

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Kyle D. Smith (SBN 280489)

ks@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

TAYLOR ENGLISH DUMA LLP

William DeClercq (SBN 240538)

wdeclercq@taylorenghish.com

445 South Figueroa Street, Suite 3100

Los Angeles, California 90017

Phone: (404) 640-5924

Fax: (415) 851-8868

Attorneys for Defendant

ACTIVUS CONNECT LLC

TAYLOR ENGLISH DUMA LLP

Alisa P. Cleek (GA Bar No. 581063)

acleek@taylorenghish.com

1600 Parkwood Circle, Suite 200

Atlanta, Georgia 30339

Phone: (678) 426-4624

Fax: (770) 434-6868

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RANDY COLBERT, an individual, on behalf of
himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

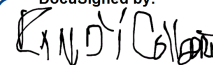
v.

ACTIVUS CONNECT LLC, a Florida Limited
Liability Company; and DOES 1 TO 50,

Defendants.

Case Number: 21STCV06019

**Amended Settlement Agreement and Release
of Class Action**

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SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Randy Colbert (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Activus Connect LLC (“Defendant”). This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Randy Colbert v. Activus Connect LLC*, case number 21STCV06019, filed on February 16, 2021, in the Superior Court of California for the County of Los Angeles.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are anticipated not to exceed \$10,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 4-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11040.)

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee portion of the Class
6 Attorney Fees and Expenses may not exceed one-third of the Gross Settlement Amount (i.e.,
7 \$74,166.67), as approved by the Court, and the award of costs and expenses shall not exceed an
8 additional \$15,000.00. If the Court awards less than the full amount requested for the Class Attorney
9 Fees and Expenses, the unawarded amount will be made available for distribution as part of the Net
10 Settlement Amount (defined below) and distributed to Class Participants. This Settlement is not
11 contingent upon the Court awarding Class Counsel any particular amount in attorneys’ fees and costs.

12 **1.6. CLASS COUNSEL**

13 “Class Counsel” shall mean Jonathan Melmed and Kyle Smith of Melmed Law Group P.C.

14 **1.7. CLASS MEMBER**

15 “Class Member” shall mean all individuals who worked as hourly, non-exempt employees for
16 Defendant in the State of California during the Class Period (defined below).

17 **1.8. CLASS NOTICE**

18 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
19 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
20 Class Members along with the Share Form.

21 **1.9. CLASS PARTICIPANTS**

22 “Class Participants” shall mean all Class Members who do not timely request exclusion from
23 the Class Settlement.

24 **1.10. CLASS PERIOD**

25 “Class Period” shall mean the period from February 16, 2017, through December 31, 2021.

26 **1.11. CLASS REPRESENTATIVE**

27 “Class Representative” shall mean Plaintiff Randy Colbert.
28

1 **1.12. CLASS SETTLEMENT**

2 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
3 subject to Court approval.

4 **1.13. COMPLAINT**

5 “Complaint” shall mean the currently-operative complaint in the Action.

6 **1.14. COURT**

7 “Court” shall mean the Superior Court of the County of Los Angeles.

8 **1.15. DEFENDANT**

9 “Defendant” shall mean Defendant Activus Connect LLC.

10 **1.16. DEFENSE COUNSEL**

11 “Defense Counsel” shall mean Alisa P. Cleek and William DeClercq of Taylor English Duma
12 LLP.

13 **1.17. EFFECTIVE DATE**

14 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
15 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
16 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
17 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
18 **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
19 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the
20 following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate
21 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
22 proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding
23 opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal,
24 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
25 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
26 Settlement shall not become effective until the Court’s order approving the Class Settlement is
27 completely final and there is no further recourse by an appellant or objector who seeks to contest the
28 Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through

(d) are completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement).

1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING

"Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

1.19. EMPLOYER'S TAXES

"Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.20. FINAL APPROVAL AND FAIRNESS HEARING

"Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.21. GROSS SETTLEMENT AMOUNT

"Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling \$222,500.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages. Under no circumstances will Defendant be required to pay any amount in excess of the Gross Settlement Amount in connection with this Settlement, with the exceptions of: **(1)** employer-side taxes owed by Defendant on the wage portion of the Individual Settlement Amount, and **(2)** where the escalator provision below is triggered.

1 **1.22. HEARING ON PRELIMINARY APPROVAL**

2 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
3 approval of the Class Settlement.

4 **1.23. INCENTIVE AWARD**

5 “Incentive Award” shall mean any additional monetary payment provided to the Class
6 Representative for his efforts and risks on behalf of the Settlement Class in this Action.

7 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

8 “Individual Settlement Amount” shall mean the amount payable from the Net Settlement
9 Amount which is ultimately distributed to each Class Participant, less any Employee’s Taxes and
10 Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA
11 Payment.

12 **1.25. NET SETTLEMENT AMOUNT**

13 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
14 Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount
15 allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004
16 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California
17 Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award. Payments
18 for the employee-side taxes for the wage component of Individual Settlement Amounts shall be paid
19 out of the Net Settlement Amount.

20 **1.26. OPT OUT**

21 “Opt Out” shall refer to the process of submitting a timely and valid written request for
22 exclusion from the Class Settlement in accordance with the terms of this Settlement Agreement and
23 Class Notice and no later than the Response Deadline.

24 **1.27. OPT-OUTS**

25 “Opt-Outs” shall mean all persons who timely and validly submit a written request for exclusion
26 from the Class Settlement in accordance with the terms of this Settlement Agreement and Class Notice
27 and no later than the Response Deadline.
28

1 **1.28. PAGA PAYMENT**

2 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
3 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
4 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
5 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
6 twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give
7 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
8 subdivision (l)(2).

9 **1.29. PAGA PERIOD**

10 “PAGA Period” shall mean the period from February 10, 2020, through December 31, 2021.

11 **1.30. PAGA SETTLEMENT CLASS**

12 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant
13 as non-exempt employees in California during the PAGA Period. Defendant represents that the PAGA
14 Settlement Class consists of approximately 152 employees that worked a total of approximately 2,000
15 pay periods during the PAGA Period.

16 **1.31. PARTIES**

17 “Parties” shall mean Plaintiff and Defendant.

18 **1.32. PLAINTIFF**

19 “Plaintiff” shall mean Plaintiff Randy Colbert.

20 **1.33. PRELIMINARY APPROVAL DATE**

21 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
22 preliminarily approving this Settlement Agreement.

23 **1.34. RELEASED CLAIMS**

24 “Released Claims” shall mean all claims for wages, expenses, benefits, debts, liabilities,
25 demands, obligations, guarantees, statutory and civil penalties, damages, interest, attorneys’ fees, costs,
26 and/or other amounts or relief recoverable under state, local, or federal law that Plaintiff asserted or
27 could have asserted in the Action arising out of or related to the allegations set forth in the Complaint
28 and/or PAGA notice to the LWDA—on behalf of himself, the State of California, and/or the putative

Class Members—including, but not limited to, claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and **(12)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

“Released Claims” shall include without limitation all claims that were alleged or could have been alleged in the Action based on the facts set forth in the Complaint, whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages. “Released Claims” shall also include without limitation all claims that Plaintiff and/or the putative Class Members may have against the Released Parties (defined below) relating to **(i)** the payment, taxation, and allocation of attorneys’ fees and costs to Class Counsel pursuant to this Settlement Agreement, and **(ii)** the payment, taxation, and allocation of Plaintiff’s Service Award pursuant to this Settlement Agreement.

This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair

1 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
2 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
3 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
5 interpretive guidelines.

6 **1.35. RELEASED PARTIES**

7 “Released Parties” shall mean Defendant Activus Connect LLC and its subsidiaries, affiliates
8 and/or parents; employee benefit plans sponsored or maintained by any of the foregoing; its attorneys,
9 and its respective successors and predecessors in interest; all of its respective officers, directors,
10 employees, administrators, fiduciaries, trustees, beneficiaries and agents; and each of its past, present
11 and future officers, directors, shareholders, employees, agents, principals, heirs, representatives,
12 accountants, auditors, consultants, insurers and reinsurers.

13 **1.36. RELEASING PARTIES**

14 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
15 behalf or purporting to assert a claim under or through them, including, but not limited to, their
16 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
17 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
18 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

19 **1.37. RESPONSE DEADLINE**

20 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
21 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
22 Members may postmark a request for exclusion and/or objection to Class Settlement.

23 **1.38. SETTLEMENT ADMINISTRATOR**

24 “Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by
25 the parties) which the Parties have agreed will be responsible for administration of the Class Settlement
26 and related matters.
27
28

1.39. SETTLEMENT CLASS

“Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. Defendant represents that the Settlement Class consists of approximately 152 Class Members that worked a total of approximately 4,000 workweeks during the Class Period.

1.40. SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFF’S CLAIMS

Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; (5) failure to maintain accurate employment records in violation of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

1 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

2 Class Counsel has conducted significant informal discovery during the prosecution of the
3 Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a
4 dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of
5 documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment
6 data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant;
7 **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis
8 of potential class-wide damages, including information sufficient to understand Defendant's potential
9 defenses to Plaintiff's claims; **(f)** research of the applicable law with respect to the claims asserted in
10 the Complaint and the potential defenses thereto; and **(g)** assembling and analyzing of data for
11 calculating damages.

12 Class Counsel and the Class Representative have vigorously prosecuted this case, and
13 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
14 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
15 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
16 with an experienced employment law mediator, which culminated in a settlement in principal, the terms
17 of which are elaborated in this Settlement Agreement.

18 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS**
19 **SETTLEMENT**

20 The document and data exchange in this matter, as well as discussions between counsel, have
21 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
22 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
23 conducted in this Action and the information exchanged by the Parties through pre-mediation
24 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
25 compromise the issues on a fair and equitable basis.

26 The Class Representative and Class Counsel believe that the claims, causes of action,
27 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
28 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings

1 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
2 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
3 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
4 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
5 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
6 alleged in the Action.

7 The Class Representative and Class Counsel believe that the settlement set forth in this
8 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
9 independent review of this Settlement Agreement by the Court in the approval process will confirm
10 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
11 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
12 and the Class Members.

13 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

14 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
15 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
16 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
17 Action. Defendant contends that it complied with California and federal wage and hour laws and has
18 dealt legally and fairly with Plaintiff and the Class Members.

19 Defendant further denies that, for any purpose other than settling this Action, these claims are
20 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
21 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
22 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
23 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
24 respective businesses without further expensive litigation and the distraction and diversion of their
25 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
26 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
27 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled
28 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

1 **2.5. INTENT OF THE CLASS SETTLEMENT**

2 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
3 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
4 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from
5 liability for any and all claims arising out of the Action.

6 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

7 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
8 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
9 conditional certification is appropriate because the Released Claims are being compromised without
10 need to establish the elements of those claims on which liability turns. The certification of the
11 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
12 Defendant, including without limitation, that certification of a class for trial purposes is or would be
13 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
14 treatment of any of the claims in the Action.

15 In the event that the Settlement Agreement is not finally approved by the Court, a Final
16 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered
17 null and void as set forth herein, then certification of the Settlement Class shall be automatically
18 vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding
19 determination that the requirements for certification of a class for trial purposes in this Action or in any
20 other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final
21 Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise any
22 preliminary approval of the Settlement Class in connection with any later proceeding before the Court.

23 **4. APPOINTMENT OF CLASS COUNSEL**

24 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
25 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
26 Class Settlement pursuant to this Settlement Agreement.

1 **5. CONSIDERATION**

2 **5.1. SETTLEMENT AMOUNT**

3 The Parties agree to settle this Action for the Gross Settlement Amount of \$222,500.00. There
4 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
5 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
6 consideration for the Class Settlement and will be made in full and final settlement of: the Released
7 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
8 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
9 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
10 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).
11 Defendant will not be responsible for payment of any amounts for attorneys fees or costs associated
12 with this Settlement Agreement to any law firm or party other than as provided in the Class Attorney
13 Fees and Expenses specified above. Furthermore, Defendant's delivery of the Gross Settlement
14 Amount to the Settlement Administrator as specified in this Settlement Agreement shall complete
15 Defendant's obligation to fund the Gross Settlement Amount, including without limitation Defendant's
16 obligation to pay the Court-awarded Class Attorneys Fees and Expenses. Thus, Defendant shall not be
17 responsible for paying any further amount in attorneys fees or costs for any reason after delivery of the
18 Gross Settlement Amount to the Settlement Administrator.

19 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
20 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
21 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
22 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
23 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
24 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
25 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

26 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

27 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$5,000.00
28 for Randy Colbert to acknowledge his efforts on behalf of the Settlement Class in this Action, including

1 assisting in the investigation and consulting with Class Counsel and providing crucial documents to
2 Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an
3 amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross
4 Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled
5 as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and
6 the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment.
7 Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved
8 by the Court and shall hold Defendant harmless from all liability with regard thereto.

9 **5.3. PAYMENT TO CLASS PARTICIPANTS**

10 Each Class Participant shall be eligible to receive payment of the Individual Settlement
11 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
12 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
13 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
14 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
15 and shall hold Defendant harmless from any and all liability with regard thereto.

16 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

17 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
18 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
19 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
20 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
21 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
22 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
23 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
24 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
25 member during the PAGA Period as a proportion of all pay periods worked by all members of the
26 PAGA Settlement Class.

5.5. TAX TREATMENT AND PAYMENT

For the purpose of calculating Employee's Taxes and Required Withholding for the Individual Settlement Amounts for Class Participants (including any payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 10% of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and 90% of each Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely responsible for all other individual tax obligations.

With respect to the PAGA Payment and any payments made to individual members of the PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made to them.

5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS

Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be

1 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
2 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
3 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
4 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
5 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
6 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
7 any other purpose, and that additional contributions or benefits are not required by this Settlement
8 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
9 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
10 or any other plan sponsored by Defendant.

11 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

12 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
13 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
14 Settlement Amount (i.e., \$74,166.67) and the award of costs and expenses up to an additional
15 \$15,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
16 amounts.

17 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
18 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
19 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
20 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
21 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
22 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
23 Attorney Fees and Expenses awarded.

24 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
25 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
26 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
27 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
28 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering

1 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
2 be based on the “catalyst theory” and/or the “common fund doctrine.”

3 **6. SETTLEMENT ADMINISTRATION**

4 **6.1. COSTS AND EXPENSES**

5 All costs and expenses due to the Settlement Administrator in connection with its administration
6 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
7 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
8 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
9 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
10 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
11 Amount, and is not expected to exceed \$10,000.00.

12 **6.2. PAYMENT BY DEFENDANT**

13 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
14 employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the Effective
15 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
16 more than \$222,500.00 plus the Employer’s Taxes, except where the Escalator Provision is triggered.

17 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

18 **7.1. THE SETTLEMENT ADMINISTRATOR**

19 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
20 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
21 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
22 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
23 determining individual payments to members of the PAGA Settlement Class; maintaining the
24 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
25 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
26 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
27 Payment payable to the LWDA; receiving and reviewing requests for exclusion and notices of
28 objection, if any, submitted by Class Members; providing a due diligence declaration for submission

1 to the Court prior to the Final Approval and Fairness Hearing; printing and providing Class Members,
2 Plaintiff, and Class Counsel with IRS Form W-2 and/or 1099 as required under this Settlement
3 Agreement and applicable law; providing a due diligence declaration for submission to the Court upon
4 the completion of the distributions called for under this Settlement Agreement; issuing a final report
5 and performing such other duties as the Parties or their counsel may direct. Additionally, the Settlement
6 Administrator will handle all tax document preparation and reporting, including state and federal tax
7 forms, if any. Any expenses incurred in connection with such preparation shall be an Administrative
8 Expense. The Settlement Administrator shall keep the Parties timely apprised of the performance of
9 all Settlement Administrator responsibilities. The Parties agree to cooperate in the Settlement
10 administration process and to make all reasonable efforts to control and minimize Administrative
11 Expenses. Each of the Parties represent that they do not have any financial interest in the Settlement
12 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
13 conflict of interest. On a weekly basis, the Settlement Administrator will provide reports to Class
14 Counsel and Defense Counsel with summary information updating them as to the number of validated
15 and timely objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel
16 and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections
17 no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
18 with proof of mailing of the Class Notice, without listing individual Class Member names which the
19 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
20 of the Court's Final Approval and Fairness Hearing.

21 No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement
22 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
23 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
24 Participant, without any identifying personal information; **(b)** the number of Class Participants to
25 receive such payments, and **(c)** the final number of Opt-Outs and objections.

26 Administrative Expenses are not anticipated to exceed \$10,000.00. Prior to the calculation and
27 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
28 total Administrative Expenses through the conclusion of their services and such actual amount will be

1 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
2 Amounts.

3 **7.2. NOTICE TO CLASS MEMBERS**

4 Notice shall be provided to Class Members in the following manner: Within thirty (30) days
5 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an
6 updated list of Class Members and members of the PAGA Settlement Class containing names, social
7 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
8 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel
9 shall not receive a copy of this list. Because sensitive personal information is being provided to the
10 Settlement Administrator, it shall maintain the information securely and in confidence. Access to such
11 information shall be limited to employees of the Settlement Administrator with a need to use the
12 information for administration of this Settlement Agreement. The Settlement Administrator will take
13 all necessary measures to adequately secure the information.

14 Upon receipt of the class information, the Settlement Administrator will conduct a national
15 change of address search and a skip trace for the most current address of all former employee Class
16 Members and will update such address as necessary. Within fourteen (14) days of receiving the class
17 information, the Settlement Administrator shall determine the number of workweeks worked by each
18 Class Member, populate the data for each Class Member accordingly, and send each Class Member the
19 Class Notice via First Class United States Mail. The address identified by the Settlement Administrator
20 as the current mailing address shall be presumed to be the best mailing address for each Class Member.

21 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before a
22 date seven (7) calendar days before the Response Deadline shall be re-mailed to the forwarding address
23 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall have no
24 further obligation to mail the Notice of Settlement to a Class Member. Class Members to whom the
25 Notice of Settlement is resent shall have fourteen (14) calendar days thereafter or until the Response
26 Deadline has expired, whichever is later, to mail the Opt Out or written objection to the Settlement
27 Administrator. The date of the postmark on the return envelope shall be the exclusive means used to
28 determine whether a Class Member has timely mailed his/her Opt Out or written objection on or before

1 the relevant deadline. If a Class Member's Class Notice is returned to the Settlement Administrator
2 more than once as non-deliverable, then an additional Class Notice shall not be re-mailed. If, for any
3 reason, a Class Notice is non-deliverable, the Settlement Administrator will not mail an Individual
4 Settlement Amount to a Class Member. Rather, the Settlement Administrator will hold the Individual
5 Settlement Amount until the Void Date, as that term is defined below.

6 Compliance with the notice procedures specified in this Settlement Agreement shall constitute
7 due and sufficient notice to Class Members of this Settlement and shall satisfy the requirements of due
8 process. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel
9 to provide notice of the proposed Settlement. In the event the procedures in this Settlement Agreement
10 are followed and the intended recipient of a Class Notice still does not receive the Class Notice, the
11 intended recipient shall remain a Class Member and will be bound by all terms of the Settlement and
12 any Final Approval Order entered by the Court if the Settlement becomes effective. It will be presumed
13 that if an envelope has not been returned undeliverable within the Response Deadline, the Notice was
14 delivered.

15 The Class Notice shall contain an easily-understood statement alerting the Class Members that,
16 unless they elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all
17 Released Claims against the Released Parties.

18 The Class Notice will inform Class Members of their estimated share of the settlement and the
19 number of workweeks they worked during the Class Period. Class Members may dispute their
20 workweeks if they believe they worked more weeks in the Class Period than Defendant's records show
21 by submitting information to the Settlement Administrator no later than forty-five (45) days after being
22 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
23 Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to
24 resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be
25 credited, the Settlement Administrator shall make the final decision based on the information presented
26 by the Class Member and Defendant.

7.3. OPT-OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state the Class Member's name, address, telephone number, last four digits of the social security number, and must be hand signed by the person requesting exclusion. The Opt Out request should state in substance:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE ACTION TITLED *RANDY COLBERT V. ACTIVUS CONNECT LLC*, PENDING IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CASE NO. 21STCV06019. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

If the Opt Out request does not contain the information set forth above or is not postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address, it will not be deemed a timely and valid Opt Out from the Class. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Opt Out has been timely submitted.

Any Class Member who submits a timely and valid Opt Out request will not be entitled to any monetary recovery under the Class Settlement and will not be bound by the terms of this Settlement Agreement as it relates to the Released Claims. Any Class Member who submits a timely and valid Opt Out will not have any right to object, appeal, or comment on the Class Settlement. Class Members who fail to submit a timely and valid Opt Out on or before the Response Deadline shall be Class Participants and will be bound by all terms of the Class Settlement and the order granted at the Final Approval and Fairness Hearing. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a complete list of all Class Members who have submitted timely and valid Opt Outs, including their name and social

1 security number. The Settlement Administrator shall also provide a copy of any or all Opt Out requests
2 on the request of counsel for either of the Parties.

3 At least thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
4 Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence
5 and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class
6 Members. The declaration shall specify the number of Class Members to whom the Class Notice was
7 sent and the number of Class Members to whom the Class Notice was not delivered, as well as
8 information relating to the number of Opt Outs and objectors. Class Counsel shall file this declaration
9 with the Court.

10 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
11 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
12 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
13 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
14 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
15 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

16 A request to Opt Out of the Class Settlement shall not serve to exclude the Class Member from
17 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
18 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
19 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

20 Class Participants will be bound by the Release of Released Claims set forth in the definition
21 of "Released Claims" provided in this Settlement Agreement.

22 **7.4. OBJECTION PROCEDURE**

23 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
24 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the
25 Settlement Administrator no later than the Response Deadline. Only Class Participants may object to
26 the Settlement. The objection should include the case name and number and must set forth, in clear and
27 concise terms, a statement of the reasons why the objector believes that the Court should find that the
28 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the

1 Class Settlement should not be approved, including the legal and factual arguments supporting the
2 objection. If an objector wishes to appear at the Final Approval and Fairness Hearing, in person or
3 through an attorney, they may do so. The Settlement Administrator will promptly serve copies of any
4 objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members
5 wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person
6 or through a lawyer retained at their own expense.

7 The Parties agree to use their best efforts to carry out the terms of this Settlement Agreement.
8 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
9 to submit an objection or Opt Out from the Settlement or to appeal from the Court's Final Approval
10 Order. Class Counsel shall not represent Class Members in objecting to or appealing this Settlement
11 Agreement.

12 **7.5. FINAL APPROVAL PROCEDURES**

13 As soon as practicable after the Response Deadline, Plaintiff will file a motion for final
14 approval, asking the Court to issue an order finally approving the Class Settlement on the terms
15 described in this Settlement Agreement. Plaintiff's submission will include any motions, memoranda,
16 and evidence as may be necessary for the Court to determine that this Settlement Agreement is fair,
17 adequate, and reasonable.

18 No earlier than forty-five (45) calendar days after the Response Deadline, the Court shall hold
19 the Final Approval and Fairness Hearing, where objections, if any, may be heard and the Court shall
20 determine whether the Settlement Agreement should be finally approved, and if so, the amounts
21 payable for: **(a)** Class Attorney Fees and Expenses; **(b)** Incentive Award; **(c)** Individual Settlement
22 Amounts; and **(d)** Administrative Expenses.

23 If the Court approves this Settlement Agreement at the Final Approval and Fairness Hearing,
24 Plaintiff shall request that the Court enter an order finally approving the Class Settlement on the terms
25 described in this Settlement Agreement. After thus granting final approval of the Class Settlement and
26 entering judgment, the Court shall retain jurisdiction over the Parties to enforce and implement the
27 terms of the judgment.
28

1 **7.6. NOTICE OF FINAL JUDGMENT**

2 Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered
3 a final order certifying the Class for settlement purposes only and approving the Class Settlement, the
4 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of
5 the California Rules of Court, by posting a copy of said order and final judgment on its website at a
6 web address to be included in the Class Notice.

7 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

8 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

9 The claims of all Class Members are settled for the Gross Settlement Amount of \$222,500.00,
10 which will be allocated as follows:

- 11 1. The Administrative Expenses, not to exceed \$10,000.00;
- 12 2. Class Counsel's attorney fees not to exceed \$74,166.67;
- 13 3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
- 14 4. The Incentive Award, not to exceed \$5,000.00; and
- 15 5. PAGA Payment to LWDA of \$15,000.00.

16 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
17 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
18 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
19 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
20 amounts in each category. No more than ten (10) calendar days after the Final Approval Order, the
21 Settlement Administrator will provide the Parties with an accounting of all anticipated payments from
22 the Gross Settlement Amount, including (a) the total amount of Individual Settlement Amounts and
23 employer-side taxes thereon; (b) the PAGA Award; (c) Class Representative's Incentive Award; (d) the
24 Class Counsel's Attorney Fee and Expenses and (e) Administrative Expenses, all as specified in this
25 Settlement Agreement and approved by the Court.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. Each Class Participant's Individual Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period. This is determined by multiplying the portion of the Net Settlement Amount allocated to Class Participant payments by a fraction, the numerator of which is the Class Participant's total number of workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Class Participants during the Class Period. If there are any timely submitted Opt Outs, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Class Participant so that the amount actually distributed to Participating Class Members equals 100% of the portion of the Net Settlement Amount allocated to Class Participant payments.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards. The Parties make no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement and Class Members are not relying on any statement or representation by the Parties in this regard.

1 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE**
2 **PAGA SETTLEMENT CLASS**

3 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
4 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
5 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
6 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
7 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
8 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

9 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
10 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
11 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
12 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
13 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
14 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant
15 harmless from any and all liability with regard thereto. The Parties make no representations as to the
16 tax treatment or legal effect of the payments called for in this Settlement Agreement and the PAGA
17 Settlement Class members are not relying on any statement or representation by the Parties in this
18 regard.

19 Defendant will provide the Settlement Administrator with any information reasonably
20 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
21 member, and any other reasonably required information the Settlement Administrator requests to
22 perform the calculations required under this Settlement Agreement. Defendant shall have no
23 responsibility for deciding the validity of the individual payment amounts allocated to each member of
24 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
25 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
26 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
27 Taxes and Required Withholding.
28

1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
2 obligation associated with their respective shares of the PAGA Payment. The Parties make no
3 representations as to the tax treatment or legal effect of the PAGA Payment called for in this Settlement
4 Agreement and the PAGA Settlement Class members are not relying on any statement or representation
5 by the Parties in this regard.

6 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

7 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
8 approved by the Court to Class Counsel no later than twenty (20) days after the Class Settlement is
9 funded. Class Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-
10 9 before the Class Attorney Fees and Expenses payment is issued. The Settlement Administrator shall
11 issue the appropriate IRS Form 1099 for the payments made pursuant to this paragraph.

12 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

13 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
14 Court no later than twenty (20) days after the Class Settlement is funded.

15 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

16 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
17 due to it and approved by the Court no later than twenty (20) days after the Class Settlement is funded.

18 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
19 **INDIVIDUAL SETTLEMENT AMOUNTS**

20 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
21 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
22 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
23 last-known address no later than twenty (20) days after the Effective Date. If the Settlement
24 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
25 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
26 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
27 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
28

1 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
2 remaining monetary obligations have been calculated and accounted for.

3 Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class
4 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
5 declaration of payment. In the event that any Class Participant is deceased, payment shall be made
6 payable to the estate of that Class Member and delivered to the executor or administrator of that estate,
7 unless the Settlement Administrator has received an affidavit or declaration pursuant to California
8 Probate Code section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

9 **8.8. NON-CASHED SETTLEMENT CHECKS**

10 Any funds associated with checks that have not been cashed within one hundred eighty (180)
11 days, will become void on the one hundred eight-first (181st) day after mailing (the "Void Date"). The
12 Parties agree that any unclaimed funds resulting from any uncashed check will be distributed to Friends
13 of Puerto Rico, a non-profit 501(C)(3). Friends of Puerto Rico supports economic development of the
14 people of Puerto Rico through entrepreneurial initiatives, education and creating opportunity for
15 women and girls, including in the United States. In the event the Court determines that Friends of
16 Puerto Rico is not in conformity with California Code of Civil Procedure as a *cy pres* recipient, the
17 Parties agree that another *cy pres* will be agreed upon by the parties and approved by the Court pursuant
18 to Code of Civil Procedure Section 384. For the purposes of determining whether Defendant has met
19 their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to have
20 fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether such
21 Class Member subsequently negotiates the check.

22 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR PAYMENT** 23 **OF INDIVIDUAL SETTLEMENT SHARES**

24 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
25 calculated using the employment and payroll records of Defendant, which presumptively shall be
26 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
27 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
28 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other

1 written employment records, to the Settlement Administrator. Each Class Member may dispute the
2 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
3 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
4 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
5 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
6 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
7 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
8 relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the
9 dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-
10 appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes
11 prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement
12 Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no
13 obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
14 Agreement).

15 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

16 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

17 The Class Settlement and conditional class certification shall be considered null and void, and
18 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
19 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
20 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
21 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
22 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
23 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
24 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
25 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

26 **9.2. DEFENDANT’S RIGHT TO VOID CLASS SETTLEMENT**

27 Defendant, at its sole discretion, shall have the right, but not the obligation, to revoke this
28 Settlement Agreement if ten percent (10%) or more of the total number of Class Members timely Opt

1 Out. Defendant shall exercise its revocation right, if at all, by providing written notice to Class Counsel
2 no later than thirty (30) days from the date of receipt from the Settlement Administrator of a complete
3 list of all Class Members who have submitted timely and valid Opt Outs. If Defendant exercises a right
4 to void this Settlement Agreement pursuant to this Paragraph, this Settlement Agreement and any
5 related settlement documents shall be null and void, and any class certified for settlement purposes will
6 be vacated. In such an event, neither this Settlement Agreement, related settlement documents, nor the
7 negotiations leading to this Settlement Agreement may be used as evidence for any purpose, and
8 Defendant shall retain the right to challenge all claims and allegations in the Action, to assert all
9 applicable defenses, and to dispute the propriety of class certification on all applicable grounds.

10 **9.3. ESCALATOR PROVISION**

11 If the number of workweeks is greater than 4,200, then the Gross Settlement Amount shall be
12 increased proportionately for each additional week worked.

13 **9.4. INVALIDATION**

14 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
15 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
16 of the Class Settlement are to remain in full force and effect.

17 **9.5. STAY ON APPEAL**

18 In the event of a timely appeal from the approval of the Class Settlement and judgment, the
19 judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount
20 or take any other actions required by this Settlement Agreement until all appeal rights have been
21 exhausted by operation of law.

22 **10. MOTIONS FOR COURT APPROVAL**

23 **10.1. PRELIMINARY APPROVAL**

24 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
25 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
26 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
27 approval in a timely fashion.
28

10.2. FINAL APPROVAL

The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Settlement Class for settlement purposes only and approving the Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

11. RELEASES AND WAIVERS**11.1. RELEASE OF CLAIMS BY SETTLEMENT CLASS**

Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise, and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant, will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

Class Participants will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

11.2. RELEASE OF CLAIMS BY PLAINTIFF

Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,

1 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
2 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
3 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
4 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
5 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
6 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,
7 arising out of or in any way connected with his employment with Defendant including, the Released
8 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
9 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
10 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
11 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
12 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
13 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
14 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
15 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
16 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
17 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
18 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
19 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
20 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
21 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
22 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
23 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
24 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
25 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
26 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
27 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
28 arising out of the matters released in this Settlement Agreement.

1 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of
2 California Civil Code section 1542, which provides as follows:

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

7 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
8 relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or
9 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
10 different from those which he now knows or believes to be true with respect to the subject matter of all
11 the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does
12 fully, finally, and forever settle and release any and all claims against the Released Parties, known or
13 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
14 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
15 of such different or additional facts.

16 **11.3. CIRCULAR 230 DISCLAIMER**

17 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
18 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
19 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
20 communication or disclosure between or among the parties or their attorneys and other advisers, is or
21 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
22 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
23 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
24 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
25 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
26 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
27 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
28 may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has

1 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
2 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
3 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
4 Settlement Agreement.

5 **12. DUTIES OF THE PARTIES**

6 **12.1. MUTUAL FULL COOPERATION**

7 The Parties agree to cooperate fully with one another to accomplish and implement the terms
8 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
9 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
10 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
11 by this Settlement Agreement and any other efforts that may become necessary by court order or
12 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
13 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
14 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
15 this Settlement Agreement.

16 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

17 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
18 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
19 legal challenge, whether by appeal or collateral attack.

20 **12.3. DUTIES PRIOR TO COURT APPROVAL**

21 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
22 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
23 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
24 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
25 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
26 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
27 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
28

1 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
2 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

3 **13. MISCELLANEOUS PROVISIONS**

4 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

5 Pending Court approval and other than as provided herein, if any of the conditions set forth in
6 this Settlement Agreement are not met and satisfied, this Settlement Agreement shall, at the option of
7 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and shall not be
8 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
9 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
10 conditional class certification shall be considered void, and neither the Settlement Agreement,
11 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
12 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
13 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
14 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
15 fees and costs actually incurred.

16 **13.2. DIFFERENT FACTS**

17 The Parties acknowledge that, except for matters expressly represented herein, the facts in
18 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
19 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
20 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
21 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
22 and binding despite such difference.

23 **13.3. NO PRIOR ASSIGNMENTS**

24 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
25 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
26 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
27 except as set forth herein.
28

13.4. NON-ADMISSION

Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

13.5. NON-EVIDENTIARY USE

Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

13.6. MEDIA OR PRESS

Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media or press.

13.7. NON-RETALIATION

Defendant understands and acknowledges that it has a legal obligation to not retaliate against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to Opt Out of the Class Settlement.

13.8. CONSTRUCTION

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

13.9. GOVERNING LAW

This Settlement Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

13.10. NOTICES

Except for Class Member notices required to be made by the Settlement Administrator, all notices or other communications required or permitted under this Settlement Agreement shall be in

1 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
2 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
3 party appearing in this Settlement Agreement.

4 **13.11. CAPTIONS AND INTERPRETATIONS**

5 Section titles or captions contained herein are inserted as a matter of convenience and for
6 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
7 or any provision thereof.

8 **13.12. MODIFICATION**

9 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
10 by the Parties and approved by the Court. This Settlement Agreement may not be discharged except
11 by performance in accordance with its terms or by a writing signed by the Parties.

12 **13.13. INTEGRATION CLAUSE**

13 This Settlement Agreement contains the entire agreement between the Parties relating to the
14 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
15 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
16 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
17 Settlement Agreement may be waived except in writing as provided above.

18 **13.14. SUCCESSORS AND ASSIGNS**

19 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
20 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
21 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
22 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
23 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
24 successors, and assigns.

25 **13.15. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

26 Any person executing this Settlement Agreement or any such related document on behalf of a
27 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
28

Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Settlement Agreement or any such related document.

Plaintiff represents and warrants that he is authorized to sign this Settlement Agreement and that he has not assigned any Released Claims covered by this Settlement Agreement to a third-party.

13.16. EXECUTION IN COUNTERPARTS

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

13.17. ATTORNEY FEES, COSTS, AND EXPENSES

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

13.19. INTERIM STAY OF PROCEEDINGS

The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the terms of this Settlement Agreement, pending the Final Approval and Fairness Hearing to be conducted by the Court.

13.20. EXECUTION BY CLASS MEMBERS

It is agreed that it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Class Notice will therefore advise all Class Members of the binding nature of this Settlement Agreement and the Released Claims, which release shall have the same force and effect as if each Class Member executed this Settlement Agreement individually (excepting only those Class Member who return a timely and valid Opt Out).

13.21. EXECUTION BY PLAINTIFF

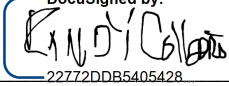
Plaintiff, by signing this Settlement Agreement, is bound by the terms herein and further agrees to not submit any Opt Out or objection to the Settlement Agreement. Any such Opt Out or objection shall therefore be void and of no force or effect.

14. EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES**CLASS REPRESENTATIVE:**

Dated: 11/17/2021 _____

DocuSigned by:

 22772DD85405428
 Randy Colbert
 Plaintiff and Class Representative

DEFENDANT:

Dated: _____

Activus Connect LLC

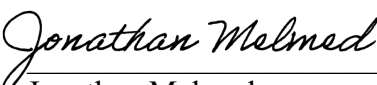
By: _____

Title: _____

APPROVED AS TO FORM BY COUNSEL**CLASS COUNSEL:**

Dated: 11/18/21 _____

Melmed Law Group P.C.


 Jonathan Melmed
 Attorneys for Plaintiffs

1 **13.21. EXECUTION BY PLAINTIFF**

2 Plaintiff, by signing this Settlement Agreement, is bound by the terms herein and further agrees
3 to not submit any Opt Out or objection to the Settlement Agreement. Any such Opt Out or objection
4 shall therefore be void and of no force or effect.

5 **14. EXECUTION**

6 The Parties and their counsel have executed this Settlement Agreement on the date below their
7 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
8 date of the latest signature.

9 **APPROVAL AND EXECUTION BY PARTIES**

10 **CLASS REPRESENTATIVE:**

11
12 Dated: _____

Randy Colbert
Plaintiff and Class Representative

14
15 **DEFENDANT:**

16 Dated: November 5, 2021

Activus Connect LLC

17
18  _____

19 By: Felix A. Serrano

20 Title: CEO

21
22 **APPROVED AS TO FORM BY COUNSEL**

23 **CLASS COUNSEL:**

24
25 Dated: _____

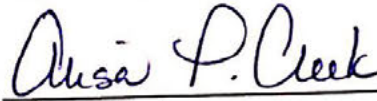
Melmed Law Group P.C.

26
27 _____
Jonathan Melmed
28 Attorneys for Plaintiffs

1 **DEFENDANT'S COUNSEL:**

2
3 Dated: 11.2.2021

Taylor English Duma LLP



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5 Alisa P. Cleek
6 Attorneys for Defendant
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EXHIBIT 1

Notice of Proposed Class Action Settlement

1
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3 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
4 **FOR THE COUNTY OF LOS ANGELES**

5 RANDY COLBERT, an individual, on behalf of himself, the
6 State of California, as a private attorney general, and on behalf
7 of all others similarly situated,

8 Plaintiff,

9 v.

10 ACTIVUS CONNECT LLC, a Florida Limited Liability
11 Company; and DOES 1 TO 50,

12 Defendants.
13

Case Number: 21STCV06019

**Notice of Proposed Class Action
Settlement**

14 *A court authorized this notice. This is not a solicitation from a lawyer.*
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1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

2 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

3 A proposed class action settlement agreement (the “Settlement”) has been reached between:
4 **(1)** Plaintiff Randy Colbert (“Plaintiff”), individually and in his representative capacity on behalf of a
5 group of prospective class members defined below, and as a private attorney general on behalf of the
6 State of California; and **(2)** Defendant Activus Connect LLC (“Defendant”). The Settlement resolves
7 disputed claims against Defendant arising out of its compensation practices during the period from
8 February 16, 2017, through December 31, 2021 (the “Class Period”) as applied to all individuals who
9 worked as hourly, non-exempt employees for Defendant Activus Connect LLC in the State of
10 California during the Class Period (“Class Members”).

11 The Court has granted preliminary approval of the Settlement and ordered this notice to be sent
12 to you because you may be entitled to money under the Settlement and because the Settlement affects
13 your legal rights.

14 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
15 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
16 automatically included in the Settlement and do not need to take any further action to receive a
17 payment. If you accept your settlement amount, you will release the claims described below.

18 **1. DESCRIPTION OF THE LAWSUIT**

19 On February 16, 2021, Plaintiff, individually and in his representative capacity on behalf of the
20 Class Members, and as a private attorney general on behalf of the State of California, filed a complaint
21 against Defendant in the Superior Court of California for the County of Los Angeles in the matter of
22 ***Randy Colbert v. Activus Connect LLC***, case number **21STCV06019** (the “Action”). The Action
23 sought recovery for Defendant’s alleged: **(1)** failure to pay minimum wage for all hours worked;
24 **(2)** failure to pay proper overtime wages; **(3)** failure to provide compliant rest periods and pay missed
25 rest break premiums; **(4)** failure to provide compliant meal periods and pay missed meal period
26 premiums; **(5)** failure to maintain accurate employment records; **(6)** failure to pay timely wages during
27 employment; **(7)** failure to pay all wages due and owing at separation; **(8)** failure to reimburse business
28 expenses; **(9)** failure to provide complete and accurate wage statements; **(10)** deceptive, fraudulent, or

1 otherwise unlawful business practices based on the foregoing in violation of California’s Unfair
2 Competition Law; and **(11)** statutory penalties based on the foregoing pursuant to the California Labor
3 Code Private Attorneys General Act of 2004 (“PAGA”).

4 **Defendant denies all liability, denies all allegations in the Action, and has raised various**
5 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws,
6 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action
7 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of
8 resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to
9 any wrongdoing or liability.

10 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
11 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
12 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
13 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
14 it is in their respective best interests and the interests of the Class Members to settle the Action on the
15 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
16 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
17 negotiations between the Parties, including mediation with an experienced and well-respected mediator
18 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
19 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
20 resolve the disputed claims.

21 Plaintiff and Plaintiff’s counsel—Jonathan Melmed and Kyle Smith of Melmed Law Group
22 P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support are the defenses to
23 liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of
24 trial on the merits, and the delays and uncertainties associated with litigation. Plaintiff and Class
25 Counsel believe that the settlement described in this notice is fair, adequate, reasonable, and in the best
26 interests of Plaintiff and the Class Members.

27 Under the Settlement, the following settlement class will be certified under California law: all
28 individuals who worked as hourly, non-exempt employees for Defendant Activus Connect LLC in the

1 State of California during the Class Period. The “Class Period” is defined as the period from February
2 16, 2017, through December 31, 2021. The Settlement provides for a gross settlement amount of
3 \$222,500.00, a share of which is to be distributed to the Class Members based on the pro rata number
4 of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked
5 by all Class Members. In exchange for their share of the settlement amount, all participating Class
6 Members will be deemed to have released Defendant from liability on the terms described in this notice.

7 On [date of preliminary approval], the Court preliminarily approved the Settlement and
8 conditionally certified the settlement class. This notice is being sent to you because Defendant’s records
9 indicate that you worked for Defendant during the Class Period and that you meet the definition
10 required to be treated as a Class Member.

11 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
12 **NOT AFFECT YOUR EMPLOYMENT.**

13 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking
14 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member
15 because of the Class Member's participation or decision not to participate in the Settlement.

16 **3. TERMS OF THE SETTLEMENT**

17 Defendant has agreed to pay \$222,500.00 (the “Gross Settlement Amount”) to resolve the
18 claims in the Action. The Gross Settlement Amount is the maximum value Defendant has and will
19 provide to settle the Action. Aside from employer-side taxes due on the wage component of the
20 Individual Settlement Amount, the consideration described above shall constitute the entire
21 consideration provided by Defendant pursuant to the Settlement and Defendant will not be required to
22 pay any amount above the Gross Settlement Amount in connection with this Settlement.

23 The Parties agreed to the following payments from the Gross Settlement Amount:

- 24 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
25 as the “Settlement Administrator,” who is sending this notice to you and will perform
26 many other duties relating to the Settlement. Under the Settlement, up to \$10,000.00
27 will be paid from the Gross Settlement Amount to pay the Settlement Administration
28 Costs. Any Settlement Administration Costs not incurred by the Settlement

1 Administrator or awarded by the Court will be added to the Net Settlement Amount
2 (defined below) and will be distributed to the Class Members who do not opt out of this
3 Settlement.

4 2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on
5 behalf of the Class Members on a contingency fee basis (that is, without being paid any
6 money to date) and have been paying all litigation costs and expenses. To date, the
7 Parties have aggressively litigated many aspects of the case including investigation,
8 settlement efforts, and a full-day mediation session. The Court will determine the actual
9 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross
10 Settlement Amount. Class Members are not personally responsible for any of Class
11 Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of
12 the Gross Settlement Amount (i.e., \$74,166.67) as reasonable compensation for the
13 work Class Counsel performed and will continue to perform in the Action. Class
14 Counsel also will ask for reimbursement of up to \$15,000.00 for the costs Class Counsel
15 incurred in connection with the Action. Any attorneys' fees or litigation costs not
16 awarded by the Court will be added to the Net Settlement Amount (defined below and
17 distributed to Class Members who do not opt out of this Settlement.

18 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide
19 a service payment to Plaintiff in the amount of \$5,000.00 for Randy Colbert to
20 compensate him for his efforts on behalf of the Class Members in the Action, including
21 assisting in the investigation and consulting with Class Counsel and providing crucial
22 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a
23 Class Member. Any Service Payment not awarded by the Court will be added to the
24 Net Settlement Amount (defined below) and distributed to the Class Members who do
25 not opt out of this Settlement.

26 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement
27 of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment
28 is to be approved by the Court pursuant to Labor Code section 2699 and is to be

distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who worked for Defendant during the period from February 10, 2020, through December 31, 2021 (the “PAGA Period”), and who come within the definition of an “aggrieved employee” for the purposes of the Settlement (i.e., all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period).

After deducting the amounts above, the balance of the settlement amount will form the “Net Settlement Amount” for distribution to the Class Members.

4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS

Each eligible Class Member who does not request exclusion from the Settlement will be deemed a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the Settlement, his or her share will be distributed to the remaining Class Participants.

Ten percent (10%) of each Individual Settlement Amount will constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and Ninety percent (90%) of each Individual Settlement Amount will constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

Defendant, or its proxies, shall take all usual and customary deductions from the Individual Settlement Amount payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form 1099 as income. Class Participants are responsible for the proper income tax treatment of their Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The workweeks you worked for Defendant during the Class Period will be calculated based on Defendant’s records. If you feel that you were not credited with the correct number of workweeks

1 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
2 **[Response Deadline]** with documentation to establish the number of workweeks you claim to have
3 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**
4 **not be returned or preserved, so do *not* send originals.** The Parties and the Settlement Administrator
5 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
6 be credited. The Settlement Administrator will make the final decision as to how many weeks are
7 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
8 may submit an objection, which is explained below.

9 Settlement checks will be mailed to all Class Participants after the Court grants final approval
10 of the Settlement and judgment is entered.

11 **5. THE RELEASE OF CLAIMS**

12 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
13 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”
14 against the “Released Parties” as those terms are defined below.

15 The “Released Parties” are Defendant Activus Connect LLC and its subsidiaries, affiliates
16 and/or parents; employee benefit plans sponsored or maintained by any of the foregoing; its attorneys,
17 and its respective successors and predecessors in interest; all of its respective officers, directors,
18 employees, administrators, fiduciaries, trustees, beneficiaries and agents; and each of its past, present
19 and future officers, directors, shareholders, employees, agents, principals, heirs, representatives,
20 accountants, auditors, consultants, insurers and reinsurers.

21 The “Released Claims” are all claims for wages, expenses, benefits, debts, liabilities, demands,
22 obligations, guarantees, statutory and civil penalties, damages, interest, attorneys’ fees, costs, and/or
23 other amounts or relief recoverable under state, local, or federal law that Plaintiff asserted or could
24 have asserted in the Action arising out of or related to the allegations set forth in the Complaint and/or
25 PAGA notice to the LWDA—on behalf of himself, the State of California, and/or the putative Class
26 Members—including, but not limited to, claims for: **(1)** failure to pay minimum wage for all hours
27 worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order;
28 **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and

1 the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break
2 premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to
3 provide compliant meal periods and pay missed meal period premiums in violation of Labor Code
4 sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment
5 records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in
6 violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in
7 violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in
8 violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage
9 statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise
10 unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law
11 (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to
12 PAGA (Lab. Code, §§ 2698–2699.6); and **(12)** all claims for liquidated damages, penalties, interest,
13 fees, costs based on the foregoing.

14 “Released Claims” shall include without limitation all claims that were alleged or could have
15 been alleged in the Action based on the facts set forth in the Complaint, whether arising at law, in
16 contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief,
17 penalties or liquidated damages. “Released Claims” shall also include without limitation all claims
18 that Plaintiff and/or the putative Class Members may have against the Released Parties (defined below)
19 relating to **(i)** the payment, taxation, and allocation of attorneys’ fees and costs to Class Counsel
20 pursuant to this Settlement Agreement, and **(ii)** the payment, taxation, and allocation of Plaintiff’s
21 Service Award pursuant to this Settlement Agreement.

22 The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,
23 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
24 does it release any claims, actions, or causes of action which may be possessed by Class Members
25 under state or federal discrimination statutes, including, without limitation, the California Fair
26 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
27 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
28 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income

1 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
2 interpretive guidelines.

3 Class Members who do not request exclusion from the Settlement will be deemed to have
4 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
5 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
6 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
7 to the Settlement payments. That section provides in pertinent part as follows:

8 “An employer shall not require the execution of a release of a claim or right on account
9 of wages due, or to become due, or made as an advance on wages to be earned, unless
10 payment of those wages has been made.”

11 **6. YOUR OPTIONS**

12 **6.1. FIRST OPTION: DO NOTHING AND RECEIVE YOUR PORTION OF THE**
13 **SETTLEMENT**

14 If you do nothing, you will be automatically included as a Class Participant in the Settlement
15 and will receive a settlement payment. If you do nothing, you will also be bound by the Settlement
16 and you will be releasing all claims related to the allegations in the Action as explained in the “Release
17 of Claims” section above. You do *not* have to take any further action to receive your settlement
18 payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
19 Administrator has your current address on file, or you may not receive important information or a
20 settlement payment. The estimated amount of your settlement payment if you do nothing is included
21 on the attached *Class Action Settlement Share Form*.

22 **6.2. SECOND OPTION: REQUEST EXCLUSION FROM THE CLASS AND THE**
23 **SETTLEMENT**

24 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
25 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
26 Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests
27 exclusion from the Class Settlement. The request for exclusion must include your name, address,
28 telephone number, and signature, and it should state:

1 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE ACTION
2 TITLED *RANDY COLBERT V. ACTIVUS CONNECT LLC*, PENDING IN THE
3 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CASE NO.
4 21STCV06019. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
5 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS
6 SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY
7 CLAIMS I MIGHT HAVE.”

8 To be timely, the request for exclusion must be postmarked and mailed directly to the
9 Settlement Administrator at the below address **on or before [Response Deadline]**. **Requests for**
10 **exclusion postmarked after this date may be disregarded:**

11 ILYM Group, Inc.
12 14751 Plaza Drive, Suite J
13 Tustin, California 92780

14 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
15 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and
16 shall receive no benefits from the class action portion of the Settlement. Any Class member who
17 submits a timely and valid request for exclusion will also not have any right to object, appeal or
18 comment on the Settlement. If you want confirmation of receipt of your request for exclusion, please
19 send it by United States certified mail, return receipt requested, or contact the Settlement Administrator.

20 **Importantly**, Class Members who timely and validly request exclusion from the Class
21 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
22 the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the
23 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
24 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

25 **6.3. THIRD OPTION: OBJECT TO THE SETTLEMENT**

26 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
27 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
28 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator

1 and the Court a written objection stating your full name, address, and last four digits of your social
2 security number, the case name and number (i.e., *Randy Colbert v. Activus Connect LLC*, pending the
3 Superior Court of California, County of Los Angeles, Case No. 21ST06019), each specific reason in
4 support of your objection, and any legal support for each objection. Objections in writing must be
5 mailed to the Settlement Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin,
6 California 92780—by no later than [Response Deadline] for your objection to be considered.

7 **Objections that do not include all required information, or that are not timely submitted, might**
8 **not be considered by the Court.**

9 If you choose to object to the Settlement, you may also appear at the final approval and fairness
10 hearing scheduled for [Final Approval Hearing Date], at [Final Approval Hearing Time] in Department
11 14 of the Superior Court of California for the County of Los Angeles, at the Spring Street Courthouse
12 located at 312 North Spring Street, Los Angeles, California 90012. You have the right to appear either
13 in person or through your own attorney at this hearing.

14 The Court may, at the time of the final approval and fairness hearing, have certain social
15 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement
16 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose
17 information is provided below, for more information about the Court’s current social distancing
18 procedures. You may also review the Court’s website for the most current information.

19 If you object to the Settlement, you will remain a Class Member, and if the Court approves the
20 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as
21 Class Members who do not object. Any Class Member who does not object in the manner provided
22 above shall have waived any objection to the Settlement, whether by appeal or otherwise.

23 **7. HOW TO UPDATE OR CHANGE YOUR ADDRESS**

24 If you move after receiving this notice or if it was misaddressed, please contact the Settlement
25 Administrator, ILYM Group, Inc., at (888) 250-6810 or by email at
26 **claims@ilymgroupclassaction.com**, as soon as possible. **This is important to ensure that future**
27 **notices and/or the Settlement payment reach you.**
28

1 **8. IF THE SETTLEMENT IS NOT APPROVED**

2 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
3 Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens,
4 there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would
5 be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class
6 Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was
7 filed.

8 **9. NOTICE OF FINAL JUDGMENT**

9 Within ten (10) days after the Court has held a final and fairness approval hearing and entered
10 a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a
11 copy of that order and final judgment on its website at the following website address:

12 **[Case-Specific Settlement URL (to be added by Settlement Administrator)]**

13 **10. QUESTIONS OR COMMENTS**

14 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about
15 the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-mail at
16 **claims@ilymgroupclassaction.com**. You may also contact Class Counsel at the addresses or phone
17 numbers listed below.
18

19 **Lawyers Representing Plaintiff and the Class Members**

20 **MELMED LAW GROUP P.C.**

21 Jonathan Melmed

22 jm@melmedlaw.com

23 Kyle D. Smith (SBN 280489)

24 ks@melmedlaw.com

25 1801 Century Park East, Suite 850

26 Los Angeles, California 90067

27 Phone: (310) 824-3828

28 Fax: (310) 862-6851

EXHIBIT 2

Class Action Settlement Share Form

Randy Colbert v. Activus Connect LLC
Case Number 21STCV06019
Superior Court of California for the County of Los Angeles

You are receiving this form because you are believed to be a Class Member. **According to Defendant's records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$[REDACTED],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

02159881-2 EXHIBIT 2 – CLASS ACTION SETTLEMENT SHARE FORM