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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

DEBBIE FELIX, an individual; RICK  
MALEAD, an individual, on behalf of  
themselves, and on behalf of all persons  
similarly situated, and in their representative  
capacity on behalf of the State of California and  
fellow Aggrieved Employees,

Plaintiffs,

vs.

TVI, INC., d.b.a. SAVERS, a Washington  
corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 21CV376407

**DECLARATION OF JEAN-CLAUDE  
LAPUYADE, ESQ., IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: October 21, 2021

Time: 1:30 p.m.

Dept.: 1

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for Plaintiffs DEBBIE FELIX, and RICK MALEAD, (hereafter "Plaintiffs") in this wage and hour class action filed against TVI, INC., d.b.a. SAVERS. (hereinafter collectively "Defendant").

///

2. This declaration is being submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

### **I. EXHIBITS**

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint the Stipulation of Settlement of Class Action Claims and Release of Claims ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class Counsel's compliance with California Labor Code Section 2699(1)(2).

### **II. INTRODUCTION**

5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class. Given there are approximately 3,098 Settlement Class Members, and assuming 100% participation, the average gross settlement recovery is approximately **\$286.47** (Net Settlement Amount divided by Settlement Class Members)

6. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional

1 certification. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval  
2 of the Settlement.

### 3 **III. FACTS AND PROCEDURE**

#### 4 **A. Overview of the Litigation**

5 7. Defendant is a for-profit Washington corporation that was founded in 1954.  
6 Defendant operates a network of more than 100 second-hand retail stores throughout the United  
7 States, Canada and Australia, including 12 in California.

8 8. Plaintiff Melead worked for Defendant as an hourly, non-exempt employee between  
9 October 2015 and October 2019. Plaintiff Felix worked for Defendant as an hourly, non-exempt  
10 employee between February 2014 and December 2019. As non-exempt employees, Plaintiffs were  
11 subject to Defendant's written policies and procedures and general employment practices.

12 9. Generally, Plaintiffs claim that Defendant failed to pay them for all hours worked,  
13 failed to pay them overtime at the correct rate, failed to provide complaint meal and rest periods,  
14 failed to provide accurate itemized wage statements, failed to provide suitable seating, and failed  
15 to pay all wages due at the time of his separation. Defendant denies liability for each of Plaintiffs'  
16 claims. Defendant asserts that it fully complied with all applicable employment laws. Defendant  
17 asserts that it had clear, compliant policies and procedures for taking rest and meal periods.  
18 Defendant raised several other significant defenses to Plaintiffs' claims, including but not limited  
19 to, lack of any evidence of overtime and minimum wage violations.

20 10. On May 8, 2020, Plaintiff Melead served Defendant and the Labor and Workforce  
21 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiffs' PAGA  
22 Notice set forth the facts and theories supporting Defendant's alleged violations of various  
23 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC")  
24 Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys  
25 General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

26 11. On May 26, 2020, Plaintiff Melead filed a class action complaint in the Orange  
27 County Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;  
28 (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and

1 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et*  
2 *seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections  
3 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code  
4 sections 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of  
5 California Labor Code section 226; and (7) failure to provide wages when due in violation of  
6 California Labor Code sections 201, 202 and 203 (“*Melead* Action”). On July 14, 2020, Defendant  
7 removed the *Melead* Action to United States District Court for the Central District of California.  
8 On July 22, 2020, Plaintiff Melead filed the *Melead* PAGA Action against Defendant alleging a  
9 single cause of action for violations of California Labor Code Private Attorney General Act  
10 (“PAGA”). On September 25, 2020, the United States District Court for the Central District of  
11 California remanded the *Melead* Action to the Orange County Superior Court. On October 22,  
12 2020, Plaintiff Felix filed a Notice of Violations with the LWDA and served the same on  
13 Defendant. On February 24, 2021, Plaintiff Felix filed a PAGA Action against Defendant in the  
14 Santa Clara County Superior Court alleging a single cause of action for violations of PAGA (“*Felix*  
15 *Action*”).

16 12. Plaintiffs prepared written discovery to Defendant, but prior to serving the discovery,  
17 the Parties agreed to mediate this action as deemed in the best interest of the parties in particular in  
18 light of the many anticipated factual disputes. In anticipation of mediation, the Parties stipulated  
19 to stay formal discovery in favor of informal discovery. To prepare for mediation, the Parties  
20 agreed to informally produce certain documents and data points subject to the mediation privilege,  
21 including but not limited to, a sample of the Class Members’ time and payroll data. As discussed  
22 *infra*, Plaintiffs’ counsel retained the Berger Consulting Group, to analyze Defendant’s time and  
23 payroll data.

24 13. On March 25, 2021, the Parties participated in a full day mediation with Mark Rudy,  
25 Esq. a well-respected wage and hour class action mediator. After arms-length negotiations and  
26 bargaining, the mediation concluded without a settlement. However, following the mediation, each  
27 side, represented by its respective counsel, agreed to settle the Action based on a mediator’s  
28 proposal, which was memorialized in the form of a Memorandum of Understanding. Thereafter,

1 the parties drafted and negotiated a long-form settlement agreement, which is the subject of the  
2 instant motion.

3 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

4 14. Months before filing the Action, Class Counsel began its pre-filing investigation into  
5 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with  
6 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their  
7 employment for Defendant, including portions of Defendant's handbooks, compensation policies  
8 and time and payroll records. At the conclusion of the interviews, Class Counsel determined that  
9 Plaintiffs' complaints justified further inquiry.

10 15. Class Counsel subsequently requested Plaintiffs' employee file from Defendant. In  
11 response, Defendant produced hundreds of pages of documents, including but not limited, a copies  
12 of Plaintiffs' hiring documents, payroll and time records, performance reviews and separation  
13 documents. Class Counsel reviewed and analyzed the documents and determined the documents  
14 appeared to substantiate Plaintiffs' claim that Defendant's failed to, among other things, pay for all  
15 time worked and to provide compliant meal and rest periods. Shortly thereafter, Class Counsel  
16 initiated the actions which are before the Court now.

17 16. In light of the many anticipated factual disputes, the parties agreed early in the  
18 litigation that it would be in the best interest of both parties to mediate the matter. To prepare for  
19 mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims  
20 and Defendant's liability exposure to the Settlement Class members. In response to Class  
21 Counsel's request, Defendant produced the time and payroll records for the Settlement Class  
22 members, aggregate workweek and pay period data for the Settlement Class, and copies of  
23 applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping  
24 and, meal and rest period policies. In total, Defendant produced approximately 3,000 pages  
25 containing hundreds of thousands of unique cells of time and payroll data for Class Counsel to  
26 analyze.

27 17. Class Counsel then retained the statisticians and economists at Berger Consulting  
28 Group ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides

1 data analysis and damage modeling consulting services specializing in wage and hour class  
2 actions. BCG's team of financial and data analysts are credentialed and experienced experts in  
3 their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is  
4 uniquely qualified to analyze Defendant's time and payroll data.

5 18. BCG analyzed Defendant's time and payroll data to assist in the development of  
6 various damage models. Among other things, BCG determined the approximate number of work  
7 shift, work weeks, pay periods, average rate of pay, average length of shift and average number of  
8 hours worked per week and pay period during the Class Period. BCG also estimated the number  
9 of missed or late meal and rest periods, the amount of paid missed meal period premiums paid  
10 during the Class Period.

11 19. In advance of mediation, Class Counsel created a damage model predicated on BCG  
12 analysis. Class Counsel's model calculated Defendant's potential liability exposure while  
13 accounting for the uncertainties of continued litigation. This damage model informed and guided  
14 Class Counsel during the mediated settlement discussions.

15 20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)  
16 determining Plaintiffs' suitability as a putative class representative through interviews, background  
17 investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential  
18 claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of  
19 the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll  
20 records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in  
21 similar cases, including a recent case against the same Defendant, as well as outstanding issues  
22 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating  
23 Defendant's liability for purposes of settlement; (8) drafting the mediation brief and (9)  
24 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature  
25 and magnitude of the claims being settled, as well as the impediments to recovery, such as to make  
26 an independent assessment of the reasonableness of the terms to which the parties have agreed.

1           **C.     The Parties Settled at Mediation**

2           21.     On March 16, 2021, the Parties conducted a full day of mediation with Mark Rudy,  
3 Esq., a highly regarded mediator of wage and hour class actions. Mr. Rudy helped to manage the  
4 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.  
5 The Parties made substantial progress with Mr. Rudy's assistance. Namely, the parties exchanged  
6 information regarding their respective claims and defense, including their respective evaluation of  
7 the damages. After nearly eight hours of arm's length and adversarial negotiations, the mediation  
8 concluded without a settlement. However, following the mediation, each side, represented by its  
9 respective counsel, agreed to settle the Action based on a mediator's proposal, which was  
10 memorialized in the form of a Memorandum of Understanding. Thereafter, the parties drafted and  
11 negotiated a long-form settlement agreement, which is the subject of the instant motion. Class  
12 Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the  
13 claims at issue.

14          22.     At all times, the Parties' negotiations were at an arm's length, adversarial and non-  
15 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and  
16 the mediation session concluded without a settlement. The matter resolved only after weeks of  
17 subsequent negotiations when Mr. Rudy issued a mediator's proposal that the Parties accepted. Mr.  
18 Rudy only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the  
19 Parties' respective claims and defenses.

20          23.     Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted  
21 negotiations regarding the written terms of the class action settlement. The Parties maintained the  
22 arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the  
23 Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the  
24 Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

25           **IV.    ARGUMENT**

26           **A.     The Court Should Preliminarily Approve the Settlement**

27          24.     The Total Settlement Amount of \$1,500,000 is fair and reasonable considering the  
28 nature and magnitude of the claims being settled and the various factual and legal issues in disputes

1 and potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop  
2 varied economic damages models measuring Defendant's liability exposure while accounting for  
3 the uncertainties of continued litigation. The various models were informed by Class Counsel's  
4 investigation, including the analysis of time and payroll data. Class Counsel projected Defendant's  
5 liability exposure for the Settlement Class ranged between approximately \$3,116,921 and  
6 \$22,789,492 for damages, and between \$14,019,898 and \$33,692,469 for damages and statutory  
7 penalties, if successful at trial. This range reflects the uncertainty regarding several of Plaintiffs'  
8 claims, together with the uncertainty surrounding derivative liability for inaccurate wage  
9 statements and waiting time penalties resulting from meal and rest period violations. Thus, the  
10 Total Settlement Amount of \$1,500,000 represents approximately between 6.6% and 48.1% of  
11 Defendant's liability exposure for damages, as estimated by Class Counsel at the time of mediation.  
12 The following summarizes Defendant's estimated exposure if Plaintiffs were to prevail.

13 (1) Estimated Damages for Meal Period Violations

14 25. Plaintiffs allege that Defendant failed to provide compliant meal periods.  
15 Specifically, Plaintiffs allege that Defendant's absence of time records for employees prior to  
16 September 2020 creates a presumption of meal period violations, because Defendant cannot prove  
17 that meal periods were timely taken during that time. Consequently, Plaintiffs allege that they are  
18 owed meal period premiums for non-compliant meal periods for every day during that time period.

19 26. Defendant has denied these claims. Defendant maintains that it fully complied with  
20 California meal period laws and maintained legally compliant policies and practices. Courts have  
21 found that where an employer's meal period policies are compliant, individualized issues exist as  
22 to the reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley*  
23 *Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the  
24 employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable  
25 because individualized issues existed as to the reasons for the late meal periods). If successful,  
26 Defendant availed itself to a complete defense of Plaintiffs' meal period claim. Defendant further  
27 argued that the absence of the time records was a result of a cyber-attack that left Defendant without  
28 those records, and that had these records been available, they would have shown consistent

1 compliance with California’s meal break laws. Finally, Defendant argued that to the extent time  
2 records exist (since September 2020) the violation rate was very low (below 3%) and meal  
3 premiums were always paid—an assertion confirmed by Plaintiffs’ expert. Plaintiffs estimated the  
4 exposure for this claim was approximately between **\$0** and **\$9,897,710**, if substantiated.

5 (2) Estimated Damages for Rest Period Violations

6 27. Plaintiffs also alleged that Defendant failed to provide compliant rest periods.  
7 Specifically, this claim assumed an unlikely 100% violation rate based on Defendant’s alleged  
8 policy requiring employees to remain on the premises during their rest breaks. Before and during  
9 the mediation, Defendant argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*  
10 (2019) 43 Cal.App.5th 885, all but eliminated Plaintiffs’ claims, on liability, value, and  
11 manageability as to the rest period claims. Additionally, Defendant cited to a prior ruling that  
12 upheld the same “on premise” rest period policy challenged in this action. *See Bell v. Home Depot,*  
13 *U.S.A.*, (E.D. 2017) 2017 WL 1353779. Further, Defendant likely would have argued that only a  
14 small number of Class Members actually missed their rest breaks, and that those missed rest  
15 breaks were voluntary. Therefore, certification likely would have required depositions of Class  
16 Members, and Defendant surely would have obtained opposing testimony stating either rest  
17 breaks were taken or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*  
18 (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 (“Because of the competing testimony before  
19 the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is  
20 insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs.*  
21 *of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 (“Indeed, Plaintiff’s own  
22 evidence confirms that the written policy does not generate uniform practices.”). Accordingly,  
23 the rest break claim was subject to significant defenses. If successful, Defendant availed itself to  
24 a complete defense of Plaintiffs’ rest period claim. Plaintiffs estimated the exposure for this claim  
25 ranged between **\$0** and **\$9,774,861**, if substantiated.

26 (3) Defendant’s Estimated Exposure for Unpaid Minimum Wages

27 28. Plaintiffs alleged that Defendant subjected them and other employees to mandatory  
28 post-shift security theft-prevention checks at the end of their shifts, which were done off-the-

1 clock and lasted 15 minutes every time. Plaintiffs alleged that these screenings included a  
2 requirement that employees wait for a supervisor to come and check their personal belongings  
3 (usually a purse or a bag) to insure no items were stolen from Defendant's store. Defendant argued,  
4 however, that employees were not always required to go through the security checks, and that those  
5 checks were not always off-the-clock. Finally, Defendant argued this claim, even if successful,  
6 was limited to only a small portion of the Class Members who brought their purses or handbags  
7 into the store for their shift, and was limited to 1-5 minutes every time, and not 15 minutes as  
8 assumed by Plaintiffs. Accordingly, the minimum wage claim was subject to significant defenses.  
9 Plaintiffs estimated the exposure for this claim is approximately **\$3,114,753**, if substantiated.

10 (4) Exposure for Wage Statement Violations and Waiting Time Penalties

11 29. Plaintiffs alleged that Defendant failed to include nondiscretionary bonuses and  
12 commissions in the regular rate. Plaintiffs understood that this claim, however, presented  
13 significant obstacles. Namely, Defendants argued that most incentives were *discretionary*  
14 bonuses that do not need to be included in employees' regular rate of pay. Accordingly, the  
15 overtime claim was subject to significant defenses. Furthermore, Defendant argued that, even if  
16 successful, this claim resulted in minimal actual damage to the Class Members—and Plaintiffs'  
17 expert confirmed this to be true. Plaintiffs estimated the exposure for this claim to be  
18 approximately **\$2,168**, if substantiated.

19 (5) Exposure for Wage Statement Violations and Waiting Time Penalties

20 30. Generally, Plaintiffs allege that Defendant's aforementioned violations resulted in  
21 derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable  
22 presence of various penalties and weighed the potential recoveries against probable defenses.  
23 Specifically, Defendant could argue that Plaintiffs could not prove the "willful" prong needed to  
24 obtain waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that  
25 Plaintiffs could not show that Class Members suffered an "injury" because of wage statement  
26 violations, as required by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest  
27 period violations do not entitle employees like Plaintiffs and the Settlement Class Members to  
28 pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v.*

1 *Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.*  
2 (2018) 22 Cal. App. 5th 1308.) Although the Settlement Class arguably could have seen a  
3 significant payout for these penalties if Plaintiffs prevailed on every penalty claim, Plaintiffs would  
4 not recover any derivative penalties if they failed to prove the underlying claims. Moreover,  
5 Plaintiffs would have to overcome damaging precedent to prove the Class deserved the penalties.  
6 *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014)  
7 (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d  
8 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury).  
9 Plaintiffs could not give the penalty claims great weight given that they depended on proving the  
10 underlying claims, which according to Defendant were not supported by the facts. Nevertheless,  
11 Plaintiffs estimated the potential exposure for these claims, if substantiated, was approximately  
12 **\$10,902,977** (\$7,031,977 for waiting time penalties and \$3,871,000 for wage statement penalties).

13 (6) Total Damages and Penalties

14 31. In conclusion, the settlement of \$1,500,000.00 represents between 6.6% and 48.1%  
15 of the value of the maximum potential *damages* at issue. Even when including the penalties for  
16 Plaintiffs' claim for wage statement violations and waiting time penalties under Labor Code  
17 Sections 203 and 226, the settlement represents up to 10.7% of the maximum potential liability,  
18 assuming all of these amounts could be proved at trial. This is well within the bounds of  
19 reasonableness. (*See Vicerel v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at \*3, 7  
20 (approving a California wage and hour settlement where the class received 11.6% of the estimated  
21 total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at \*7  
22 (Approving a California wage and hour settlement where the class received 18% of the estimated  
23 total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at \* 4  
24 (Approving California wage and hour misclassification settlement where the class received  
25 approximately 7.3% of the estimated trial award was within the "range of reasonableness.".)

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1                   (7)     Defendant's PAGA Exposure

2           32.     Class Counsel's damage models also estimated Defendant's exposure for PAGA  
3 penalties arising from the aforementioned violations. At the time of mediation, Plaintiffs estimated  
4 Defendant's PAGA exposure at approximately \$13,880,300. Under PAGA, Courts have  
5 considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS  
6 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a  
7 reduction of 82.2%, because the court found maximum penalties "unjust" because the employees  
8 had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when  
9 Labor Code violations are established. *See also In re Nordstrom Com. Cases*, 186 Cal.App.4th 576,  
10 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class action); *In re*  
11 *Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, \*40-43 (E.D. Cal. Apr. 6, 2016)  
12 (PAGA penalties denied after trial). In order to recover any PAGA penalties, Plaintiffs would be  
13 required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane*  
14 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) ("Given the statutory  
15 language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not  
16 proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to  
17 prove that each Aggrieved Employee suffered a violation for each pay period the employee worked.  
18 Again, Defendant raised several defenses that presented serious threats to the claims of the  
19 Plaintiffs and the Aggrieved Employees. Defendant asserted that the employment practices  
20 complied with all applicable Labor Laws. In addition to those arguments discussed *supra*,  
21 Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43  
22 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the rest  
23 period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested.

24           **B.     Risks of Continued Litigation**

25           33.     Plaintiffs are confident about the strength of his claims. Nonetheless, Plaintiffs  
26 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat  
27 or substantially impair the value of Plaintiffs' lawsuit. Collectively, the examples cited above  
28

1 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining  
2 certification through a contested motion is a significant risk factor favoring settlement.

3 34. Finally, continuing to litigate this action would require continued and extensive  
4 resources coupled with significant Court time to proceed through trial and post-trial motions; which  
5 can often take years. Furthermore, wage and hour litigation are complex and expensive, as it often  
6 necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs  
7 are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation.  
8 Plaintiffs fully expect that Defendant would appeal any favorable judgment.

9 35. In this matter, Class Counsel negotiated a Total Settlement Amount of \$1,500,000  
10 that is roughly between 6.6% and 48% of Defendant's maximum liability exposure for damages,  
11 and up to 10.7% when including wage statement and waiting time penalties. Given the amount of  
12 the settlement here, as compared to potential value of the claims, offset by the various inherent  
13 risks to continued litigation, the settlement is fair and reasonable.

14 **C. Proposed Notice Informs the Class About the Case and Settlement**

15 36. The Parties jointly drafted the Class Notice which fairly and neutrally informs the  
16 Settlement Class of their rights and remedies in this action. The Settlement Administrator will first  
17 verify addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will  
18 include information regarding the nature of the lawsuit, a summary of the substance of the  
19 Settlement's terms, the class definition, the procedure and time period within which to requests for  
20 exclusions or objections to the Settlement, the date for the final approval hearing, the formula used  
21 to calculate settlement payments, and the terms and scope of the Released Claims. This method  
22 was negotiated by the Parties to ensure delivering the most reasonable method of notice to the  
23 Settlement Class while ensuring cost effective administration of the Settlement.

24 37. As detailed in the Agreement, the method of disseminating the proposed Class Notice  
25 and contents of the Proposed Class Notice satisfy due process and the California Rule of Court  
26 3.766.

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**D. The Court Should Preliminarily Approve the Enhancement Award**

38. Approximately 3,098 members of the Settlement Class will share in the estimated \$887,500 Net Settlement Amount due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$7,500 each<sup>1</sup> for Plaintiffs. The service award is fair and reasonable compensation for Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for

<sup>1</sup> The amount of the requested enhancement payment-\$7,500-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless. LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out  
2 of their employment.

3 39. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated  
4 Class Representative Service Award once preliminary approval of the Settlement is granted.  
5 Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the  
6 negotiated Class Representative Service Award.

7 **E. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

8 40. Class Counsel took this matter on a contingency fee basis and invested significant  
9 time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated  
10 average Individual Settlement Share illustrates the demonstrably positive outcome for the  
11 Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of  
12 one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$25,000.  
13 Agreement at §III(O)(10). In light of the positive outcome for the Settlement Class, and in light  
14 of the supporting authority, the proposed Class Counsel award is fair and reasonable.

15 41. Plaintiffs will file a formal motion for the negotiated Class Counsel Award once  
16 preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above  
17 showing is sufficient for preliminary approval of the negotiated attorneys' fees.

18 **F. The Court Should Provisionally Certify the Settlement Class**

19 42. For the purpose of Settlement only, Plaintiffs contend, and Defendant does not  
20 dispute, that provisional certification of the Settlement Class is appropriate.

21 43. Generally, the proposed Settlement Class consists of all of Defendant's current and  
22 former California employees during the Class Period. Defendant's records show that the  
23 Settlement Class Members consists of approximately 3,098 individuals, making joinder of all  
24 Settlement Class Members impracticable. Further, because all Settlement Class Members are  
25 Defendant's current and former employees, the class is readily ascertainable from Defendant's  
26 regular business records, i.e., payroll records.

27 44. The California statutes relating to each of Plaintiffs' claims apply with equal force  
28 and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-

1 wide and Defendant's liability can be determined by facts common to all members of the class.  
2 While Defendant disputes whether the class would be appropriate if the litigation were to continue,  
3 it agrees to class certification for purposes of this settlement only. The wage and hour issues are  
4 both numerous and substantial, and a class action is the most advantageous method of dealing with  
5 the claims of the Settlement Class.

6 45. Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because  
7 they arise from the same factual basis and are based on the same legal theories applicable to the  
8 other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of  
9 the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices  
10 to which the proposed Settlement Class was subject and seeks the same relief. Plaintiffs have  
11 already demonstrated their ability to advocate for the interests of the Settlement Class by initiating  
12 this litigation, undertaking class discovery, and evaluating the proposed settlement to assure that it  
13 is fair. Again, the Defendant disputes whether Plaintiffs' claims are typical of the Class for purposes  
14 of any continued litigation of the Action, but agrees for the purposes of this settlement only that  
15 Plaintiffs assert claims that are typical of the Settlement Class, including claims for meal and rest  
16 break practices and unpaid wages.

17 46. Additionally, Plaintiffs are represented by competent Class Counsel who has  
18 extensive experience in litigating wage and hour class action cases. Class Counsel successfully  
19 briefed, argued, certified, and gained state court settlement approval of the same class-wide causes  
20 of action that are at issue in this case. Class Counsel's wage and hour class action experience  
21 establishes that they are well qualified to represent the interests of this Class.

22 **F. Class Counsel's Experience**

23 47. Plaintiff, the Settlement Class Members and the Aggrieved Employees are  
24 represented by competent and experienced counsel to pursue their claims. I established the JCL  
25 Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved  
26 employees and consumers throughout California in wage and hour class actions, PAGA Actions  
27 and complex multi-party product liability matters. The Firm currently consists of myself, Jean-  
28

1 Claude Lapuyade, Esq. (Partner/Owner), Tesla Stone (Paralegal), Leilani Edmunds (Legal  
2 Secretary), Amanda Rasmussen (Law Clerk).

3 48. I am qualified to represent the Plaintiff, the State of California and the Aggrieved  
4 Employees. I have extensive experience with wage and hour class and representative actions  
5 litigation like this matter, and employment matters in general. Additionally, I have extensive  
6 complex mass tort litigation experience and complex construction product liability experience. I  
7 can, will and have adequately represented the interests of the Plaintiff, the State of California and  
8 the Aggrieved Employees throughout this action.

9 49. I have represented consumers and employees in California class actions, and  
10 complex multi-party product liability actions exclusively for more than 13 years. I have been in  
11 practice as a plaintiffs' civil litigation attorney since April 2007.

12 50. I have significant class counsel and collective action counsel experience. I served as  
13 class and/or collective (PAGA) counsel in the following matters:

14 a. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court,  
15 Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class  
16 and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm,  
17 APC acted as class counsel for the settlement class and as representative PAGA  
18 counsel the State of California and the Aggrieved Employees.)

19 b. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior  
20 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved  
21 a PAGA Settlement negotiated on behalf of the State of California and the aggrieved  
22 employees by the JCL Law Firm, APC.)

23 c. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles  
24 Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle  
25 appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA  
26 settlement for, *inter alia*, missed meal and rest periods.)

27 d. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,  
28 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a

1 PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law  
2 Firm, APC acted as counsel for the plaintiff, the State of California and the  
3 Aggrieved Employees.)

4 e. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case  
5 No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer  
6 appointed JCL Law Firm as Class Counsel and granted final approval of wage and  
7 hour class action for, *inter alia*, off-the-clock work.)

8 f. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-  
9 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as  
10 Class Counsel and granted final approval of wage and hour class action for off-the-  
11 clock work.)

12 g. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court  
13 Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL  
14 Law Firm as class counsel and granted final approval of wage and hour class action  
15 for meal period violations.)

16 h. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case  
17 No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted  
18 approval of PAGA Settlement for, among other things, off-the-clock work. JCL  
19 Law Firm, APC acted as lead counsel.)

20 i. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No.  
21 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA  
22 Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC,  
23 acted as lead counsel.)

24 j. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District  
25 of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class  
26 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC,  
27 as Class Counsel.)  
28

1 k. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior  
2 Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson  
3 appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an  
4 unlawful housing class action settlement arising out of Civil Code Section 1940.1.)  
5 l. *Hill v. Stetak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-  
6 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC  
7 as class counsel and granted final approval of wage and hour class action for unpaid  
8 overtime.)  
9 m. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No  
10 Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL  
11 Law Firm, APC, as Class Counsel and granted preliminary approval for the wage  
12 and hour class action settlement involving nearly 900 current and former employees.  
13 Final approval scheduled for October 4, 2019)  
14 n. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case  
15 No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law  
16 Firm, APC, as Class Counsel and granted final approval for a wage and hour class  
17 action settlement for *inter alia*, missed meal and rest periods and independent  
18 contractor misclassification.)  
19 o. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-  
20 2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL  
21 LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour  
22 wage class action settlement involving misclassified house cleaners.)  
23 p. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No.  
24 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for  
25 an unlawful housing class action arising under Civil Code Section 1940.2)  
26 q. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior  
27 Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory  
28 W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final

1 approval for a wage and hour class action settlement for meal and rest period  
2 violations);

3 r. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court  
4 Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL  
5 Law Firm, APC, as Class Counsel and granted final approval for a wage and hour  
6 class action settlement involving claims for on duty meal and rest periods.);

7 s. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior  
8 Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

9 t. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-  
10 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal  
11 and rest periods)

12 u. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-  
13 2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for  
14 employee misclassification);

15 v. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case  
16 No. BC617160 (2017 - Certified and settled wage and hour class action.);

17 w. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court  
18 Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

19 x. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-  
20 00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful  
21 housing practices arising out of Civil Code Section 1940.1);

22 51. Since 2010, my firm has successfully resolved more than sixty (65) cases and  
23 recovered in excess of \$50 million on behalf of the Firm's clients.

24 52. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a  
25 favorable verdict for the firm's clients.

26 53. Finally, I have published appellate experience in *William Blanchette et al., v. The*  
27 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

1           54.     Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers,  
2 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super  
3 Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see  
4 [https://www.superlawyers.com/about/selection\\_process.html](https://www.superlawyers.com/about/selection_process.html).)

5           **G.     Other Issues per the Court's Guidelines**

6           55.     Claims Made vs. Checks-Mailed Settlement: This is an opt-out, checks mailed  
7 settlement. Class Members are not required to submit a claim form in order to participate.

8           56.     Allocation for Tax Purposes:

- 9           a.     The Net Settlement Amount will be allocated 25% towards wages and 75% towards  
10 penalties and interest. This allocation is reasonable because Plaintiff calculated  
11 Defendant's exposure for unpaid wages to be \$3,116,921. Plaintiff further calculated  
12 Defendant's exposure for interest to be \$1,795,440 and for statutory penalties to be  
13 \$10,902,977. Therefore, Defendant's exposure represents approximately 20% of the  
14 total exposure. The Parties agreed, however, to allocate 25% of the Net Settlement  
15 Amount towards wages because of the strength of that claim and the fact that  
16 Plaintiffs' claim for penalties was largely derivative and uncertain. Finally,  
17 Defendant's exposure to meal and rest break premiums is excluded from this  
18 calculation because liability for these claims was extremely uncertain (ranging from  
19 \$0 to more than \$18 million), and it is unclear whether those premiums would be  
20 characterized as wages or penalties.
- 21           b.     The Settlement Agreement clearly identifies that the wage portion of the Net  
22 Settlement Amount will be subject to wage withholdings (*See* Agreement at  
23 ¶III(O)(3)). The Notice clearly identifies that the wage portion of the Net Settlement  
24 Amount will be subject to wage withholdings (*See* Agreement at Exhibit A, Page 4).
- 25           c.     The Settlement Agreement clearly identifies that Defendant will be paying the  
26 employers' share of payroll taxes in addition to the Gross Settlement Amount (*See*  
27 Agreement at ¶III(A)(4)). The Notice clearly identifies that that Defendant will be  
28

1           paying the employers' share of payroll taxes in addition to the Gross Settlement  
2           Amount (*See* Agreement at Exhibit A, Page 4).

3   57. Release: The release is tailored to the claims that were or could be asserted in the lawsuit  
4       based upon the facts alleged in the complaint (See Memorandum of Points and Authorities  
5       in Support of Plaintiffs' Motion for Preliminary Approval, filed concurrently herewith, at  
6       Section ¶D(4).

7   58. Cy Pres:

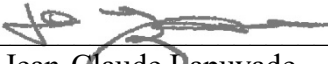
8       a. The Settlement Agreement provides that uncashed funds will be distributed to The  
9       Children Advocacy Institute. Neither Class Counsel nor Defendant's Counsel or  
10      their respective parties have any interest, pecuniary or otherwise, in The Children  
11      Advocacy Institute.

12      b. A Cy Pres recipient is preferred in this case over a redistribution to the participating  
13      Class Members because of the significant size of the Class (3,098 Class Members).  
14      Distributing a second round of checks to more than 3,000 Class Members could cost  
15      upwards of \$17,000 in additional administration costs, which will come out of the  
16      Net Settlement Amount and will reduce the overall recovery by participating Class  
17      Members. The decrease resulting from the added administration costs could  
18      ultimately end up being greater than any increase those participating Class Members  
19      could see from a redistribution of uncashed funds. Therefore, a Cy Pres recipient is  
20      necessary.

21      c. The distribution to The Children Advocacy Group is appropriate under C.C.P. § 384  
22      because it is a non-profit children advocacy institute.

23       I declare under the penalty of perjury under the laws of the State of California that the  
24       foregoing is true and correct. Executed this 23<sup>rd</sup> day of September 2021, at San Diego, California.

25                           **JCL LAW FIRM, APC**

26  
27                           By:   
28                               Jean-Claude Lapuyade  
                                  Attorney for Plaintiff

# **EXHIBIT 1**

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

7 **ZAKAY LAW GROUP, APLC**  
8 SHANI O. ZAKAY (STATE BAR #277924)  
9 5850 OBERLIN DRIVE, SUITE 230A  
10 SAN DIEGO, CA 92121  
11 TEL: (619) 255-9047  
12 FAX: (858) 404-9203

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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SANTA CLARA**

DEBBIE FELIX, an individual, in her  
representative capacity on behalf of the State  
of California and fellow Aggrieved  
Employees,

PLAINTIFFS,

vs.

TVI, INC., d.b.a. SAVERS, a Washington  
corporation; and DOES 1 through 50,  
Inclusive;

DEFENDANTS.

Case No. 21CV376407

[Action Filed 02/24/2021]

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

Judge: Hon. Sunil R. Kulkarni  
Dept.: 1

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and  
2 between Plaintiffs DEBBIE FELIX and RICK MELEAD (hereinafter “Plaintiffs”), individually and  
3 on behalf of the Putative Class, and Defendant TVI, INC., d.b.a. SAVERS (hereinafter  
4 “Defendants”):

5 **I. DEFINITIONS**

6 A. “Actions” shall mean the following collectively, *Felix v. TVI, Inc., d.b.a Savers.*,  
7 Santa Clara County Superior Court, Case No. 21CV376407, filed February 24,  
8 2021(hereinafter “*Felix* PAGA Action”), *Melead v. TVI Savers, Inc.*, Orange County  
9 Superior Court, Case No. 30-2020-01140887-CU-OE-CXC, filed May 26, 2020  
10 (hereinafter “*Melead* Class Action”), *Melead v. TVI Savers, Inc.*, United States  
11 District Court, Central District of California, Case No. 8:20-cv-01224 CJC (ADSx),  
12 removed from the Orange County Superior Court on July 7, 2020 (hereinafter  
13 “*Melead* Federal Class Action”), and *Melead v. TVI Savers, Inc.*, Orange County  
14 Superior Court, Case No. 30-2020-01152545-CU-OE-NJC, filed on July 22, 2020  
15 (hereinafter “*Melead* PAGA Action”).  
16  
17

18 B. “Aggrieved Employees” shall mean all of Defendant’s current and former non-  
19 exempt employees employed in California during the PAGA Period. Aggrieved  
20 Employees are prohibited from requesting exclusion or objecting to the PAGA  
21 Payment.  
22

23 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of  
24 Class Action and Release of Claims.  
25

26 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and  
27 Shani Zakay of Zakay Law Group, APLC.  
28

- 1 E. "Class Counsel Award" means the award of fees and expenses that the Court  
2 authorizes to be paid to Class Counsel for the services they have rendered to  
3 Plaintiffs and the Class in the Actions, consisting of attorneys' fees currently not to  
4 exceed one-third of the Total Settlement Amount currently estimated to be \$500,000  
5 out of \$1,500,000 plus costs and expenses not to exceed \$25,000.00. Class Counsel's  
6 award for attorneys' fees will be divided equally between Class Counsel (50% to  
7 JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- 9 F. "Class Data" means information regarding Class Members that Defendant will in  
10 good faith compile from its records and provide to the Settlement Administrator. It  
11 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class  
12 Member's full name; last known address; Social Security Number; start dates and end  
13 dates of employment.
- 15 G. "Class Members" or the "Class" means all of Defendant's current and former non-  
16 exempt employees employed in California during the Class Period.
- 18 H. "Class Period" means the period from April 18, 2017 to July 27, 2021.
- 20 I. "Class Representative Service Award" means the amount that the Court authorizes to  
21 be paid to the Class Representatives, in addition to their Individual Settlement  
22 Payments and their pro-rata share of the PAGA Settlement, in recognition of their  
23 efforts and risks in assisting with the prosecution of the Actions and in exchange for  
24 executing a General Release of Defendant.
- 26 J. "Class Representatives" shall mean plaintiff DEBBIE FELIX and RICK MELEAD.

1 K. "Court" means the Superior Court for the State of California, County of Santa Clara  
2 presiding over the *Felix* Action.

3  
4 L. "Defendant" shall mean TVI, Inc., d.b.a. SAVERS, a Washington corporation.

5  
6 M. "Effective Date" means the earliest date, following entry by the Court of an order  
7 and judgment finally approving this Settlement, upon which one of the following have  
8 occurred: (i) if no objection is filed to the settlement and no objector appears at the  
9 hearing on final approval, the date of the Court's entry of the order granting final  
10 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the  
11 hearing on final approval, then the earlier of the following: (a) the expiration of all  
12 potential appeal periods without a filing of a notice of appeal of the final approval  
13 order or judgment; (b) final affirmance of the final approval order and judgment by  
14 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all  
15 such appeals (including any petition for review, rehearing, certiorari, etc.) such that  
16 the final approval order and judgment is no longer subject to further judicial review.

17  
18  
19 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and  
20 is the date Defendant transfers the Total Settlement Amount into the QSF in accord  
21 with the terms of this Agreement.

22  
23 O. "Individual Settlement Payment" means the amount payable from the Net Settlement  
24 Amount to each Settlement Class Member and excludes any amounts distributed to  
25 Aggrieved Employees pursuant to PAGA  
26  
27  
28

- 1 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class  
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and  
3 Settlement Administration Costs.  
4
- 5 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the  
6 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other  
7 than formatting changes to facilitate printing by the Settlement Administrator).  
8
- 9 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,  
10 Labor Code § 2698 *et seq.*
- 11 S. "PAGA Payment Ratio" means the respective PAGA Workweeks during the PAGA  
12 Period for each Aggrieved Employee divided by the sum total of the PAGA  
13 Workweeks for all Aggrieved Employees during the PAGA Period.  
14
- 15 T. "PAGA Period" means the period between April 6, 2019 to July 27, 2021.  
16
- 17 U. "PAGA Settlement" shall mean Fifty Thousand Dollars (\$50,000.00) to be allocated  
18 from the Total Settlement Amount.  
19
- 20 V. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either  
21 Plaintiff or Defendant, individually.
- 22 W. "Payment Ratio" means the respective Workweeks for each Class Member divided  
23 by the sum total Workweeks for all Class Members.  
24
- 25 X. "Plaintiff" or Plaintiffs shall mean either DEBBIE FELIX or RICK MELEAD  
26 individually or collectively.  
27  
28

1 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained  
2 by the Settlement Administrator to fund the Total Settlement Amount.

3  
4 Z. "Released Class Claims" means all class action claims under state, federal, or local  
5 law, whether statutory, common law, or administrative law, arising out of the claims  
6 expressly plead in the *Felix* Action, *Melead* Class Action and *Melead* Federal Class  
7 Action and all other claims that could have been plead based on the facts plead in the  
8 *Felix* Action, *Melead* Class Action and *Melead* Federal Class Action including:  
9 failure to pay minimum and overtime wages; failure to pay for or provide meal and  
10 rest periods, failure to pay all wages due to discharged or quitting employees; failure  
11 to provide accurate wage statements; alleged violation of Business and Professions  
12 Code Section 17200, based on the alleged labor code violations including, but not  
13 limited to, injunctive relief; liquidated damages and penalties of any nature, and  
14 expressly excluding all other claims, including claims for vested benefits, wrongful  
15 termination, unemployment insurance, disability, social security, workers'  
16 compensation, and class claims outside of the Class Period.

17  
18  
19 AA. "Released PAGA Claims" mean any and all claims for civil penalties, fees and costs  
20 arising under PAGA expressly alleged, or that could have been alleged based on the  
21 facts alleged in the *Felix* Action and *Melead* PAGA Action and Plaintiffs' notice  
22 letters to the LWDA including, but not limited to, Labor Code sections 201, 202, 203,  
23 204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, and the  
24 applicable IWC Wage Orders, including but not limited to Defendant's alleged failure  
25 to provide suitable seating, which occurred during the PAGA Period and expressly  
26 excluding all other claims, including claims for vested benefits, wrongful termination,  
27  
28

1 unemployment insurance, disability, social security, workers' compensation, and  
2 PAGA claims outside the PAGA Period.

3  
4 BB. "Released Parties" shall mean Defendant and all its present and former parent  
5 companies, subsidiaries, divisions, related or affiliated companies, shareholders,  
6 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and  
7 any individual or entity which could be liable for any of the Released Class Claims  
8 or Released PAGA Claims, and Defendant's counsel of record in the Actions.

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

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

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

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

4  
5 GG. "Total Settlement Amount" means One Million Five Hundred Thousand Dollars  
6 (\$1,500,000.00) that Defendant must pay into the QSF in connection with this  
7 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class  
8 Representative Service Awards, the Class Counsel Award, PAGA Settlement and the  
9 Settlement Administration Costs and *exclusive* of the employer's share of payroll tax,  
10 if any, triggered by any payment under this Settlement.  
11

12 HH. "Workweeks", for purposes of calculating the distribution of the Net Settlement  
13 Amount, means the number of weeks of employment during the Class Period that  
14 each Class Member worked in California. The Settlement Administrator will calculate  
15 the number of Workweeks by calculating the number of days each Class Member was  
16 employed during the Class Period, dividing by seven (7), and rounding up to the  
17 nearest whole number. For purpose of determining the Individual Settlement  
18 Payments and Payment Ratio, each Class Member who is a former employee no  
19 longer working for Defendant will be assigned four (4) additional Workweeks.  
20  
21

22 II. "PAGA Workweeks", for purposes of calculating the distribution of the Aggrieved  
23 Employee Payment, as defined herein, means the number of weeks of employment  
24 during the PAGA Period that each Aggrieved Employee worked in California. The  
25 Settlement Administrator will calculate the number of PAGA Workweeks by  
26 calculating the number of days each Aggrieved Employee was employed during the  
27 PAGA Period, dividing by seven (7), and rounding up to the nearest whole number.  
28

1 **II. RECITALS**

2

3 A. On May 8, 2020, Plaintiff Melead filed a Notice of Violations with the Labor and

4 Workforce Development Agency (LWDA) and served the same on Defendant.

5

6 B. On May 26, 2020, plaintiff Melead filed the *Melead* Class Action for:

7 1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;

8

9 2. Failure to pay overtime wages in violation of California Labor Code sections

10 510 *et seq.*;

11

12 3. Failure to pay minimum wages in violation of California Labor Code sections

13 1194, 1197 and 1197.1;

14

15 4. Failure to provide required rest periods in violation of California Labor Code

16 sections 226.7 and 512;

17

18 5. Failure to provide required meal periods in violation of California Labor Code

19 sections 226.7 and 512;

20

21 6. Failure to provide accurate itemized wage statements in violation of California

22 Labor Code section 226; and

23

24 7. Failure to provide wages when due in violation of California Labor Code

25 sections 201, 202 and 203.

26

27 C. On July 14, 2020, Defendant removed the *Melead* Class Action to United States

28 District Court for the Central District of California (*Melead* Federal Class Action).

1 D. On September 25, 2020, the United States District Court for the Central District of  
2 California remanded the *Melead* Federal Class Action to the Orange County Superior Court.

3  
4 E. On July 22, 2020, Plaintiff Melead filed the *Melead* PAGA Action against Defendant  
5 alleging a single cause of action for violations of PAGA for, *inter alia*, the following:

- 6
- 7 1. Failure to provide complaint meal and rest periods;
  - 8 2. Failure to pay all minimum, regular and overtime wages;
  - 9 3. Failure to pay the correct rate of overtime pay;
  - 10 4. Failure to provide suitable seating;
  - 11 5. Failure to maintain true and accurate records;
  - 12 6. Failure to provide accurate itemized wages statements; and
  - 13 7. Failure to timely pay wages when due during, and upon termination of
  - 14 employment.

15  
16  
17  
18  
19 F. On October 22, 2020, Plaintiff Felix filed a Notice of Violations with the Labor and  
20 Workforce Development Agency (LWDA) and served the same on Defendant.

21  
22 G. On February 24, 2021, Plaintiff Felix filed the *Felix* PAGA Action against Defendant  
23 alleging a single cause of action for violations of PAGA for, *inter alia*, the following:

- 24
- 25 1. Failure to provide complaint meal and rest periods;
  - 26 2. Failure to allow employees to take duty-free, off-the-premises rest periods;
  - 27

3. Failure to pay all minimum, regular and overtime wages;
4. Failure to pay the correct rate of overtime pay;
5. Failure to provide suitable seating;
6. Failure to maintain true and accurate records;
7. Failure to provide accurate itemized wages statements;
8. Failure to pay employee wages for time spent getting their bags checked; and
9. Failure to timely pay wages when due during, and upon termination of employment.

H. On March 25, 2021, the Parties participated in mediation presided over by Mark Rudy, Esq., a well-respected wage and hour class action mediator. The mediation concluded without a settlement. However, following the mediation, each side, represented by its respective counsel, agreed to settle the Action based on a Mediator's proposal which was memorialized in the form of a Memorandum of Understanding.

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

1 other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action  
2 have merit. The Parties agree to certification of the Class for purposes of this  
3 Settlement only. If for any reason the settlement does not become effective,  
4 Defendant reserves the right to contest certification of any class for any reason and  
5 reserves all available defenses to the claims in the Action.  
6

7 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:  
8

9 **III. TERMS OF AGREEMENT**

10 A. Settlement Consideration and Settlement Payments by Defendant.  
11

12 1. Settlement Consideration. In full and complete settlement of the Actions, and  
13 in exchange for the releases set forth below, Defendant and the Released  
14 Parties will pay the sum of the Individual Settlement Payments, the Class  
15 Representative Service Award, the Class Counsel Award, PAGA Settlement,  
16 and the Settlement Administration Costs, as specified in this Agreement, equal  
17 to the Total Settlement Amount of One Million Five Hundred Thousand  
18 Dollars (\$1,500,000.00). The Parties agree that this is a non-reversionary  
19 Settlement and that no portion of the Total Settlement Amount shall revert to  
20 Defendant. Other than the Defendant's share of employer payroll taxes, or as  
21 otherwise specified in the Agreement, Defendant shall not be required to pay  
22 more or less than the Total Settlement Amount, except as provided for  
23 hereinbelow.  
24

25 2. Class Size. At the time of mediation, Defendant estimated that the Settlement  
26 Class was comprised of 3,098 individuals that collectively worked  
27  
28

1 approximately 178,668 Workweeks (“Projected Workweeks”) during the  
2 Class Period. In regard hereto, Defendant will provide a declaration under  
3 penalty of perjury confirming the number of Class Members and Workweeks  
4 they worked during the Class Period prior to the filing of the motion for  
5 preliminary approval. If, at the time of Defendant’s declaration, the actual  
6 number of Workweeks exceeds the Projected Workweeks by more than 10%  
7 (i.e., greater than 196,535), Defendant shall have the option to increase the  
8 Gross Settlement Amount proportionally with each added workweek at a rate  
9 of \$8.40 per Workweek or Defendant shall have the ability to cut off the Class  
10 Period as of the date that any workweeks exceed 10% of 178,668.  
11

12  
13 3. Settlement Payment. Defendant and the Released Parties, and each of them,  
14 are jointly and severally liable for payment of the Total Settlement Amount.  
15 Defendant shall pay, via wire transfer, the Total Settlement Amount to the  
16 Settlement Administrator on the Funding Date:  
17

18 4. Defendant’s Share of Payroll Taxes. Defendant’s share of employer side  
19 payroll taxes is in addition to the Total Settlement Amount and shall be paid  
20 together with the Total Settlement Amount.  
21

22 B. Right to File Amended Complaint in the *Felix* Action. Prior to filing the Motion for  
23 Preliminary Approval of this Settlement, Defendants shall stipulate for leave for  
24 Plaintiffs to file a First Amended Complaint in the *Felix* Action. The First Amended  
25 Complaint will join plaintiff Melead and add all class action causes of action asserted  
26 in the *Melead* Class Action and *Melead* Federal Class Action into the *Felix* Action.  
27 Defendant shall not be required to Answer or in any way respond to the First Amended  
28

1 Complaint as the First Amended Complaint is solely being filed to effectuate this  
2 Settlement Agreement.

3  
4 C. Release by Settlement Class Members. As of the Funding Date, in exchange for the  
5 consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members  
6 release the Released Parties from the Released Class Claims for the Class Period.

7  
8 D. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the  
9 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of  
10 California release the Released Parties from the PAGA Released Claims for the PAGA  
11 Period.

12  
13 E. General Release by Plaintiffs. As of the Funding Date, for the consideration set forth  
14 in this Agreement, Plaintiffs, for themselves and each of them individually, waive,  
15 release, acquit and forever discharge the Released Parties from any and all claims,  
16 actions, charges, complaints, grievances and causes of action, of whatever nature,  
17 whether known or unknown, which exist or may exist on their behalf as of the date of  
18 this Agreement, including but not limited to any and all tort claims, contract claims,  
19 wage claims, wrongful termination claims, disability claims, benefit claims, public  
20 policy claims, retaliation claims, statutory claims, personal injury claims, emotional  
21 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum  
22 meruit claims, and any and all claims arising under any federal, state or other  
23 governmental statute, law, regulation or ordinance, including, but not limited to  
24 claims for violation of the Fair Labor Standards Act, the California Labor Code, the  
25 Wage Orders of California's Industrial Welfare Commission, other state wage and  
26 hour laws, the Americans with Disabilities Act, the Age Discrimination in  
27  
28

1 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII  
2 of the Civil Rights Act of 1964, the California Fair Employment and Housing Act,  
3 the California Family Rights Act, the Family Medical Leave Act, California's  
4 Whistleblower Protection Act, California Business & Professions Code Section  
5 17200 et seq., and any and all claims arising under any federal, state or other  
6 governmental statute, law, regulation or ordinance. Plaintiffs also waive and  
7 relinquish any and all claims, rights or benefits that they may have under California  
8 Civil Code § 1542, which provides as follows:  
9

10  
11 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***  
12 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***  
13 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***  
14 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***  
15 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***  
16 ***DEBTOR OR RELEASED PARTY.***  
17

18 Thus, notwithstanding the provisions of section 1542, and to implement a full and  
19 complete release and discharge of the Released Parties, Plaintiffs expressly  
20 acknowledge this Settlement Agreement is intended to include in its effect, without  
21 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at  
22 the time of signing this Settlement Agreement, and that this Settlement Agreement  
23 contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs  
24 have read this Settlement Agreement, including this waiver of California Civil Code  
25 section 1542, and that Plaintiffs have consulted with or had the opportunity to consult  
26 with counsel of Plaintiffs' choosing about this Settlement Agreement and specifically  
27  
28

1 about the waiver of section 1542, and that Plaintiffs understand this Settlement  
2 Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter  
3 into this Settlement Agreement. Plaintiffs further acknowledge that Plaintiffs later  
4 may discover facts different from or in addition to those Plaintiffs now know or  
5 believe to be true regarding the matters released or described in this Settlement  
6 Agreement, and even so Plaintiffs agree that the releases and agreements contained in  
7 this Settlement Agreement shall remain effective in all respects notwithstanding any  
8 later discovery of any different or additional facts. Plaintiffs expressly assume any and  
9 all risk of any mistake in connection with the true facts involved in the matters,  
10 disputes, or controversies released or described in this Settlement Agreement or with  
11 regard to any facts now unknown to Plaintiffs relating thereto.  
12  
13

14 F. Dismissal of the *Melead* Class Action and *Melead* PAGA Action: Upon the Funding  
15 Date, Class Counsel will take all steps necessary to dismiss the *Melead* Class Action  
16 and *Melead* PAGA Action with prejudice.  
17

18 G. Conditions Precedent: This Settlement will become final and effective only upon the  
19 occurrence of all of the following events:  
20

- 21 1. The Court enters an order granting preliminary approval of the Settlement;
- 22 2. The Court enters an order granting final approval of the Settlement and a Final  
23 Judgment;
- 24 3. If an objector appears at the final approval hearing, the time for appeal of the  
25 Final Judgment and Order Granting Final Approval of Class Action  
26 Settlement expires; or, if an appeal is timely filed, there is a final resolution of  
27  
28

1 any appeal from the Judgment and Order Granting Final Approval of Class  
2 Action Settlement; and

3  
4 4. Defendant fully funds the Total Settlement Amount.

5  
6 H. Nullification of Settlement Agreement. In the event that this Settlement Agreement is  
7 not preliminarily or finally approved by the Court, fails to become effective, or is  
8 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits  
9 Defendant from obtaining a complete resolution of the Released Claims, or if  
10 Defendant fails to fully fund the Total Settlement Amount:

11  
12 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,  
13 and shall not be admissible in any judicial, administrative or arbitral  
14 proceeding for any purpose or with respect to any issue, substantive or  
15 procedural;

16  
17 2. The conditional class certification (obtained for any purpose) shall be void *ab*  
18 *initio* and of no force or effect, and shall not be admissible in any judicial,  
19 administrative or arbitral proceeding for any purpose or with respect to any  
20 issue, substantive or procedural; and

21  
22 3. The First Amended Complaint in the *Felix* Action shall be void *ab initio* and  
23 of no force or effect, and the initial complaint filed in the *Felix* Action shall  
24 thereafter become the operative complaint.  
25  
26  
27  
28

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

4  
5           5.     Defendant shall bear the sole responsibility for any cost to issue or reissue any  
6                 curative notice to the Settlement Class Members and the all Settlement  
7                 Administration Costs incurred to the date of nullification.

8  
9           I.     Certification of the Settlement Class. The Parties stipulate to conditional class  
10                certification of the Class for the Class Period for purposes of settlement only. In the  
11                event that this Settlement is not approved by the Court, fails to become effective, or is  
12                reversed, withdrawn or modified by the Court, or in any way prevents or prohibits  
13                Defendant from obtaining a complete resolution of the Released Claims, the  
14                conditional class certification (obtained for any purpose) shall be void *ab initio* and of  
15                no force or effect, and shall not be admissible in any judicial, administrative or arbitral  
16                proceeding for any purpose or with respect to any issue, substantive or procedural.

17  
18  
19           J.     Tax Liability. The Parties make no representations as to the tax treatment or legal  
20                effect of the payments called for, and Class Members and/or Aggrieved Employees are  
21                not relying on any statement or representation by the Parties in this regard. Class  
22                Members and/or Aggrieved Employees understand and agree that they will be  
23                responsible for the payment of any taxes and penalties assessed on the Individual  
24                Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA  
25                Settlement described and will be solely responsible for any penalties or other  
26                obligations resulting from their personal tax reporting of Individual Settlement  
27                Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

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

22          L.    Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file with  
23          the Court a Motion for Order Granting Preliminary Approval and supporting papers,  
24          which shall include this Settlement Agreement.

26          M.    Settlement Administrator. The Settlement Administrator shall be responsible for:  
27          establishing and administering the QSF; calculating, processing and mailing payments  
28

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

16  
17  
18  
19 N. Notice Procedure.

- 20 1. Class Data. No later than ten (10) business days after the Preliminary  
21 Approval Date, Defendant shall provide the Settlement Administrator with the  
22 Class Data for purposes of preparing and mailing Notice Packets to the Class  
23 Members.  
24  
25 2. Notice Packets.  
26 a) The Notice Packet shall contain the Notice of Class Action Settlement  
27 in a form substantially similar to the form attached as Exhibit A. The  
28

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

- 24 b) The Notice Packet's mailing envelope shall include the following  
25 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE  
26 ENTITLED TO PARTICIPATE IN A CLASS ACTION  
27 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR  
28

1 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED  
2 NOTICE.”

3  
4 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,  
5 the Settlement Administrator will perform a search based on the National  
6 Change of Address Database to update and correct any known or identifiable  
7 address changes. No later than fourteen (14) calendar days after receiving the  
8 Class Data from Defendant, the Settlement Administrator shall mail and email  
9 copies of the Notice Packet to all Class Members via regular First-Class U.S.  
10 Mail and electronic mail. The Settlement Administrator shall exercise its best  
11 judgment to determine the current mailing address for each Class Member.  
12 The address identified by the Settlement Administrator as the current mailing  
13 address shall be presumed to be the best mailing address for each Class  
14 Member.  
15

16  
17 4. Undeliverable Notices. Any Notice Packets returned to the Settlement  
18 Administrator as non-delivered on or before the Response Deadline shall be  
19 re-mailed to any forwarding address provided. If no forwarding address is  
20 provided, the Settlement Administrator shall promptly attempt to determine a  
21 correct address by lawful use of skip-tracing, or other search using the name,  
22 address and/or Social Security number of the Class Member involved, and  
23 shall then perform a re-mailing, if another mailing address is identified by the  
24 Settlement Administrator. In addition, if any Notice Packets, which are  
25 addressed to Class Members who are currently employed by Defendant, are  
26 returned to the Settlement Administrator as non-delivered and no forwarding  
27  
28

1 address is provided, the Settlement Administrator shall notify Defendant.  
2 Defendant will request that the currently employed Class Member provide a  
3 corrected address, and transmit to the Administrator any corrected address  
4 provided by the Class Member. Class Members who received a re-mailed  
5 Notice Packet shall have their Response Deadline extended fifteen (15) days  
6 from the original Response Deadline.  
7

8 5. Disputes Regarding Individual Settlement Payments. Class Members will  
9 have the opportunity, should they disagree with Defendant's records regarding  
10 the start and end dates of employment to provide documentation and/or an  
11 explanation to show contrary dates. If there is a dispute, the Settlement  
12 Administrator will consult with the Parties to determine whether an  
13 adjustment is warranted. The Settlement Administrator shall determine the  
14 eligibility for, and the amounts of, any Individual Settlement Payments under  
15 the terms of this Agreement. The Settlement Administrator's determination  
16 of the eligibility for and amount of any Individual Settlement Payment shall  
17 be binding upon the Class Member and the Parties.  
18  
19

20 6. Disputes Regarding Administration of Settlement. Any disputes not resolved  
21 by the Settlement Administrator concerning the administration of the  
22 Settlement will be resolved by the Court under the laws of the State of  
23 California. Before any such involvement of the Court, counsel for the Parties  
24 will confer in good faith to resolve the disputes without the necessity of  
25 involving the Court.  
26  
27  
28

1                   7.     Exclusions. The Notice of Class Action Settlement contained in the Notice  
2                   Packet shall state that Class Members who wish to exclude themselves from  
3                   the Settlement must submit a written request for exclusion by the Response  
4                   Deadline. The written request for exclusion must state that the Class Member  
5                   wishes to exclude himself or herself from the Settlement and (1) must contain  
6                   the name, address, and the last four digits of the Social Security number of the  
7                   person requesting exclusion; (2) must be signed by the Class Member; (3)  
8                   must be postmarked or fax stamped by the Response Deadline and returned to  
9                   the Settlement Administrator at the specified address or fax telephone number;  
10                  and (4) contain a typewritten or handwritten notice stating in substance: "I  
11                  wish to opt out of the settlement of the class action lawsuit entitled *Felix v.*  
12                  *TVI, Inc., d.b.a Savers.*, currently pending in the Superior Court for the County  
13                  of Santa Clara, Case No. 21CV376407 . I understand that by requesting to  
14                  be excluded from the settlement, I will receive no money from the Settlement  
15                  described in this Notice." The request for exclusion will not be valid if it is  
16                  not timely submitted, if it is not signed by the Class Member, or if it does not  
17                  contain the name and address and last four digits of the Social Security number  
18                  of the Class Member. The date of the postmark on the mailing envelope or  
19                  fax stamp on the request for exclusion shall be the exclusive means used to  
20                  determine whether the request for exclusion was timely submitted. Any Class  
21                  Member who requests to be excluded from the Settlement Class will not be  
22                  entitled to an Individual Settlement Payment and will not be otherwise bound  
23                  by the terms of the Settlement or have any right to object, appeal or comment  
24                  thereon. However, any Class Member that submits a timely request for  
25  
26  
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28

1 exclusion that is also a member of the Aggrieved Employees will still receive  
2 their pro rata share of the PAGA Settlement, as specified below, and in  
3 consideration, will be bound by the Release by the Aggrieved Employees as  
4 set forth herein. Settlement Class Members who fail to submit a valid and  
5 timely written request for exclusion on or before the Response Deadline shall  
6 be bound by all terms of the Settlement and any final judgment entered in this  
7 Action if the Settlement is approved by the Court. No later than fourteen (14)  
8 calendar days after the Response Deadline, the Settlement Administrator shall  
9 provide counsel for the Parties with a final list of the Class Members who have  
10 timely submitted written requests for exclusion. At no time shall any of the  
11 Parties or their counsel seek to solicit or otherwise encourage members of the  
12 Class to submit requests for exclusion from the Settlement.  
13  
14

- 15 8. Objections. The Notice of Class Action Settlement contained in the Notice  
16 Packet shall state that Class Members who wish to object to the Settlement  
17 must submit to the Settlement Administrator a written statement of objection  
18 (“Notice of Objection”) by the Response Deadline. The postmark date of  
19 mailing shall be deemed the exclusive means for determining that a Notice of  
20 Objection was served timely. The Notice of Objection must be signed by the  
21 Settlement Class Member and state: (1) the case name and number; (2) the  
22 name of the Settlement Class Member; (3) the address of the Settlement Class  
23 Member; (4) the last four digits of the Settlement Class Member’s Social  
24 Security number; (4) the basis for the objection; and (5) if the Settlement Class  
25 Member intends to appear at the Final Approval/Settlement Fairness Hearing.  
26  
27 Class Members who fail to make objections in writing in the manner specified  
28

1 above may still make their objections orally at the Final Approval/Settlement  
2 Fairness Hearing with the Court's permission. Settlement Class Members will  
3 have a right to appear at the Final Approval/Settlement Fairness Hearing to  
4 have their objections heard by the Court. At no time shall any of the Parties  
5 or their counsel seek to solicit or otherwise encourage Class Members to file  
6 or serve written objections to the Settlement or appeal from the Order and  
7 Final Judgment. Class Members who submit a written request for exclusion  
8 may not object to the Settlement. Class Members may not object to the PAGA  
9 Settlement  
10 Settlement  
11

12 O. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay  
13 the Total Settlement Amount on or before the Funding Date, plus any employer's share  
14 of payroll taxes as mandated by law within the time specified herein.  
15

16 1. Individual Settlement Payments. Individual Settlement Payments shall be  
17 paid from the Net Settlement Amount and shall be paid pursuant to the  
18 formula set forth below.  
19

20 Calculation of Individual Settlement Payments. Using the Class Data, the  
21 Settlement Administrator shall add up the total number of Workweeks for all  
22 Class Members. The respective Workweeks for each Class Member will be  
23 divided by the total Workweeks for all Class Members, resulting in the  
24 Payment Ratio for each Class Member. Each Class Member's Payment Ratio  
25 will then be multiplied by the Net Settlement Amount to calculate each Class  
26 Member's estimated Individual Settlement Payments. Each Individual  
27 Settlement Payment will be reduced by any legally mandated employee tax  
28

1 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement  
2 Payments for Class Members who submit valid and timely requests for  
3 exclusion will be redistributed to Settlement Class Members who do not  
4 submit valid and timely requests for exclusion on a pro rata basis based on  
5 their respective Payment Ratios.

6  
7 2. Calculation of Individual Payments to the Aggrieved Employees. Using the  
8 Class Data, the Settlement Administrator shall add up the total number of  
9 PAGA Workweeks for all Aggrieved Employees during the PAGA Period.  
10 The respective PAGA Workweeks for each Aggrieved Employee will be  
11 divided by the total PAGA Workweeks for all Aggrieved Employees,  
12 resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each  
13 Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the  
14 Aggrieved Employee Payment to calculate each Aggrieved Employee’s  
15 estimated share of the PAGA Settlement.  
16

17  
18 3. Allocation of Individual Settlement Payments. For tax purposes, Individual  
19 Settlement Payments shall be allocated and treated as follows: 25% as wages  
20 (“Wage Portion”); 75% as penalties and interest (“Non-Wage Portion”). The  
21 Wage Portion is subject to wage withholdings and shall be reported on IRS  
22 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings  
23 and shall be reported on IRS Form 1099.  
24

25 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved  
26 Employee Settlement Payments shall be allocated and treated as 100%  
27 penalties and shall be reported on IRS Form 1099.  
28

1                   5.     No Credit Toward Benefit Plans. The Individual Settlement Payments and  
2                   individual shares of the PAGA Settlement made to Settlement Class Members  
3                   and/or Aggrieved Employees under this Settlement Agreement, as well as any  
4                   other payments made pursuant to this Settlement Agreement, will not be  
5                   utilized to calculate any additional benefits under any benefit plans to which  
6                   any Class Members may be eligible, including, but not limited to profit-  
7                   sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,  
8                   sick leave plans, PTO plans, and any other benefit plan. Rather, it is the  
9                   Parties' intention that this Settlement Agreement will not affect any rights,  
10                  contributions, or amounts to which any Class Members may be entitled under  
11                  any benefit plans.  
12

13  
14                  6.     All monies received by Settlement Class Members under the Settlement which  
15                  are attributable to wages shall constitute income to such Settlement Class  
16                  Members solely in the year in which such monies actually are received by the  
17                  Settlement Class Members. It is the intent of the Parties that Individual  
18                  Settlement Payments and individual shares of the PAGA Settlement provided  
19                  for in this Settlement agreement are the sole payments to be made by Defendant  
20                  to Settlement Class Members and/or Aggrieved Employees in connection with  
21                  this Settlement Agreement, with the exception of Plaintiffs, and that the  
22                  Settlement Class Members and/or Aggrieved Employees are not entitled to any  
23                  new or additional compensation or benefits as a result of having received the  
24                  Individual Settlement Payments and/or their shares of the PAGA Settlement.  
25  
26  
27  
28

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

5  
6           8.     Expiration. Any checks issued to Settlement Class Members and Aggrieved  
7                   Employees shall remain valid and negotiable for one hundred and eighty (180)  
8                   days from the date of their issuance. If a Settlement Class Member and/or  
9                   Aggrieved Employee does not cash his or her settlement check within 90 days,  
10                  the Settlement Administrator will send a letter to such persons, advising that  
11                  the check will expire after the 180<sup>th</sup> day, and invite that Settlement Class  
12                  Member and/or Aggrieved Employee to request reissuance in the event the  
13                  check was destroyed, lost or misplaced. In the event an Individual Settlement  
14                  Payment and/or Aggrieved Employee's individual share of the PAGA  
15                  Settlement check has not been cashed within one hundred and eighty (180)  
16                  days, all funds represented by such uncashed checks, plus any interest accrued  
17                  thereon, shall be distributed consistent with California Code of Civil  
18                  Procedure Section 384 as follows: to The Children's Advocacy Institute  
19                  (CAI), founded at the nonprofit University of San Diego School of Law in  
20                  1989. Neither Class Counsel nor Defendant's counsel has any interest,  
21                  pecuniary or otherwise, in CAI.

22  
23  
24  
25           9.     Class Representative Service Award. In addition to the Individual Settlement  
26                   Payment and their individual share of the PAGA Settlement to be paid to  
27                   Plaintiffs, Plaintiffs will apply to the Court for an award of not more than  
28

1 \$7,500, each, as the Class Representative Service Awards. Defendant does  
2 not presently intend to oppose a Class Representative Service Awards of no  
3 more than \$7,500 for each Plaintiff. The Settlement Administrator shall pay  
4 the Class Representative Service Awards, either in the amount stated herein if  
5 approved by the Court or some other amount as approved by the Court, to  
6 Plaintiffs from the Total Settlement Amount no later than ten (10) calendar  
7 days after the Funding Date. Any portion of the requested Class  
8 Representative Service Awards that are not awarded to the Class  
9 Representatives shall be part of the Net Settlement Amount and shall be  
10 distributed to Settlement Class Members as provided in this Agreement. The  
11 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiffs  
12 for their Class Representative Service Award. Plaintiffs shall be solely and  
13 legally responsible to pay any and all applicable taxes on their Class  
14 Representative Service Award and shall hold harmless the Released Parties  
15 from any claim or liability for taxes, penalties, or interest arising as a result of  
16 the Class Representative Service Awards. The Class Representative Service  
17 Awards shall be in addition to Plaintiffs' Individual Settlement Payment as a  
18 Settlement Class Member. Approval of this Settlement shall not be  
19 conditioned on Court approval of the requested amount of the Class  
20 Representative Service Awards. In the event that the Court reduces or does  
21 not approve the requested Class Representative Service Awards, Plaintiffs  
22 shall not have the right to revoke the Settlement, and it will remain binding.  
23  
24  
25  
26

27 10. Class Counsel Award. Defendant understands a motion by Class Counsel for  
28 attorneys' fees not to exceed one-third of the Total Settlement Amount

1 currently estimated to be \$500,000.00 plus costs and expenses supported by  
2 declaration not to exceed Twenty-Five Thousand Dollars (\$25,000.00), from  
3 the Total Settlement Amount will be filed. Any portion of the requested Class  
4 Counsel Award that is not awarded to Class Counsel shall be part of the Net  
5 Settlement Amount and shall be distributed to Settlement Class Members as  
6 provided in this Agreement. The Settlement Administrator shall allocate and  
7 pay the Class Counsel Award to Class Counsel from the Total Settlement  
8 Amount no later than five (5) calendar days after the Funding Date. Class  
9 Counsel shall be solely and legally responsible to pay all applicable taxes on  
10 the payment made pursuant to this paragraph. The Settlement Administrator  
11 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments  
12 made pursuant to this paragraph. In the event that the Court reduces or does  
13 not approve the requested Class Counsel Award, Plaintiffs and Class Counsel  
14 shall not have the right to revoke the Settlement, or to appeal such order, and  
15 the Settlement will remain binding.  
16  
17  
18

- 19 11. PAGA Settlement. Fifty Thousand Dollars (\$50,000) shall be allocated from  
20 the Total Settlement Amount for settlement of claims for civil penalties under  
21 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The  
22 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA  
23 Settlement (\$37,500) to the California Labor and Workforce Development  
24 Agency no later than twenty-five (25) calendar days after the Funding Date  
25 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement  
26 (\$12,500) will be distributed to the Aggrieved Employees as described in this  
27 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of  
28

1 distributing the PAGA Settlement to the Aggrieved Employees, each  
2 Aggrieved Employee shall receive their pro-rata share of the Aggrieved  
3 Employee Payment using the PAGA Payment Ratio as defined above.  
4

- 5 12. Settlement Administration Costs. The Settlement Administrator shall be paid  
6 for the costs of administration of the Settlement from the Total Settlement  
7 Amount. The estimate of the Settlement Administration Costs is \$22,500.00.  
8 The Settlement Administrator shall be paid the Settlement Administration  
9 Costs no later than twenty-five (25) calendar days after the Funding Date.  
10

- 11 P. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with  
12 the Court a Motion for Order Granting Final Approval and Entering Judgment, within  
13 twenty-eight (28) days following the expiration of the Response Deadline, which  
14 motion shall request final approval of the Settlement and a determination of the  
15 amounts payable for the Class Representative Service Award, the Class Counsel  
16 Award, the PAGA Settlement, and the Settlement Administration Costs.  
17

- 18 1. Declaration by Settlement Administrator. No later than fourteen (14) days  
19 after the Response Deadline, the Settlement Administrator shall submit a  
20 declaration in support of Plaintiffs' motion for final approval of this  
21 Settlement detailing the number of Notice Packets mailed and re-mailed  
22 to Class Members, the number of undeliverable Notice Packets, the number of  
23 timely requests for exclusion, the number of objections received, the amount  
24 of the average Individual Settlement Payment and highest Individual  
25 Settlement Payment, the Settlement Administration Costs, and any other  
26  
27  
28

1 information as the Parties mutually agree or the Court orders the Settlement  
2 Administrator to provide.

3  
4 2. Final Approval Order and Judgment. Class Counsel shall present an Order  
5 Granting Final Approval of Class Action Settlement to the Court for its  
6 approval, and Judgment thereon, at the time Class Counsel files the Motion  
7 for Final Approval.  
8

9 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to  
10 revoke the Settlement and Defendant shall have, in its sole discretion, the option to  
11 terminate this Settlement if, after the Response Deadline, the number of Settlement  
12 Class Members who submitted timely and valid written requests for exclusion from  
13 the Settlement is at least five percent (5%) of all Settlement Class Members. If  
14 Defendant exercises the option to terminate this Settlement, Defendant shall: (a)  
15 provide written notice to Class Counsel within five (5) calendar days after (i)  
16 providing the Class Data to the Settlement Administrator or (ii) the Settlement  
17 Administrator provides information regarding opt outs (which is to occur no later than  
18 fourteen (14) calendar days after the Response Deadline, and (b) pay all Settlement  
19 Administration Costs incurred up to the date or as a result of the termination; and the  
20 Parties shall proceed in all respects as if this Agreement had not been executed.  
21

22  
23 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide  
24 an opportunity for Counsel for Defendant to review the Motions for Preliminary and  
25 Final Approval, including the Order Granting Final Approval of Class Action  
26 Settlement, and Judgment before filing with the Court. The Parties and their counsel  
27 will cooperate with each other and use their best efforts to affect the Court's approval  
28

1 of the Motions for Preliminary and Final Approval of the Settlement, and entry of  
2 Judgment.

3  
4 P. Cooperation. The Parties and their counsel will cooperate with each other and use  
5 their best efforts to implement the Settlement.

6  
7 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,  
8 except such proceedings necessary to implement and complete the Settlement, pending  
9 the Final Approval/Settlement Fairness Hearing to be conducted by the Court

10  
11 R. Amendment or Modification. This Agreement may be amended or modified only by  
12 a written instrument signed by counsel for all Parties or their successors-in-interest.

13  
14 S. Entire Agreement. This Agreement and any attached Exhibit constitute the entire  
15 Agreement among these Parties, and no oral or written representations, warranties or  
16 inducements have been made to any Party concerning this Agreement or its Exhibit  
17 other than the representations, warranties and covenants contained and memorialized  
18 in this Agreement and its Exhibit.

19  
20 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
21 represent they are expressly authorized by the Parties whom they represent to negotiate  
22 this Agreement and to take all appropriate Action required or permitted to be taken by  
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
24 documents required to effectuate the terms of this Agreement. The persons signing  
25 this Agreement on behalf of Defendant represents and warrants that he/she is  
26 authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and  
27  
28

warrant that they are authorized to sign this Agreement and that he/she has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

U. No Public Comment: The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Class Counsel further agrees not to use the Settlement Agreement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Further, Class Counsel will not include, reference or use the Settlement Agreement for any marketing or promotional purposes, or for attempting to influence business relationships at Saver's locations, either before or after the Motion for Preliminary Approval is filed.

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

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

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

1           Y.   This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement  
2           is a fair, adequate and reasonable settlement of this Action and have arrived at this  
3           Settlement after extensive arms-length negotiations, taking into account all relevant  
4           factors, present and potential.

5  
6           Z.   Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with  
7           respect to the interpretation, implementation and enforcement of the terms of this  
8           Agreement and all orders and judgments entered in connection therewith, and the  
9           Parties and their counsel submit to the jurisdiction of the Court for purposes of  
10          interpreting, implementing and enforcing the settlement and all orders and judgments  
11          entered in connection with this Agreement.

12  
13          AA.   Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
14          the Court shall first attempt to construe the provisions valid to the fullest extent  
15          possible consistent with applicable precedents so as to define all provisions of this  
16          Agreement valid and enforceable.

17  
18          BB.   No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently  
19          intend to pursue any claims against the Released Parties, including, but not limited to,  
20          any and all claims relating to or arising from Plaintiffs' employment with Defendant,  
21          regardless of whether Class Counsel is currently aware of any facts or legal theories  
22          upon which any claims or causes of action could be brought against Released Parties,  
23          including those facts or legal theories alleged in the operative complaint in this Action.  
24          The Parties further acknowledge, understand and agree that this representation is  
25          essential to the Agreement and that this Agreement would not have been entered into  
26          were it not for this representation.  
27  
28

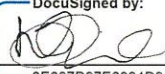
1 CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class  
2 certification for purposes of this settlement only.

3  
4 DD. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the  
5 Released Claims have merit and give rise to liability on the part of Defendant.  
6 Defendant claims that the Released Claims have no merit and do not give rise to  
7 liability. This Agreement is a compromise of disputed claims. Nothing contained in  
8 this Agreement and no documents referred to and no action taken to carry out this  
9 Agreement may be construed or used as an admission by or against the Defendant or  
10 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other  
11 than as may be specifically set forth herein, each Party shall be responsible for and  
12 shall bear its/his own attorney's fees and costs.  
13

14  
15 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

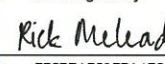
16 DATED: 7/19/2021

17 DEBBIE FELIX

DocuSigned by:  
  
3E897D37E6024D9...

18 DATED: 7/24/2021

19 RICK MELEAD

DocuSigned by:  
  
7757EA753F7A4F5...

20  
21 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

22 DATED: 8/2/2021

23 TVI, INC d.b.a. SAVERS

24 Printed Name

25 Title

26   
27  
28

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

2  
3 DATED: 7/24/2021

JCL LAW FIRM, A.P.C.

4 By:

DocuSigned by:

Jean-Claude Lapuyade

0EBC25D5B9CD469...

5 Attorneys for the Plaintiffs and the Settlement Class  
6 Members

7  
8  
9 DATED: 7/24/2021

ZAKAY LAW GROUP, APLC

10 By:

DocuSigned by:

4ECDE73A91D4420...

11 Attorneys for Plaintiffs and the Settlement Class  
12 Members

13  
14 DATED: 8/2/2021

JACKSON LEWIS, P.C.

15 By:

16 Attorneys for Defendants

17 4828-2706-0977, v. 2

# **EXHIBIT A**

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT  
AND FINAL HEARING DATE**

*(Felix, et al., v. TVI, Inc., d.b.a. Savers, Santa Clara County Superior Court Case No. 21CV376407)*

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

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing and Receive a Payment</b>                             | <p>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.</p> <p><b>Your estimated Settlement Share is: \$&lt;&lt;[REDACTED]&gt;&gt;. See the explanation below.</b></p> <p>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.</p> |
| <b>Exclude Yourself</b>                                             | <p>If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement</b>.</p> <p>Instructions are set forth below.</p>                                                                                                                                                                                                                                        |
| <b>Object</b>                                                       | <p>You may write to the Court about why you believe the settlement should not be approved.</p> <p>Directions are provided below.</p>                                                                                                                                                                                                                                                                                                                                                                                         |

**1. Why did I get this Notice?**

A proposed class action settlement (the “Settlement”) of the following lawsuits has been reached between Plaintiff Debbie Felix (“Felix”) and Rick Melead (“Mlead”) (collectively, “Plaintiffs”) and Defendant TVI, Inc., d.b.a. Savers (“Defendant”): *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara County Superior Court, Case No. 21CV376407 (hereinafter “*Felix* PAGA Action”), *Mlead v. TVI Savers, Inc.*, Orange County Superior Court, Case No. 30-2020-01140887-CU-OE-CXC (hereinafter “*Mlead* Class Action”), and *Mlead v. TVI Savers, Inc.*, Orange County Superior Court, Case No. 30-2020-01152545-CU-OE-NJC (hereinafter “*Mlead* PAGA Action”) (collectively, the “Actions”). The Santa Clara County Superior Court (the “Court”) has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

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

All of Defendant’s current and former non-exempt employees employed in California during the period of April 18, 2017 to July 27, 2021.

The “Class Period” is the period of time running from April 18, 2017 to July 27, 2021.

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

## **2. What is this class action lawsuit about?**

On May 26, 2020, Plaintiff Melead filed the *Melead* Class Action Complaint against Defendant in the Superior Court of the State of California, County of Orange. Plaintiff Melead asserted claims that Defendant: (a) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (b) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (c) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (d) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (e) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (f) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (g) Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203.

On July 14, 2020, Defendant removed the *Melead* Class Action to the United States District Court for the Central District of California (*Melead* Federal Class Action). On September 25, 2020, the United States District Court for the Central District of California remanded the *Melead* Federal Class Action to the Orange County Superior Court.

On July 22, 2020, Plaintiff Melead filed the *Melead* PAGA Action against Defendant alleging a single cause of action for Violations of the Private Attorney General Act at Labor Code Sections 2698 *et seq.*

On February 24, 2021, Plaintiff Felix filed the *Felix* PAGA Action against Defendant alleging a single cause of action for Violations of the Private Attorney General Act at Labor Code Sections 2698 *et seq.*

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Actions could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their termination; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Actions.

On March 25, 2021, the Parties participated in an all-day mediation with Mark Rudy, Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties were unable to reach an agreement for settlement. However, following the mediation, each side, represented by its respective counsel, agreed to settle the Actions based on a mediator's proposal. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

## **3. What are the terms of the Settlement?**

Total Settlement Amount. Defendant has agreed to pay an “all in” amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “Total Settlement Amount”) to fund the settlement. The Total Settlement Amount includes the payment of all Settlement Shares to Settlement Class Members, Class Counsel's attorneys' fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiffs.

After the Judgment becomes Final, Defendant will pay the Total Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid From the Total Settlement Amount. The Settlement provides for certain payments to be made from the Total Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Total Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$[REDACTED], for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Total Settlement Amount (currently \$500,000.000) and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payments. Class Representative Service Payments of up to Seven Thousand and Five Hundred Dollars (\$7,500.00) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$50,000 relating to Plaintiffs’ claim under the Private Attorneys General Act (“PAGA”), \$37,500 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) and the remaining \$12,500 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Net Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Settlement Share for each Settlement Class Member will be calculated by calculating the number of days each Settlement Class Member was employed during the Class Period, dividing by seven (7), and rounding up to the nearest whole number. For purpose of determining the Settlement Share and Payment Ratio, each Class Member who is a former employee no longer working for Defendant will be assigned four (4) additional workweeks. A “workweek” is defined as a normal seven-day week of work during the Class Period in which, according to Defendant’s records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to Aggrieved Employees. The Net PAGA Amount shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Settlement Administrator will calculate the number of PAGA Workweeks by calculating the number of days each Aggrieved Employee was employed during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole number. “Aggrieved Employees” means all of Defendant’s current and former non-exempt employees employed in California during the period of April 6, 2019 to July 27, 2021.

**If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If**

your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

**Tax Matters.** One-Fourth of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Three-Fourths of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

**Conditions of Settlement.** This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

#### **4. What Do I Release Under the Settlement?**

**Released Claims.** Upon entry of final judgment and funding in full of the Total Settlement Amount by Defendant, Plaintiffs and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all class action claims under state, federal, or local law, whether statutory, common law, or administrative law, arising out of the claims expressly plead in the *Felix* Action, *Melead* Class Action and *Melead* Federal Class Action and all other claims that could have been plead based on the facts plead in the *Felix* Action, *Melead* Class Action and *Melead* Federal Class Action including: failure to pay minimum and overtime wages; failure to pay for or provide meal and rest periods, failure to pay all wages due to discharged or quitting employees; failure to provide accurate wage statements; alleged violation of Business and Professions Code Section 17200, based on the alleged labor code violations including, but not limited to, injunctive relief; liquidated damages and penalties of any nature, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period ("Released Class Claims").

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

The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Total Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" are defined as any and all claims for civil penalties, fees and costs arising under PAGA expressly alleged, or that could have been alleged based on the facts alleged in the *Felix* Action and *Melead* PAGA Action and Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Orders, including but not limited to Defendant's alleged failure to provide suitable seating, which occurred during the PAGA Period and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

#### **5. How much will my payment be?**

**Defendant's records reflect that you have <<\_\_\_\_>> work-weeks worked during the Class Period (April 18, 2017 to July 27, 2021).**

Based on this information, your estimated Settlement Share is <<\_\_\_\_\_>>.

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

#### 6. How can I get a payment?

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

The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is \_\_\_\_\_. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Felix, et al., v. TVI, Inc., d.b.a. Savers, Santa Clara County Superior Court Case No. 21CV376407*." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

#### 8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Felix, et al., v. TVI, Inc., d.b.a. Savers, Santa Clara County Superior Court Case No. 21CV376407*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by

appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than**                     . The address for the Settlement Administrator is \_\_\_\_\_.

The addresses for the Parties' counsel are as follows:

**Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
3990 Old Town Ave., Suite C204  
San Diego, CA 92110  
Tel: (619) 599-8292  
Email: [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
Website: [www.jcl-lawfirm.com](http://www.jcl-lawfirm.com)

**Class Counsel:**

Shani O. Zakay, Esq.  
Zakay Law Group, APLC  
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**Counsel for Defendant:**

Adam Y. Siegel, Esq.  
Jackson Lewis P.C.  
725 South Figueroa Street, Suite 2500  
Los Angeles, CA 90017-5408  
Tel: (213) 689-0404  
Fax: (213) 689-0430  
Email: [Adam.Siegel@jacksonlewis.com](mailto:Adam.Siegel@jacksonlewis.com)

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

The Court will hold a Final Approval Hearing at 00:00 AM/PM on \_\_\_\_\_, at the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113-1090 in Department 1 before Judge Sunil R. Kulkarni. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

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

You may call the Settlement Administrator at \_\_\_\_\_ or write to *Felix, et al., v. TVI, Inc., d.b.a. Savers, Santa Clara County Superior Court Case No. 21CV376407*, Settlement Administrator, c/o \_\_\_\_\_.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

**IMPORTANT:**

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Children Advocacy Institute in accordance with Code of Civil Procedure Section 384 in the name of the Settlement Class Member. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

# **EXHIBIT 2**