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JCL LAW FIRM, APC

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE 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 SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 17, 2022

Time: 1:30 P.M.

Dept.: 1

Action Filed: February 24, 2021

I, SHANI O. ZAKAY, declare as follows:

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

2. Over the course of the litigation during the last 20 months, a number of attorneys from two firms have worked on this matter. The credentials of counsel in this action are reflected in the Zakay Law Group, APC firm resumes a true and correct copy of which is attached hereto as Exhibit #1, and the declaration of Jean-Claude Lapuyade filed concurrently herewith. Some of the major cases those two firms have undertaken are also set forth in Exhibit #1 and the Lapuyade declaration. The attorneys involved in this matter at have had substantial class litigation experience, mostly in the area of employment class actions, unfair business practices and other complex litigation. These attorneys have extensive experience in cases involving labor code violations and wage and hour claims. Class Counsel has litigated similar wage and hour cases against other employers on behalf of employees. Class Counsel have been approved as experienced class counsel during contested motions in state and federal courts throughout California. It is this level of experience which enabled the firm to undertake the instant matter and to successfully combat the resources of the defendants and their capable and experienced counsel.

3. Summary of the Proposed Settlement

- a. A true and correct copy of the Class Action Settlement Agreement (hereinafter the “Agreement”) is attached hereto as Exhibit #2.¹ Plaintiffs and Defendant reached a full and final Settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (“Total Settlement Amount”). The Total Settlement Amount includes all Individual Settlement Payments to the Settlement Class Members, the Class Representative Service Award to Plaintiffs, Settlement Administration Costs, the PAGA Settlement, and Court-approved Class Counsel Award. Defendant will separately pay the employer’s share of payroll taxes to the qualified settlement fund, per the Agreement. (Agreement at ¶ I(TT)).
- b. The relief provided in the settlement will benefit all members of the Class. The settlement does not grant preferential treatment to Plaintiff or segments of the Class in

¹ Capitalized terms are defined in the Agreement.

1 any way. Payments to the Class Members are all determined under a neutral
2 methodology. All Class Members will receive the same opportunity to participate in
3 and receive payment through a neutral formula that is based upon the weeks worked
4 for that individual. The Net Settlement Amount shall equal the net amount available
5 for Individual Settlement Payments to all Settlement Class Members from the Total
6 Settlement Amount after deducting the Court-approved amounts for the Class
7 Representatives Service Awards, the Class Counsel Award, the PAGA Settlement, and
8 the Settlement Administration Costs. The Settlement Administrator will pay an
9 Individual Settlement Payment from the Net Settlement Amount to each Settlement
10 Class Member. The submission of a claim form is not required to be paid. The
11 Individual Settlement Payments for each Settlement Class Member will be calculated
12 based on the workweeks worked by each Settlement Class Member during the Class
13 Period. The entire Net Settlement Fund shall be distributed.

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

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

- 1 4. If a Settlement Class Member's Individual Settlement Payment check is not cashed within 180
2 days after its last mailing to the Settlement Class Member, the funds from such uncashed
3 checks will be paid to the Children Advocacy Institute in accordance with California Code of
4 Civil Procedure section 384 in the name of the Settlement Class Member and the Settlement
5 Class Member will remain bound by the Settlement.
- 6 5. The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the Total
7 Settlement Amount as the attorneys' fees portion of the Class Counsel Award. Class Counsel
8 will also be allowed to apply separately for an award of litigation expenses incurred in the
9 prosecution and settlement of the Action in an amount not exceeding \$25,000. **In support of
10 this request, Class Counsel is providing evidentiary support, including lodestar, in the
11 declarations submitted concurrently herewith.** The Agreement provides for payment of
12 Class Representative Service Awards of no more than \$7,500 for each Plaintiff, or such lesser
13 amount as may be approved by the Court in compensation for their services. Defendant does
14 not oppose a motion for approval of the Class Counsel Award and Class Representative
15 Service Award consistent with the Agreement.
- 16 6. The Parties allocated \$50,000 from the Total Settlement Amount for settlement of civil
17 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of
18 Labor Code §2699(i) the PAGA Payment shall be allocated \$37,500 to the LWDA (the
19 "LWDA Payment") as the LWDA's share of the settlement of civil penalties and \$12,500 for
20 distribution to the Aggrieved Employees as the Aggrieved Employee Payments. (Agreement
21 at ¶III(O)(11)).
- 22 7. On March 25, 2021, the Parties participated in an all-day mediation presided over by Mark
23 Rudy, Esq., a well-respected wage and hour class action mediator. Prior to the mediation, the
24 Parties prepared by exchanging data, calculating damages, and submitting mediation briefs to
25 the Mediator. Defendant provided Class Counsel with necessary records and information for
26 the members of the Class. Defendant produced a sample consisting of pay records and time
27 records for some of the Class Members for the entire Class Period. Defendant also produced
28 Defendant's relevant employment policies, including compensation policies and timekeeping

1 policies. Plaintiffs analyzed the data with the help of an expert and prepared and submitted a
2 mediation brief to Mr. Rudy. After arms-length negotiations and bargaining, the mediation
3 concluded without a settlement. However, following the mediation, each side, represented by
4 its respective counsel, agreed to settle the Action based on a mediator's proposal, which was
5 memorialized in the form of a Memorandum of Understanding. The Parties then prepared the
6 full Agreement which was signed by the Parties and received preliminary approval from the
7 Court by Order dated October 21, 2021.

8 8. The Settlement is fair, adequate and reasonable to the Class and should be finally approved for
9 the same reasons the Court granted preliminary approval to the Settlement, finding that it is
10 fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
11 valued at \$1,500,000 is an excellent result for the Class. This result is particularly favorable
12 in light of the fact that liability in this case was far from certain in light of the defenses
13 asserted by Defendants. There have been no objections and no opt outs. Given the
14 complexities of this case, the defenses asserted, the uncertainty of class certification, along
15 with the uncertainties of proof at trial and appeal, the proposed Settlement is fair, reasonable
16 and adequate, and should be finally approved.

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

1 administration process, including details regarding the mailing of the Notice Packet, notices
2 returned as undeliverable, the administrator's efforts to locate class members and re-mail notices,
3 and the final administration results, are all documented in the Declaration of Lluvia Islas, which is
4 filed concurrently herewith.

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

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

13 a. On May 26, 2020, Plaintiff Melead filed a class action complaint in the Orange County
14 Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§
15 17200; (2) failure to pay minimum wages in violation of California Labor Code
16 sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of
17 California Labor Code sections 510 *et seq.*; (4) failure to provide required meal
18 periods in violation of California Labor Code sections 226.7 and 512; (5) failure to
19 provide required rest periods in violation of California Labor Code sections 226.7 and
20 512; (6) failure to provide accurate itemized wage statements in violation of California
21 Labor Code section 226; and (7) failure to provide wages when due in violation of
22 California Labor Code sections 201, 202 and 203 ("*Melead* Action"). On July 22,
23 2020, Plaintiff Melead filed the *Melead* PAGA Action against Defendant alleging a
24 single cause of action for violations of California Labor Code Private Attorney General
25 Act ("PAGA"). On February 24, 2021, Plaintiff Felix filed a PAGA Action against
26 Defendant in the Santa Clara County Superior Court alleging a single cause of action
27 for violations of PAGA ("*Felix* Action"). Defendant has denied and continues to deny
28

1 these claims. Defendant maintains that it fully complies with California meal period
2 laws and maintains legally compliant policies and practices.

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

6 **12. History of Settlement Discussion**

- 7 a. This Settlement was the result of arm's-length negotiations as well as informal
8 settlement conferences between the Parties through their respective attorneys. After
9 comprehensive legal and factual analysis, Class Counsel possessed sufficient
10 information for intelligent evaluation of the case for purposes of settlement. Prior to
11 the initiation of settlement discussions, Class Counsel reviewed and outlined the case
12 based upon the information for the Class, and determined the conditions of settlement
13 which would be fair and reasonable to the Class with the assistance of an expert. Class
14 Counsel was experienced in the types of settlement appropriate to resolve these wage
15 and hour claims on behalf of employees.
- 16 b. On March 25, 2021, the Parties participated in an all-day mediation presided over by
17 Mark Rudy, Esq., a well-respected wage and hour class action mediator. Prior to the
18 mediation, the Parties prepared by exchanging data, calculating damages, and
19 submitting mediation briefs to the Mediator. Defendant provided Class Counsel with
20 necessary records and information for the members of the Class. Defendant produced
21 a sample consisting of pay records and time records for some of the Class Members for
22 the entire Class Period. Defendant also produced Defendant's relevant employment
23 policies, including compensation policies and timekeeping policies. Plaintiffs
24 analyzed the data with the help of an expert and prepared and submitted a mediation
25 brief to Mr. Rudy. After arms-length negotiations and bargaining, the mediation
26 concluded without a settlement. However, following the mediation, each side,

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

1 represented by its respective counsel, agreed to settle the Action based on a mediator's
2 proposal, which was memorialized in the form of a Memorandum of Understanding.
3 The Parties then prepared the full Agreement which was signed by the Parties and
4 received preliminary approval from the Court by Order dated October 21, 2021.

5 c. The Order dated October 21, 2021 preliminarily approved the Class Settlement
6 contained in the Agreement as fair, reasonable and adequate.

7 d. Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and
8 adequate. In my judgment as experienced Class Counsel, this Settlement should be
9 finally approved.

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

11 a. Here, a number of defenses asserted by Defendant presented serious threats to the
12 claims of the Plaintiffs and the other Class Members. Defendant asserted that the
13 employment practices complied with all applicable Labor Laws. With respect to the
14 meal break claim, Defendant maintains that it fully complies with California meal
15 period laws and maintains legally compliant policies and practices. Courts have found
16 that where an employer's meal period policies are compliant, individualized issues
17 exist as to the reasons for missed, late or truncated meal periods. *See e.g. Lampe v.*
18 *Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that
19 although only 11.1% of the employees' time punches for meal periods were within the
20 first 5 hours, the claim was not certifiable because individualized issues existed as to
21 the reasons for the late meal periods). If successful, Defendant availed itself to a
22 complete defense of Plaintiffs' meal period claim. Defendant further argued that the
23 absence of the time records was a result of a cyber-attack that left Defendant without
24 those records, and that had these records been available, they would have shown
25 consistent compliance with California's meal break laws. Finally, Defendant argued
26 that to the extent time records exist (since September 2020) the violation rate was very
27 low (below 3%) and meal premiums were always paid—an assertion confirmed by
28

1 Plaintiffs' expert. Plaintiffs estimated the exposure for this claim was approximately
2 between **\$0** and **\$9,897,710**, if substantiated.

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

23 c. With respect to the minimum wages claim, Defendant argued, that employees were not
24 always required to go through the security checks, and that those checks were not
25 always off-the-clock. Finally, Defendant argued this claim, even if successful, was
26 limited to only a small portion of the Class Members who brought their purses or
27 handbags into the store for their shift, and was limited to 1-5 minutes ever time, and
28 not 15 minutes as assumed by Plaintiffs. Accordingly, the minimum wage claim was

1 subject to significant defenses. Plaintiffs estimated the exposure for this claim is
2 approximately **\$3,114,753**, if substantiated.

3 d. With respect to the overtime claim, Defendant argued that most incentives were
4 *discretionary* bonuses that do not need to be included in employees' regular rate of
5 pay and for those bonuses that were non-discretionary, such bonuses were already
6 included the regular rate of pay. Accordingly, the overtime claim was subject to
7 significant defenses. Furthermore, Defendant argued that, even if successful, this
8 claim resulted in minimal actual damage to the Class Members—and Plaintiffs' expert
9 confirmed this to be true. Plaintiffs estimated the exposure for this claim to be
10 approximately **\$2,168**, if substantiated.

11 e. With respect to the wage statement claim, Defendant could argue that Plaintiffs could
12 not prove the “willful” prong needed to obtain waiting time penalties under Cal. Lab.
13 Code § 203. Additionally, Defendant could argue that Plaintiffs could not show that
14 Class Members suffered an “injury” because of wage statement violations, as required
15 by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest period
16 violations do not entitle employees like Plaintiffs and the Settlement Class Members to
17 pursue the derivative waiting time and itemized wage statement penalties. (See
18 *Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444; *Maldonado*
19 *v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Settlement Class
20 arguably could have seen a significant payout for these penalties if Plaintiffs prevailed
21 on every penalty claim, Plaintiffs would not recover any derivative penalties if they
22 failed to prove the underlying claims. Moreover, Plaintiffs would have to overcome
23 damaging precedent to prove the Class deserved the penalties. See, e.g., *Howard v.*
24 *CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014)
25 (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832
26 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad
27 faith or actual injury). Plaintiffs could not give the penalty claims great weight given
28 that they depended on proving the underlying claims, which according to Defendant

1 were not supported by the facts. Nevertheless, Plaintiffs estimated the potential
2 exposure for these claims, if substantiated, was approximately **\$10,902,977**
3 (\$7,031,977 for waiting time penalties and \$3,871,000 for wage statement penalties).

4 f. If successful, these defenses could eliminate or substantially reduce any recovery to
5 the Class. While Plaintiffs believe that these defenses, and others, could be overcome,
6 Defendant maintains these defenses have merit and therefore present a serious risk to
7 recovery for the Class.

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

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

1 uncertain result three or more years in the future. Moreover, post-trial motions and
2 appeals would have been inevitable. Costs would have mounted and recovery would
3 have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
4 Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits
5 upon the Class. Based upon their evaluation, Plaintiffs and Class Counsel have
6 determined that the Settlement set forth in the Agreement is in the best interest of the
7 Class Members.

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

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

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

21 a. The Settlement in this case is fair, reasonable and adequate considering Defendant's
22 significant defenses, which it believes to be valid, to Plaintiffs' claims. As detailed
23 during preliminary approval, the Total Settlement Amount compares favorably to the
24 value of the claims. Class Members will receive immediate and certain payments of
25 considerable amounts under the Settlement. Currently, the overall maximum and
26 average Participating Class Member allocations are estimated to be \$1,286.37 and
27 \$262.19 respectively (Decl. Islas at ¶ 14).

b. Faced with the serious doubts as to recovery, the Settlement of \$1,500,000 plus the employer's share of payroll taxes compares favorably to the damage estimates alleged to have been suffered by the Class. Considered as a whole, the \$1,500,000 in Settlement represents between 6.6% and 48.1% of Defendant's liability exposure as estimated by Class Counsel at the time of mediation, which Class Counsel calculated to be \$3,116,921 and \$22,789,492 for damages, and between \$14,019,898 and \$33,692,469 for damages and statutory penalties. Given the amount of the settlement as compared to the potential value of claims in this case, the settlement is more than fair and reasonable based on prevailing case law.

15. If they could prove the claims, Plaintiffs estimate that Defendant was subject to maximum liability consisting of between \$0 and \$9,897,710 for meal premiums, \$0 and \$9,774,861 for rest premiums, approximately \$3,114,753 for unpaid minimum wages, and approximately \$2,168 for unpaid overtime wages. In addition, Plaintiffs calculated that Defendant could be liable for \$7,031,977 for waiting time penalties and \$3,871,000 for wage statement penalties.³

³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226 and various PAGA penalties, Plaintiffs recognize that these claims are subject to various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and the Class were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on claim for failure to provide accurate itemized wage statements "because a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements"); *see also Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Additionally, there is serious doubt as to whether violations of the meal/rest period regulations, which require payment of a "premium wage" for each improper meal period, give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bistor, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums "do not entitle employees to pursue the derivative penalties in sections 203 and 226." **In fact, under *Naranjo*, the value for claims under Labor Code §§ 203 and 226 could be \$0.** Further, Defendant denied rest and meal break violations, rendering void any derivative claims or damages recovery potential.

1 Finally, Plaintiffs' expert calculated that Defendant's exposure for PAGA penalties up to
2 \$2,836,000.⁴

3 16. **Notice to LWDA.** On January 25, 2022, at the time this motion was submitted for filing, I
4 submitted a copy of the fully executed settlement agreement to the LWDA through their
5 online filing system, and received an email confirming the submission of the proposed
6 settlement (See Exhibit 3).

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed this 25th day of January 2022, at San Diego, California.

10
11 By: 
12 Shani O. Zakay
13 Attorney for Plaintiffs
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25 ⁴ *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
26 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced
27 the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at
28 complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be
proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial,
and even then, the PAGA penalties were reduced by 90%.

EXHIBIT 1

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

1. Firm Practice Areas:

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

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

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

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

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

• **PROFESSIONAL EXPERIENCE**

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

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

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

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

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

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

SAN DIEGO STATE UNIVERSITY, San Diego, CA

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

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

- **COMMUNITY SERVICE**

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

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

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

- **PRACTICE AREAS**

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

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

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

- **PROFESSIONAL EXPERIENCE**

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

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

- **EDUCATION**

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

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

Academic Achievement Awards: Advanced Prosecution Function.

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

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

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

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

2. Henry v. InMotion Entertainment Group, LLC

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

3. Moore v. Zirx Transportation

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

4. Pasallo v. GSG Protective Services

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

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

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

6. Flores v. Plastic Express

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

7. Tressler v. Spoonful Management

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

8. Leymaster v. Toms Sierra Company, Inc.

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

9. Murphy v. Rockler Retailer Group, Inc.

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

10. Bruemmer v. Tempur Retail Stores, LLC.

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

11. Christina Cummings v. G6 Hospitality, LLC

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

12. Nicolai Laguatan v. Prevent LSS

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

13. Lisa Ramirez v. Carefusion Resources, LLC

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

14. Charles Ornelas v. C&A Transportation Services

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

15. Luz Marin v. California Marine Cleaning

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

16. Christian Van Cleave v. Sunrise Senior Living Management

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

17. Heather McIntyre v. JRR Enterprises

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

18. Lori Phipps v. Soapy Joe's

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

19. Heather Broughton v. NFG San Francisco, LLC

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

20. Marcos Antonios v. Interface Rehab, LLC

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

21. Tiffany Rodriguez v. Circle K

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

22. Derik Scott et al. v. Ultimate Performance

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

23. Raymond Frazier v. Asa Carlton

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

24. John Moreno v. Da Kitchen

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

25. Penny Lane v. International Aero Clubs, LLC

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

26. Amber Price v. DMSD Restaurants

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

27. Jamaal Johnson v. Volt Management Corp

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

28. Ezzat Menias v. All American Private Security

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

29. Mark Connor v. Ascendant Marketing

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

30. Niki Nunez v. Home Depot

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

31. Alma Salazar v. Frontier Toyota

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

32. Josefina Garces v. Kar Auction Services

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

33. Madison Weiss v. Niznik Behavior

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

34. Jimmy Mack v. ERM Enterprises

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

35. Josefina Garces v. DriverDo

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

36. Perseus Porras v. Tantalum Restaurant

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

37. Dorcena Deutsch v. Scripps

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

38. Josalyn O'Quinn v. Laugh Factory

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

39. Nicholas Leon v. Miller Event Management

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

40. Aaris Watts v. TRL Systems

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

41. Faith Smith v. Island Pizza

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

42. Johnathan Roa v. Otay Mesa Sales

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

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

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

45. Curtis Edwards v. Resolve Group

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

46. Elena Kiseleva v. TotalMed Staffing, Inc

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

47. Richard Jer Vang v. Bridge Property Management

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

48. Madison Marrero v. Stat Med

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

49. Brian Reyes v. Stowasser Buick-GMC

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

50. Erik Foss v. Anderson Hospitality, Inc.

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

51. Griselda Duran v. EmployBridge

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

52. Luis Rendon v. Healthcare Investments, Inc.

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

53. Richard Melead v. TVI, Inc.

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

54. David Spencer v. Asset Gas, Inc.

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

55. Thomas Haven v. California Vocations, Inc.

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

56. Estefania Renteria v. Love's Country

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

57. Rachel Latin v. OneMain General Services Corp.

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

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

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

59. Jie Xu v. HT Multinational

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

60. Yvette Molina v. Hawaiian Airlines

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

61. Reinald Pillsbury v. T & T Restaurants CA

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

62. Luis de Jesus v. Guardian Angel Home Care

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

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

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

64. Gabriel Mendez v. Bondz, Inc.

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

65. James Conley v. Siskiyou Forest Products

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

66. Alex Castellanos v. Southwest Patrol

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

67. Damien Hampton v. Pegasus Investors

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

68. Tamara Perkins v. FSEI

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

69. Rodney Stovall v. Javelin Logistics Company

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

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

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

71. Elias Kaser v. Aviation Consultants, Inc.

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

72. Christopher Chacon v. Panda Motors, Inc.

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

73. Willie Lang v. Pathways

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

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

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

75. Daniel Jacobs v. Rush Media Company

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

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

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

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

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

78. Hector Avitia v. LAZ Parking

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

79. Sukhraj Kaur v. ACES 2020, LLC

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

80. Boaventura v. Rei Do Gado

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

81. James Rachal v. ELG Metals, Inc.

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

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

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

83. Michael Ashlock v. Advantis Medical Staffing

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

84. Moe Popal v. Ameriprise Auto & Home Insurance

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

85. Mark Williams v. Web to Door

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

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

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

87. Nicolas Neutall v. Urban Alchemy

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

EXHIBIT 2

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

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

13
14 **SUPERIOR COURT OF CALIFORNIA**
15
16 **COUNTY OF SANTA CLARA**

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

21
22 **PLAINTIFFS,**

23 vs.

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

27 **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.

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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
21 1. Class Data. No later than ten (10) business days after the Preliminary
22 Approval Date, Defendant shall provide the Settlement Administrator with the
23 Class Data for purposes of preparing and mailing Notice Packets to the Class
24 Members.
- 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 thereon. However, any Class Member that submits a timely request for
26 thereon. However, any Class Member that submits a timely request for
27 thereon. However, any Class Member that submits a timely request for
28 thereon. However, any Class Member that submits a timely request for

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
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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 180th 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.

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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
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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.
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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.
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- 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
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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

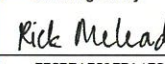
17 DEBBIE FELIX

DocuSigned by:

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18 DATED: 7/24/2021

19 RICK MELEAD

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

22 DATED: 8/2/2021

23 TVI, INC d.b.a. SAVERS

24 
25 RICHARD MEADOWS
26 Printed Name

27 General Counsel
28 Title

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

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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 3