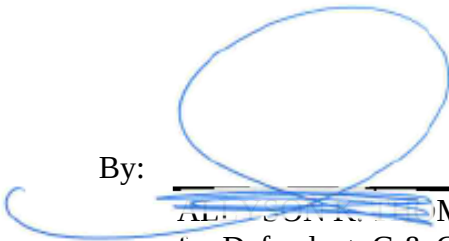
22 Dated: February 13, 2024

By: 
WALTER L. HAINES, Attorneys for
23 Plaintiff, NICOLE SHAVER, and all
24 others similarly situated

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26 KAUFMAN DOLOWICH & VOLUCK LLP

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Dated: 2/13/2024 _____

By:  _____
~~ALAN J. CAMPSON~~ CAMPSON, Attorneys
for Defendant, G & C SWAN, INC.

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**
2 **DATE FOR FINAL COURT APPROVAL**

3 (case name: Nicole Shaver v. G & C Swan, Inc. and number CIVSB2103630)

4 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
5 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

6 **You may be eligible to receive money** from an employee class action lawsuit ("Action")
7 against G & C Swan, Inc. (abbreviate name; "Defendant" is used herein as a placeholder) for
8 alleged violations of California's labor laws. The Action was filed by one of Defendant's
9 employees Nicole Shaver ("Plaintiff") and seeks payment of (1) wages and other relief for a class
10 of All of Defendant's hourly, non-exempt California employees and interns ("Class Members")
11 during the Class Period (February 17, 2017 to the date of the Court's preliminary approval of the
12 Settlement or the date the Class Work Weeks reaches 19,924, whichever is earlier); and (2)
13 penalties under the California Private Attorney General Act ("PAGA") for hourly, non-exempt
14 employees who worked for Defendant during the PAGA Period (December 11, 2019 to the date
15 of the Court's preliminary approval of the Settlement or the date the Class Work Weeks reaches
16 19,924, whichever is earlier) ("Aggrieved Employees").

17 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant
18 to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund
19 Individual PAGA Payments and pay penalties to the California Labor and Workforce
20 Development Agency ("LWDA").

21 Based on Defendant's records, and the Parties' current assumptions, **your Individual**
22 **Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding)**
23 **and your Individual PAGA Payment is estimated to be**
24 **\$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is
25 <<\$increment type value>> and a Pay Period is <<@PayPeriodValue>>. The actual amount you
26 may receive likely will be different and will depend on a number of factors. (If no amount is
27 stated for your Individual PAGA Payment, then according to Defendant's records you are not
28 eligible for an Individual PAGA Payment under the Settlement because you didn't work during
29 the PAGA Period.) The individual payments amounts will vary. However, the average Individual
30 Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment
31 Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be
32 <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a
33 Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest
34 is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual
35 PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment
36 Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

37 The above estimates are based on Defendant's records showing that **you worked**
38 <<__>> **Work Weeks** during the Class Period and **you worked** <<__>> **Pay Periods** during
39 the PAGA Period. If you believe that you worked more Work Weeks during either period, you
40 can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. 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. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims for California labor law violations against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating
The Opt-out Deadline is <<RESPONSE DEADLINE>>	

1		Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
2		
3		You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
4		
5	Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
6	Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	
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11	You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
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16	You Can Challenge the Calculation of Your Work Week / Pay Periods	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.
17	Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	
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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action:

David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired ☐ an experienced, neutral mediator ☐ a retired judge ☐ (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Gross Settlement Amount. Defendant Will Pay \$650,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

1. Attorney Fees and Costs. Up to \$216,666.64 (33.33% of the Gross Settlement to Class Counsel for attorneys’ fees and up to \$40,000.00 for their litigation expenses.

To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Award. Up to \$20,000.00 as a Class Representative Service Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3. Administration Expenses. Up to \$10,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Based on its records, Defendant estimated that, as of the date of the Settlement, (1) there are 112 Class Members and 19,924 total Work Weeks during the Class period and (2) there were 54 Aggrieved Employees who worked 5,099 Pay Periods during the PAGA Period.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Work Weeks.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages ("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) in your name.

1 If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you
2 should consult the rules of the Fund for instructions on how to retrieve your money. You can
3 contact the Unclaimed Property Fund at (800) 992-4647.

4 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
5 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
6 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
7 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
8 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
9 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
10 Member's name, present address, telephone number, and a simple statement electing to be
11 excluded from the Settlement. You may use the enclosed Election Not To Participate In
12 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
13 Members) will not receive Individual Class Payments, but will preserve their rights to personally
14 pursue claims against Defendant for violations of California's labor laws.

15 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
16 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
17 Individual PAGA Payments and Plaintiff releases Defendant from civil penalties it may owe to
18 the Aggrieved Employees.

19 G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
20 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
21 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
22 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not
23 pay any money and Class Members will not release any claims against Defendant.

24 H. Administrator. The Court has appointed a neutral company, ILYM Group, Inc.
25 (the "Administrator") to send this Notice, calculate and make payments, and process Class
26 Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges
27 over Work Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks
28 necessary to administer the Settlement. The Administrator's contact information is contained in
Section 9 of this Notice.

I. Participating Class Members' Release. After the Judgment is final and Defendant
has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or
its officers, directors, employees, and agents for wages based on the Class Period facts and PAGA
penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

1 All Participating Class Members, on behalf of themselves and their respective
2 former and present representatives, agents, attorneys, heirs, administrators,
3 successors, and assigns, release Released Parties from all claims stated in the
4 Operative Complaint and those based solely upon the facts alleged in the Operative
5 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
6 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.

7 J. The PAGA Release. After the Court's judgment is final, and Defendant has paid
8 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
9 claims for civil penalties that could have been sought by the Labor Commissioner for the
10 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
11 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

12 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

13 A. Individual Class Payments. The Administrator will calculate Individual Class
14 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
15 by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
16 worked by each individual Participating Class Member.

17 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
18 Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
19 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
20 worked by each individual Aggrieved Employee.

21 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
22 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
23 Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have
24 until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or Pay Periods
25 credited to you. You can submit your challenge by signing and sending a letter to the
26 Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
27 purpose. Section 9 of this Notice has the Administrator's contact information.

28 You need to support your challenge by submitting copies of pay stubs or other records.
The Administrator will accept Defendant's calculation of Work Weeks and/or Pay Periods based
on Defendant's records as accurate unless you send copies of records containing contrary
information. You should send copies rather than originals because the documents will not be
returned to you. The Administrator will resolve Work Week and/or Pay Period challenges based
on your submission and on input from Class Counsel (who will advocate on behalf of
Participating Class Members) and Defendant's Counsel. The Administrator's decision is final.
You can't appeal or otherwise challenge its final decision.

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1 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
2 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
3 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
4 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the
5 Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you
6 object to, why you object, and any facts that support your objection. Make sure you identify the
7 Action, *Nicole Shaver vs. G & C Swan, Inc.*, case no. CIVSB2103630, and include your name,
8 current address, telephone number, and approximate dates of employment for Defendant and sign
9 the objection. Section 9 of this Notice has the Administrator's contact information. You may use
10 the enclosed Objection form for this purpose. You should send your objection to the
11 Administrator by email, fax, or send by regular U.S. mail.

12 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
13 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
14 to tell the Court what you object to, why you object, and any facts that support your objection.
15 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
16 Hearing.

17 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

18 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
19 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department S-26 of the San
20 Bernardino Superior Court, located at San Bernardino District – Civil Division, 247 West Third
21 Street, Dept. S17, San Bernardino, CA 92415-0210. At the Hearing, the judge will decide whether
22 to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to
23 Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors,
24 Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer
25 to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
26 (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current
27 information.

28 It's possible the Court will reschedule the Final Approval Hearing. You should check the
Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
to verify the date and time of the Final Approval Hearing.

1 **9. HOW CAN I GET MORE INFORMATION?**

2 The Agreement sets forth everything Defendant and Plaintiff have promised to do under the
3 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
4 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
5 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
6 using the contact information listed below, or consult the Superior Court website by going to
7 (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
8 No. CIVSB2103630. You can also make an appointment to personally review court documents
9 in the Clerk's Office at the San Bernardino District – Civil Division by calling <<CLERK OF
10 COURT'S PHONE NUMBER>>.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: David G. Spivak
Email Address: david@spivaklaw.com
Name of Firm: The Spivak Law Firm
Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094

Administrator:

Name of Company: ILYM Group, Inc.
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimed Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

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1 *Shaver v. G & C Swan, Inc.*
2 **Superior Court of the State of California, County of San Bernardino**
3 Case No. CIVSB2103630

4 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

5 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
6 **A SHARE OF THE SETTLEMENT PROCEEDS,**
7 **DO NOT FILL OUT THIS FORM.**

8 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
9 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR**
10 **POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

11 *Shaver v. G & C Swan, Inc.* Class Action Administrator
12 c/o ____
13 ____
14 ____

15 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
16 excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
17 bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the
18 Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved
19 Employee under the Settlement, I will still receive an Individual PAGA Payment.

20 ____
21 (Typed or Printed Name)

22 ____
23 (Address)

24 ____
25 (City, State, Zip Code)

26 ____
27 (Telephone Number, Including Area Code)

28 ____
(Identification Number)

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

Dated: ____.
(Signature)

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EXHIBIT C

1 **WORK WEEK DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of San Bernardino
4 *Nicole Shaver v. G & C Swan, Inc.*, Case No. CIVSB2103630

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX – XX – ____

10 TO ALL OF DEFENDANT'S HOURLY, NON-EXEMPT CALIFORNIA EMPLOYEES AND
11 INTERNS DURING THE CLASS PERIOD FROM FEBRUARY 17, 2017 THROUGH THE
12 DATE OF THE COURT'S PRELIMINARY APPROVAL OF THE SETTLEMENT.

13 The amount of your estimated Settlement Award is based upon the number of eligible Work
14 Weeks you worked between February 17, 2017 and the date of the Court's preliminary approval
15 of the Settlement and eligible Work Weeks you worked between December 11, 2019 and the date
16 of the Court's preliminary approval of the Settlement. "Individual Class Work Weeks" are
17 defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt
18 employees of G & C Swan, Inc. ("Defendant") in California during the calendar week.
19 "Individual PAGA Work Weeks" are defined as any Work Week in which you worked at least
20 one (1) day as an hourly, non-exempt employees of Defendant in California during the calendar
21 week during the period of December 11, 2019 through the date of the Court's preliminary
22 approval of the Settlement. The number of Class and PAGA Work Weeks applicable to your
23 claim are set forth below.

24 **YOUR ELIGIBLE WORK WEEKS**

25 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks
26 between February 17, 2017 and <<the date of the Court's preliminary approval of the
27 Settlement>> and <<number of Work Weeks>> Work Weeks between December 11, 2019
28 through <<the date of the Court's preliminary approval of the Settlement>>.

29 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

30 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
31 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
32 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
33 process may take six months or more. You will receive a Form W-2 reflecting the payment to
34 you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the
35 payment could vary, up or down.

1 If you wish to dispute the number of February 17, 2017 credited to you, or anything else about
2 your employment status, you must complete and return this form by indicating what you believe
3 is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to
4 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
5 a postmark or delivery service date stamp). You may use this Work Weeks Dispute form for this
6 purpose. You must also send any documents or other information that you contend supports your
7 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
8 based upon Defendant's records and any information you provide. Please be advised that the
9 information on this Work Weeks Dispute Form is presumed to be correct unless the documents
10 you submit are company records from Defendant.

11 _____
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15 _____

16 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
17 **WEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
18 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**
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EXHIBIT D

1 **OBJECTION FORM**

2 **Nicole Shaver v. G & C Swan, Inc.**
3 **Superior Court of the State California, County of San Bernardino**
4 **Case No. CIVSB2103630**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

9 <<Address2>>

10 <<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

11 **THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE**
12 **SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF**
13 **YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS**
14 **FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU**
15 **SHOULD EMAIL IT TO <<____@____.COM>>, FAX IT TO <<XXX-XXX-**
16 **XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO**
17 **THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE**
18 **ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.**

19 **IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**
20 **THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING**
21 **DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR**
22 **THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.**

23 The Court will consider your objection at the Final Approval Hearing if you timely submit it.
24 Include any and all evidence and supporting papers (including, without limitation, all briefs,
25 written evidence, and declarations) that you would like the Court to consider. However, you may
26 speak to the Court at the final approval hearing whether or not you submit a timely objection.

27 [] I OBJECT to the *Nicole Shaver v. G & C Swan, Inc.* Settlement on the following
28 grounds (if additional space necessary, please include additional sheets of paper):

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Nicole Shaver v. G & C Swan, Inc. Administrator
[ADDRESS]

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EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

NICOLE SHAVER, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

G & C SWAN, INC., a California corporation; ,
; , , , ; and DOES 1–50, inclusive,

Defendant(s).

Case No. CIVSB2103630

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: February 17, 2021
Dept: S-26, The Honorable
Joseph T. Ortiz

The Motion of Plaintiff Nicole Shaver (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Joseph T. Ortiz presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. 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 hearing. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all of Defendant's hourly, non-exempt California employees and interns (collectively “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean the period of time from February 17, 2017, through <<the date of the Court's preliminary approval of the Settlement>>.

3. Based on its records, Defendant estimates that, as of the date of the Settlement Agreement, (1) there are 112 Class Members and 19,924 Total Work Weeks during the Class period and (2) there were 54 Aggrieved Employees who worked 5,099 Pay Periods during the PAGA Period.

4. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the

1 day after the appellate court affirms the Judgment and issues a remittitur.

2 5. This action is provisionally certified pursuant to section 382 of the California Code
3 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
4 purposes of settlement only with respect to the proposed Settlement Class.

5 6. Not later than 15 days after the Court grants Preliminary Approval of the
6 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
7 of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
8 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
9 and for no other purpose, and restrict access to the Class Data to Administrator employees who
10 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
11 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
12 omitted class member identifying information and to provide corrected or updated Class Data as
13 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
14 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
15 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
16 Class Data.

17 7. No later than three (3) business days after receipt of the Class Data, the
18 Administrator shall notify Class Counsel that the list has been received and state the number of
19 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

20 8. Using best efforts to perform as soon as possible, and in no event later than 14
21 days after receiving the Class Data, the Administrator will send to all Class Members identified
22 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
23 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**

1 **A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar amounts
2 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
3 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
4 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
5 using the National Change of Address database.

6
7 9. Not later than 3 business days after the Administrator's receipt of any Notice
8 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
9 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
10 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
11 Packet to the most current address obtained. The Administrator has no obligation to make further
12 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
13 the USPS a second time.

14
15 10. Class Counsel's contact information is David G. Spivak, Esq., The Spivak Law
16 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
17 contact information is Allyson K. Thompson, Esq., Kaufman Dolowich & Voluck LLP, 11111
18 Santa Monica Bl., Suite 850, Los Angeles, CA, 90025.

19
20 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
21 and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days
22 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is
23 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
24 re-mailed Notice Packet.

25
26 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
27 discovers any persons who believe they should have been included in the Class Data and should
28

1 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
2 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
3 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
4 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
5 requiring them to exercise options under the Settlement Agreement not later than 14 days after
6 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.
7

8 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
9 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
10 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
11 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
12 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
13 the Class Member's election to be excluded from the Settlement and includes the Class Member's
14 name, address and email address or telephone number. To be valid, a Request for Exclusion must
15 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
16 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.
17

18 14. The Administrator may not reject a Request for Exclusion as invalid because it
19 fails to contain all the information specified in the Class Notice. The Administrator shall accept
20 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
21 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
22 determination shall be final and not appealable or otherwise susceptible to challenge. If the
23 Administrator has reason to question the authenticity of a Request for Exclusion, the
24 Administrator may demand additional proof of the Class Member's identity. The Administrator's
25 determination of authenticity shall be final and not appealable or otherwise susceptible to
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1 challenge.

2 15. Every Class Member who does not submit a timely and valid Request for Exclusion
3 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
4 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
5 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
6 Participating Class Member actually receives the Class Notice or objects to the Settlement.
7

8 16. Every Class Member who submits a valid and timely Request for Exclusion is a
9 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
10 right to object to the class action components of the Settlement. Plaintiff releases all claims for
11 civil penalties that could have been sought by the Labor Commissioner for the violations
12 identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages
13 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
14 Member.
15

16 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
17 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
18 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
19 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
20 A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not
21 required. The Class Member may challenge the allocation by communicating with the
22 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
23 Member to submit supporting documentation. In the absence of any contrary documentation, the
24 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
25 correct so long as they are consistent with the Class Data. The Administrator's determination of
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1 each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not
2 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
3 copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and
4 Class Counsel and the Administrator's determination the challenges.

5
6 18. Objections to Settlement. Only Participating Class Members may object to the
7 class action components of the Settlement and/or this Agreement, including contesting the
8 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
9 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

10 19. Participating Class Members may send written objections to the Administrator, by
11 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
12 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
13 Participating Class Member who elects to send a written objection to the Administrator must do
14 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
15 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
16 as Exhibit D may be used for this purpose but is not required.

17
18 20. Non-Participating Class Members have no right to object to any of the class action
19 components of the Settlement.

20 21. Not later than 14 days before the date by which Plaintiff is required to file the
21 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
22 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
23 compliance with all of its obligations under the Settlement Agreement, including, but not limited
24 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
25 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
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1 from Settlement it received (both valid or invalid), the number of written objections and attach
2 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
3 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
4 declaration(s) in Court.

5 22. The Court approves, as to form and content, the Class Notice in substantially the
6 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
7 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
8 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
9 the form attached as Exhibit D to this Order.

10 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
11 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

12 24. The Court approves, for settlement purposes only, Nicole Shaver as the Class
13 Representative.

14 25. The Court approves ILYM Group, Inc. as the Administrator.

15 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
16 costs subject to final review by the Court.

17 27. The Court preliminarily approves the estimated Administrator costs payable to the
18 Administrator subject to final review by the Court.

19 28. The Court preliminarily approves Plaintiff's Class Representative Service
20 Payment subject to final review by the Court.

21 29. A Final Approval Hearing shall be held on ____ at ____.m. in Department S-26 of
22 the Superior Court for the State of California, County of San Bernardino, located at the San
23 Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA

1 92415-0210 to consider the fairness, adequacy and reasonableness of the proposed Settlement
2 preliminarily approved by this Preliminary Approval Order, and to consider the application of
3 Class Counsel for attorneys' fees and costs and the Class Representative Service Payment to the
4 Class Representative. The notice of motion and all briefs and materials in support of the motion
5 for final approval of class action settlement and motion for attorneys' fees and litigation costs
6 shall be served and filed with this Court on or before _____. Plaintiff's counsel must give notice to
7 any objecting party of any continuance of the hearing of the motion for final approval.
8

9 30. If for any reason the Court does not execute and file a Final Approval Order and
10 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
11 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
12 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
13 litigation, as more specifically set forth in the Settlement.
14

15 31. The Court expressly reserves the right to adjourn or continue the Final Approval
16 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
17 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
18

19 **IT IS SO ORDERED.**
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21 _____
22 **DATE**

23 _____
24 **THE HONORABLE JOSEPH T. ORTIZ**
25 **SUPERIOR COURT JUDGE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

NICOLE SHAVER, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

G & C SWAN, INC., a California corporation; ,
; , , , ; and DOES 1–50, inclusive,

Defendant(s).

Case No. CIVSB2103630

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: February 17, 2021
Dept: S-26, The Honorable Joseph
T. Ortiz

This matter came on for hearing on ____ at ____m. in Department S-26 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$650,000.00 in compromise of all disputed claims on behalf of all of Defendant’s hourly, non-exempt California employees and interns during the period of February 17, 2017 to <<the date of the Court’s preliminary approval of the Settlement>>

1 (“Settlement Class Period”). All capitalized terms used herein shall have the same meaning as
2 defined in the Settlement.

3 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
4 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
5 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
6 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
7 and the evidence and argument received by the Court in conjunction with the motions for
8 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
9 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
10 DETERMINATIONS¹:

11
12 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
13 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
14 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
15 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
16 Settlement, their right to receive their proportional share of the Settlement, their right to request
17 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
18 person or by counsel at the final approval hearing and be heard regarding final approval of the
19 Settlement. Adequate periods of time were provided by each of these procedures. No member of
20 the Settlement Class presented written objections to the proposed Settlement as part of this notice
21 process, stated an intention to appear, or actually appeared at the final approval hearing.
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25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court’s Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

2. For purposes of this Final Order and Judgment, the Class Members are all of Defendant's hourly, non-exempt California employees and interns at any time during the period of February 17, 2017 to <<the date of the Court's preliminary approval of the Settlement>> (“Settlement Class Period”).

3. The Court finds and determines that the notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding final approval of the Settlement based on the responses of Class Members. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process as to all persons entitled to such notice.

Release by Plaintiff and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement.

PAGA Release. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

“**Released Claims**” shall mean all claims stated in the Operative Complaint and based solely on the facts alleged in the Operative Complaint. “**Released Parties**” shall mean Defendant, its officers, directors, employees and agents.

2. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement, including the release of claims contained therein, should be and hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement according to its terms. As of the Effective Date of Settlement, and for the duration of the Settlement Class Period, all Class Members are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Released Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____ Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by the Administrator and therefore is/are not in the Settlement Class.

3. The Court finds and determines that (a) the Settlement Shares to be paid to Participating Class Members and (b) the LWDA payment as civil penalties under the California Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants final approval to, and orders the payment of, those amounts be made to the Participating Class Members and to the California Labor & Workforce Development Agency (“LWDA”), in accordance with the terms of the Settlement.

4. The Court further grants final approval to and orders that the following payments be made in accordance with the terms of the Settlement:

a. Class Counsel fees & costs of \$216,666.64 in attorneys' fees and \$40,000.00 in litigation costs to Class Counsel;

b.	\$20,000.00 as a Class Representative Service Payment award payable to
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1 Plaintiff Nicole Shaver for her service as a Class Representative;

2 c. \$10,000.00 in costs of the Administrator payable to Administrator for its
3 services as the Administrator; and

4 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
5 LWDA.
6

7 7. The settlement shall proceed as directed in the Settlement, and no payments
8 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
9 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
10 of all matters relating to the interpretation, administration, implementation, effectuation and
11 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
12 Court 3.769(h).
13

14 8. Within 14 calendar days of the Effective Date of Settlement, Defendant shall
15 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
16 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
17 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
18 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
19 total amount of all Individual PAGA Payments to Aggrieved Employees.
20

21 9. Other than its employer side payroll taxes, Defendant's payment of such sums
22 shall be the sole financial obligation of Defendant under the Settlement, and shall be in full
23 satisfaction of all claims released herein, including, without limitation, all claims for wages,
24 penalties, interest, attorneys' fees, costs and expenses.

25 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
26 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
27

1 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator
2 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
3 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
4 California Unclaimed Property Fund.

5 11. The Parties shall file a final accounting report by _____. A non-appearance case
6 review re submission of a final report is scheduled for ____ at _____.m. in Department S-26. The
7 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
8 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
9 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
10 stipulation shall be signed by counsel for the class and defense counsel in accord with the
11 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
12 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
13 non-appearance hearing for the lodging of the stipulation and proposed order and separate
14 amended judgment is scheduled for ____ at _____.m. in Department S-26.

15 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
16 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
17 deposit funds for distribution by the Administrator to Participating Class Members in accordance
18 with the Settlement.

19 13. The Court hereby enters final judgment in this case in accordance with the terms
20 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
21 Order and Judgment.

22 14. The Parties are hereby ordered to comply with the terms of the Settlement.

23 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
24

1 provided by the Settlement and this Final Order and Judgment.

2 16. The Settlement is not an admission by Defendant nor is this Final Order and
3 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
4 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
5 admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order and
6 Judgment, the Settlement, any document referred to herein, any exhibit to any document referred
7 to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related
8 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or
9 concession with regard to, the denials or defenses of Defendant, and shall not be offered in
10 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other
11 tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and
12 Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other
13 papers and records on file in the Action may be filed in this Court or in any other litigation as
14 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,
15 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.
16

17 17. This document shall constitute a Judgment for purposes of California Rule of
18 Court 3.769(h).
19

20 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
21
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23 _____
24 **DATE**

THE HONORABLE JOSEPH T. ORTIZ
SUPERIOR COURT JUDGE