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**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

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

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; **(e)** the later of the following
20 events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate proceeding
21 opposing the Class Settlement has elapsed without any appeal, writ, or other appellate proceeding
22 having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding opposing the
23 Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal, writ, or the
24 issuance of such other final appellate order upholding the Court’s final order with no right to pursue
25 further remedies or relief; and **(f)** the settlement has been fully funded by way of Defendant’s payment
26 of all settlement amounts to the Settlement Administrator. In this regard, it is the intention of the Parties
27 that the Class Settlement shall not become effective until the Court’s order approving the Class
28 Settlement is completely final and there is no further recourse by an appellant or objector who seeks to

1 contest the Class Settlement. In the event no objections are filed, the Effective Date shall be after steps
2 (a) through (d) are completed (i.e., the date that the court has entered a final order and judgment
3 certifying the Settlement Class and approving this Settlement Agreement).

4 **1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

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

11 **1.19. EMPLOYER’S TAXES**

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

17 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

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

20 **1.21. GROSS SETTLEMENT AMOUNT**

21 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
22 \$222,500.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
23 inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class
24 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately
25 pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of
26 each Individual Settlement Amount allocated as wages. Under no circumstances will Defendant be
27 required to pay any amount in excess of the Gross Settlement Amount in connection with this
28

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.

1.22. HEARING ON PRELIMINARY APPROVAL

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

1.23. INCENTIVE AWARD

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

1.24. INDIVIDUAL SETTLEMENT AMOUNT

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

1.25. NET SETTLEMENT AMOUNT

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

1.26. OPT OUT

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

1 **1.27. OPT-OUTS**

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

5 **1.28. PAGA PAYMENT**

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

13 **1.29. PAGA PERIOD**

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

15 **1.30. PAGA SETTLEMENT CLASS**

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

20 **1.31. PARTIES**

21 “Parties” shall mean Plaintiff and Defendant.

22 **1.32. PLAINTIFF**

23 “Plaintiff” shall mean Plaintiff Randy Colbert.

24 **1.33. PRELIMINARY APPROVAL DATE**

25 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
26 preliminarily approving this Settlement Agreement.
27
28

1.34. RELEASED CLAIMS

“Released Claims,” for the purposes of the class action portion of the Settlement Agreement, shall mean all claims for wages, expenses, benefits, debts, liabilities, demands, obligations, guarantees, statutory and civil penalties, damages, interest, attorneys’ fees, costs, and/or other amounts or relief recoverable under state, local, or federal law that Plaintiff asserted or could have asserted in the Action arising out of or related to the allegations set forth in the Complaint—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); and **(11)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

“Released Claims,” for the purposes of the class action portion of the Settlement Agreement, shall also 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,” for the purposes of the class action portion of the Settlement Agreement, 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,

1 and allocation of attorneys' fees and costs to Class Counsel pursuant to this Settlement Agreement, and
2 (ii) the payment, taxation, and allocation of Plaintiff's Service Award pursuant to this Settlement
3 Agreement.

4 "Released Claims," for the purposes of the PAGA portion of the Settlement Agreement, shall
5 mean all claims for civil penalties pursuant to PAGA that Plaintiff asserted in both Plaintiff's PAGA
6 notice to the LWDA and the Complaint, including all claims for civil penalties related to alleged or
7 actual violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185,
8 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2084.

9 This Settlement Agreement will not release any person, party, or entity from claims, if any, by
10 Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
11 does it release any claims, actions, or causes of action which may be possessed by Class Members
12 under state or federal discrimination statutes, including, without limitation, the California Fair
13 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
14 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
15 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
16 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
17 interpretive guidelines.

18 **1.35. RELEASED PARTIES**

19 "Released Parties" shall mean Defendant Activus Connect LLC and its subsidiaries, affiliates
20 and/or parents; employee benefit plans sponsored or maintained by any of the foregoing; its attorneys,
21 and its respective successors and predecessors in interest; all of its respective officers, directors,
22 employees, administrators, fiduciaries, trustees, beneficiaries and agents; and each of its past, present
23 and future officers, directors, shareholders, employees, agents, principals, heirs, representatives,
24 accountants, auditors, consultants, insurers and reinsurers.

25 **1.36. RELEASING PARTIES**

26 "Releasing Parties" shall mean every Class Participant and all persons purporting to act on their
27 behalf or purporting to assert a claim under or through them, including, but not limited to, their
28 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,

conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

1.37. RESPONSE DEADLINE

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

1.38. SETTLEMENT ADMINISTRATOR

“Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters, and has years of experience in the field of class action administration.

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

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

10 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

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

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

1 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS**
2 **SETTLEMENT**

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

9 The Class Representative and Class Counsel believe that the claims, causes of action,
10 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
11 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
12 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
13 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
14 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
15 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
16 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
17 alleged in the Action.

18 The Class Representative and Class Counsel believe that the settlement set forth in this
19 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
20 independent review of this Settlement Agreement by the Court in the approval process will confirm
21 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
22 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
23 and the Class Members.

24 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

25 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
26 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
27 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
28

1 Action. Defendant contends that it complied with California and federal wage and hour laws and has
2 dealt legally and fairly with Plaintiff and the Class Members.

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

13 **2.5. INTENT OF THE CLASS SETTLEMENT**

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

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

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

27 In the event that the Settlement Agreement is not finally approved by the Court, a Final
28 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered

1 null and void as set forth herein, then certification of the Settlement Class shall be automatically
2 vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding
3 determination that the requirements for certification of a class for trial purposes in this Action or in any
4 other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final
5 Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise any
6 preliminary approval of the Settlement Class in connection with any later proceeding before the Court.

7 **4. APPOINTMENT OF CLASS COUNSEL**

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

11 **5. CONSIDERATION**

12 **5.1. SETTLEMENT AMOUNT**

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

1 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
2 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
3 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
4 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
5 Class Member (“Workweeks”), as well as the estimated amount of the Individual Settlement Amount
6 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
7 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

8 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

9 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$5,000.00
10 for Randy Colbert to acknowledge his efforts on behalf of the Settlement Class in this Action, including
11 assisting in the investigation and consulting with Class Counsel and providing crucial documents to
12 Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an
13 amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross
14 Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled
15 as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and
16 the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment.
17 Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved
18 by the Court and shall hold Defendant harmless from all liability with regard thereto.

19 **5.3. PAYMENT TO CLASS PARTICIPANTS**

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

26 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

27 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
28 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have

1 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
2 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
3 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
4 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
5 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
6 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
7 member during the PAGA Period as a proportion of all pay periods worked by all members of the
8 PAGA Settlement Class.

9 **5.5. TAX TREATMENT AND PAYMENT**

10 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
11 Settlement Amounts for Class Participants (including any payments to the Class Representative but
12 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
13 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
14 W-2 for such payment to him or her). Additionally, 80% of each Individual Settlement Amount shall
15 constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such
16 payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
17 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
18 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
19 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
20 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
21 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
22 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
23 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
24 responsible for all other individual tax obligations.

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

1 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
2 to them.

3 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

4 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
5 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
6 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
7 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,
8 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
9 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
10 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
11 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
12 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
13 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
14 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
15 any other purpose, and that additional contributions or benefits are not required by this Settlement
16 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
17 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
18 or any other plan sponsored by Defendant.

19 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

20 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
21 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
22 Settlement Amount (i.e., \$74,166.67) and the award of costs and expenses up to an additional
23 \$15,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
24 amounts.

25 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
26 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
27 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
28 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for

1 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
2 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
3 Attorney Fees and Expenses awarded.

4 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
5 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
6 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
7 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
8 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
9 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
10 be based on the "catalyst theory" and/or the "common fund doctrine."

11 **6. SETTLEMENT ADMINISTRATION**

12 **6.1. COSTS AND EXPENSES**

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

20 **6.2. PAYMENT BY DEFENDANT**

21 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
22 employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the date on which
23 the Court enters a final order certifying the class for settlement purposes only and approving the Class
24 Settlement. When Defendant deposits the Gross Settlement Amount, the settlement will be fully
25 funded. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
26 more than \$222,500.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.
27
28

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

2 **7.1. THE SETTLEMENT ADMINISTRATOR**

3 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
4 **(Exhibit 1 and Exhibit 2, respectively)** to Class Members; posting notice of entry of final order and
5 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
6 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
7 determining individual payments to members of the PAGA Settlement Class; maintaining the
8 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
9 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
10 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
11 Payment payable to the LWDA; receiving and reviewing requests for exclusion and notices of
12 objection, if any, submitted by Class Members; providing a due diligence declaration for submission
13 to the Court prior to the Final Approval and Fairness Hearing; printing and providing Class Members,
14 Plaintiff, and Class Counsel with IRS Form W-2 and/or 1099 as required under this Settlement
15 Agreement and applicable law; providing a due diligence declaration for submission to the Court upon
16 the completion of the distributions called for under this Settlement Agreement; issuing a final report
17 and performing such other duties as the Parties or their counsel may direct. Additionally, the Settlement
18 Administrator will handle all tax document preparation and reporting, including state and federal tax
19 forms, if any. Any expenses incurred in connection with such preparation shall be an Administrative
20 Expense. The Settlement Administrator shall keep the Parties timely apprised of the performance of
21 all Settlement Administrator responsibilities. The Parties agree to cooperate in the Settlement
22 administration process and to make all reasonable efforts to control and minimize Administrative
23 Expenses. Each of the Parties represent that they do not have any financial interest in the Settlement
24 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
25 conflict of interest. On a weekly basis, the Settlement Administrator will provide reports to Class
26 Counsel and Defense Counsel with summary information updating them as to the number of validated
27 and timely objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel
28 and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections

1 no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
2 with proof of mailing of the Class Notice, without listing individual Class Member names which the
3 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
4 of the Court's Final Approval and Fairness Hearing.

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

10 Administrative Expenses are not anticipated to exceed \$10,000.00. Prior to the calculation and
11 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
12 total Administrative Expenses through the conclusion of their services and such actual amount will be
13 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
14 Amounts.

15 **7.2. NOTICE TO CLASS MEMBERS**

16 Notice shall be provided to Class Members in the following manner: Within thirty (30) days
17 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an
18 updated list of Class Members and members of the PAGA Settlement Class containing names, social
19 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
20 Because sensitive personal information is being provided, the Settlement Administrator and Class
21 Counsel shall maintain the information securely and in confidence. Access to such information shall
22 be limited to employees of the Settlement Administrator with a need to use the information for
23 administration of this Settlement Agreement. The Settlement Administrator will take all necessary
24 measures to adequately secure the information. The Database, however, may be provided to Class
25 Counsel as required to address and respond to inquiries and/or disputes from the Settlement Class, or
26 to otherwise protect the interests of the Settlement Class.

27 Within fourteen (14) days of receiving the class information, the Settlement Administrator shall
28 determine the number of workweeks worked by each Class Member, populate the data for each Class

1 Member accordingly, and send each Class Member the Class Notice via First Class United States Mail.
2 The address identified by the Settlement Administrator as the current mailing address shall be presumed
3 to be the best mailing address for each Class Member.

4 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before a
5 date seven (7) calendar days before the Response Deadline shall be re-mailed to the forwarding address
6 affixed thereto. If no forwarding address is provided, the Settlement Administrator will conduct a
7 national change of address search and a skip trace for the most current address of that Class Members.
8 Class Members to whom the Notice of Settlement is re-mailed shall have fourteen (14) calendar days
9 thereafter or until the Response Deadline has expired, whichever is later, to mail the Opt Out or written
10 objection to the Settlement Administrator, or to otherwise challenge their workweeks calculation as
11 provided in the Share Form. The date of the postmark on the return envelope shall be the exclusive
12 means used to determine whether a Class Member has timely mailed his/her Opt Out or written
13 objection on or before the relevant deadline. If a Class Member's Class Notice is returned to the
14 Settlement Administrator more than once as non-deliverable, then an additional Class Notice shall not
15 be re-mailed. If, for any reason, a Class Notice is non-deliverable, the Settlement Administrator will
16 not mail an Individual Settlement Amount to a Class Member. Rather, the Settlement Administrator
17 will hold the Individual Settlement Amount until the Void Date, as that term is defined below.

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

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

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

13 **7.3. OPT-OUT PROCEDURE**

14 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
15 in the Class Settlement and shall become Class Participants without having to submit a claim form or
16 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or
17 postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state
18 the Class Member's intent to be excluded (using language of the Class Member's choosing, so long as
19 their intent to be excluded is made clear), the Class Member's name, address, telephone number, last
20 four digits of the social security number, and must be hand signed by the person requesting exclusion.

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

25 Any Class Member who submits a timely and valid Opt Out request will not be entitled to any
26 monetary recovery under the Class Settlement and will not be bound by the terms of this Settlement
27 Agreement as it relates to the Released Claims. Any Class Member who submits a timely and valid
28 Opt Out will not have any right to object, appeal, or comment on the Class Settlement. Class Members

1 who fail to submit a timely and valid Opt Out on or before the Response Deadline shall be Class
2 Participants and will be bound by all terms of the Class Settlement and the order granted at the Final
3 Approval and Fairness Hearing. No later than fourteen (14) calendar days after the Response Deadline,
4 the Settlement Administrator shall provide Defense Counsel and Class Counsel with a complete list of
5 all Class Members who have submitted timely and valid Opt Outs, including their name and social
6 security number. The Settlement Administrator shall also provide a copy of any or all Opt Out requests
7 on the request of counsel for either of the Parties.

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

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

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

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

1 **7.4. OBJECTION PROCEDURE**

2 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
3 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the
4 Settlement Administrator no later than the Response Deadline. Only Class Participants may object to
5 the Settlement. The objection should include the case name and number and must set forth, in clear and
6 concise terms, a statement of the reasons why the objector believes that the Court should find that the
7 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the
8 Class Settlement should not be approved, including the legal and factual arguments supporting the
9 objection. If an objector wishes to appear at the Final Approval and Fairness Hearing, in person or
10 through an attorney, they may do so. The Settlement Administrator will promptly serve copies of any
11 objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members
12 wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person
13 or through a lawyer retained at their own expense.

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

19 **7.5. FINAL APPROVAL PROCEDURES**

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

25 No earlier than forty-five (45) calendar days after the Response Deadline, the Court shall hold
26 the Final Approval and Fairness Hearing, where objections, if any, may be heard and the Court shall
27 determine whether the Settlement Agreement should be finally approved, and if so, the amounts
28

1 payable for: **(a)** Class Attorney Fees and Expenses; **(b)** Incentive Award; **(c)** Individual Settlement
2 Amounts; and **(d)** Administrative Expenses.

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

8 **7.6. 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 certifying the Class for settlement purposes only and approving the Class Settlement, the
11 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of
12 the California Rules of Court, by posting a copy of said order and final judgment on its website at a
13 web address to be included in the Class Notice.

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

15 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

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

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

23 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
24 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
25 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
26 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
27 amounts in each category. No more than ten (10) calendar days after the Final Approval Order, the
28 Settlement Administrator will provide the Parties with an accounting of all anticipated payments form

1 the Gross Settlement Amount, including (a) the total amount of Individual Settlement Amounts and
2 employer-side taxes thereon; (b) the PAGA Award; (c) Class Representative's Incentive Award; (d) the
3 Class Counsel's Attorney Fee and Expenses and (e) Administrative Expenses, all as specified in this
4 Settlement Agreement and approved by the Court.

5 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS**
6 **PARTICIPANTS**

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

18 Defendant will provide the Settlement Administrator with any information reasonably
19 necessary to perform the calculation of number of workweeks for each Class Member, and any other
20 reasonably required information the Settlement Administrator requests to perform the calculations
21 required under this Settlement Agreement. Defendant shall have no responsibility for deciding the
22 validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement
23 Agreement, shall have no involvement in or responsibility for the determination or payment of
24 Employee's Taxes and Required Withholding, and shall have no liability for any errors made with
25 respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator
26 will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the
27 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants
28 represent and understand that they shall be solely responsible for any and all tax obligation associated

1 with their respective Individual Settlement Amounts and Incentive Awards. The Parties make no
2 representations as to the tax treatment or legal effect of the payments called for in this Settlement
3 Agreement and Class Members are not relying on any statement or representation by the Parties in this
4 regard.

5 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE**
6 **PAGA SETTLEMENT CLASS**

7 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
8 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
9 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
10 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
11 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
12 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

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

23 Defendant will provide the Settlement Administrator with any information reasonably
24 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
25 member, and any other reasonably required information the Settlement Administrator requests to
26 perform the calculations required under this Settlement Agreement. Defendant shall have no
27 responsibility for deciding the validity of the individual payment amounts allocated to each member of
28 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall

1 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
2 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
3 Taxes and Required Withholding.

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

9 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

10 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
11 approved by the Court to Class Counsel no later than twenty (20) days after the Class Settlement is
12 funded. Class Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-
13 9 before the Class Attorney Fees and Expenses payment is issued. The Settlement Administrator shall
14 issue the appropriate IRS Form 1099 for the payments made pursuant to this paragraph.

15 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

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

18 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

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

21 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
22 **INDIVIDUAL SETTLEMENT AMOUNTS**

23 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
24 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
25 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
26 last-known address no later than twenty (20) days after the Class Settlement is funded. The Settlement
27 Administrator shall make such payments either before or at the same time as the other payments
28 described herein. In no event shall the Settlement Administrator distribute the Class Attorney Fees and

1 Expenses, the Incentive Award, or other payments required by this Settlement Agreement prior to the
2 date on which the Class Participants are sent their Individual Settlement Amount. If the Settlement
3 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
4 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
5 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
6 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
7 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
8 remaining monetary obligations have been calculated and accounted for.

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

15 **8.8. NON-CASHED SETTLEMENT CHECKS**

16 Any funds associated with checks that have not been cashed within one hundred eighty (180)
17 days, will become void on the one hundred eight-first (181st) day after mailing (the "Void Date"), and
18 the Individual Settlement Amount associated with the uncashed check, along with any interest accrued
19 on such Individual Settlement Amounts while in the possession of the Settlement Administrator, will
20 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
21 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed.

22 The Released Claims will be binding upon all Class Participants, including those who do not
23 cash their checks within the 180-day period. Because all funds and interest under this Settlement
24 Agreement are to be completely distributed to the Class Participants, or to the Unclaimed Property
25 Fund in the name of the individual whose check was uncashed, the Parties agree that this disposition
26 results in no "unpaid residue" or "unclaimed or abandoned class member funds" under Code of Civil
27 Procedure Section 384.

1 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR PAYMENT**
2 **OF INDIVIDUAL SETTLEMENT SHARES**

3 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
4 calculated using the employment and payroll records of Defendant, which presumptively shall be
5 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
6 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
7 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
8 written employment records, to the Settlement Administrator. Each Class Member may dispute the
9 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
10 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
11 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
12 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
13 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
14 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
15 relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the
16 dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-
17 appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes
18 prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement
19 Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no
20 obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
21 Agreement).

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

23 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

24 The Class Settlement and conditional class certification shall be considered null and void, and
25 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
26 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
27 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
28 the Court, if any of the following occur: (a) the Court should for any reason fail to approve this

1 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
2 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
3 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
4 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

5 **9.2. DEFENDANT’S RIGHT TO VOID CLASS SETTLEMENT**

6 Defendant, at its sole discretion, shall have the right, but not the obligation, to revoke this
7 Settlement Agreement if ten percent (10%) or more of the total number of Class Members timely Opt
8 Out. Defendant shall exercise its revocation right, if at all, by providing written notice to Class Counsel
9 no later than thirty (30) days from the date of receipt from the Settlement Administrator of a complete
10 list of all Class Members who have submitted timely and valid Opt Outs. If Defendant exercises a right
11 to void this Settlement Agreement pursuant to this Paragraph, this Settlement Agreement and any
12 related settlement documents shall be null and void, and any class certified for settlement purposes will
13 be vacated. In such an event, neither this Settlement Agreement, related settlement documents, nor the
14 negotiations leading to this Settlement Agreement may be used as evidence for any purpose, and
15 Defendant shall retain the right to challenge all claims and allegations in the Action, to assert all
16 applicable defenses, and to dispute the propriety of class certification on all applicable grounds.

17 **9.3. ESCALATOR PROVISION**

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

20 **9.4. INVALIDATION**

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

24 **9.5. STAY ON APPEAL**

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

1 **10. MOTIONS FOR COURT APPROVAL**

2 **10.1. PRELIMINARY APPROVAL**

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

7 **10.2. FINAL APPROVAL**

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

16 **11. RELEASES AND WAIVERS**

17 **11.1. RELEASE OF CLAIMS BY SETTLEMENT CLASS**

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

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

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

4 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

5 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
6 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
7 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
8 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
9 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
10 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
11 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
12 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,
13 arising out of or in any way connected with his employment with Defendant including, the Released
14 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
15 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
16 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
17 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
18 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
19 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
20 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
21 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
22 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
23 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
24 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
25 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
26 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
27 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
28 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,

1 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
2 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
3 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
4 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
5 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
6 arising out of the matters released in this Settlement Agreement.

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

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

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

22 **11.3. CIRCULAR 230 DISCLAIMER**

23 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
24 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
25 acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written
26 communication or disclosure between or among the parties or their attorneys and other advisers, is or
27 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
28 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31

1 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
2 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
3 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
4 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
5 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
6 may be imposed on the Acknowledging Party; and **(3)** no attorney or advisor to any other party has
7 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
8 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
9 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
10 Settlement Agreement.

11 **12. DUTIES OF THE PARTIES**

12 **12.1. MUTUAL FULL COOPERATION**

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

22 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

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

26 **12.3. DUTIES PRIOR TO COURT APPROVAL**

27 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
28 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly

1 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
2 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
3 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
4 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
5 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
6 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
7 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

8 **13. MISCELLANEOUS PROVISIONS**

9 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

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

21 **13.2. DIFFERENT FACTS**

22 The Parties acknowledge that, except for matters expressly represented herein, the facts in
23 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
24 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
25 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
26 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
27 and binding despite such difference.
28

1 **13.3. NO PRIOR ASSIGNMENTS**

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

6 **13.4. NON-ADMISSION**

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

26 **13.5. NON-EVIDENTIARY USE**

27 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
28 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any

1 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
2 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
3 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
4 the Released Parties to prove or defend against any claim released herein by any Class Member in any
5 judicial, quasi-judicial, administrative, or governmental proceeding.

6 **13.6. MEDIA OR PRESS**

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

12 **13.7. NON-RETALIATION**

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

20 **13.8. CONSTRUCTION**

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

1 **13.9. GOVERNING LAW**

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

5 **13.10. NOTICES**

6 Except for Class Member notices required to be made by the Settlement Administrator, all
7 notices or other communications required or permitted under this Settlement Agreement shall be in
8 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
9 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
10 party appearing in this Settlement Agreement.

11 **13.11. CAPTIONS AND INTERPRETATIONS**

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

15 **13.12. MODIFICATION**

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

19 **13.13. INTEGRATION CLAUSE**

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

25 **13.14. SUCCESSORS AND ASSIGNS**

26 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
27 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
28 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,

1 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
2 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
3 successors, and assigns.

4 **13.15. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

5 Any person executing this Settlement Agreement or any such related document on behalf of a
6 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
7 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
8 this Settlement Agreement or any such related document.

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

11 **13.16. EXECUTION IN COUNTERPARTS**

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

15 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

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

19 **13.18. ACTION TO ENFORCE AGREEMENT**

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

22 **13.19. INTERIM STAY OF PROCEEDINGS**

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

26 **13.20. EXECUTION BY CLASS MEMBERS**

27 It is agreed that it is impossible or impractical to have each Class Member execute this
28 Settlement Agreement. The Class Notice will therefore advise all Class Members of the binding nature

1 of this Settlement Agreement and the Released Claims, which release shall have the same force and
2 effect as if each Class Member executed this Settlement Agreement individually (excepting only those
3 Class Member who return a timely and valid Opt Out).

4 **13.21. EXECUTION BY PLAINTIFF**

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

8 **14. EXECUTION**

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

12 **APPROVAL AND EXECUTION BY PARTIES**

13 **CLASS REPRESENTATIVE:**

14 Dated: 5-11-2022

15 ANDY
16 Randy-Colbert
17 Plaintiff and Class Representative

18 **DEFENDANT:**

19 Dated: May 6, 2022

20 **Activus Connect LLC**

21 Felix A. Serrano

22 By: Felix A. Serrano

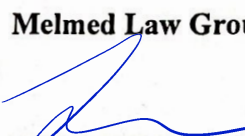
23 Title: CEO
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APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: June 13, 2022

Melmed Law Group P.C.

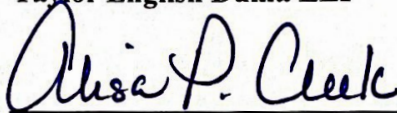


Jonathan Melmed
Attorneys for Plaintiffs

DEFENDANT'S COUNSEL:

Dated: 6.4.2022

Taylor English Duma LLP



Alisa P. Cleek
Attorneys for Defendant

EXHIBIT 1

Notice of Proposed Class Action Settlement

1
2
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” or “Settlement Agreement”)
4 has been reached between: **(1)** Plaintiff Randy Colbert (“Plaintiff”), individually and in his
5 representative capacity on behalf of a group of prospective class members defined below, and as a
6 private attorney general on behalf of the State of California; and **(2)** Defendant Activus Connect LLC
7 (“Defendant”). The Settlement resolves disputed claims against Defendant arising out of its
8 compensation practices during the period from February 16, 2017, through December 31, 2021 (the
9 “Class Period”) as applied to all individuals who worked as hourly, non-exempt employees for
10 Defendant Activus Connect LLC in the State of 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 up to \$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). The portion of the PAGA Payment allocated to the Aggrieved Employees shall be distributed to the Aggrieved Employees based on the pro rata number of pay periods worked by each particular Aggrieved Employee during the PAGA Period as a proportion of all pay periods worked by all other Aggrieved Employees.

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.

Each Aggrieved Employee will receive a pro-rata share of the PAGA Payment allocated to the Aggrieved Employees (“PAGA Settlement Amount”). As with the Individual Settlement Amount, the PAGA Settlement Amount will be determined by comparing the PAGA pay periods worked by each Aggrieved Employee to the total PAGA pay periods for all Aggrieved Employees worked during the PAGA Period.

Twenty percent (20%) 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 Eighty percent (80%) 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).

1 Defendant, or its proxies, shall take all usual and customary deductions from the Individual
2 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
3 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
4 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
5 1099 as income. Class Participants are responsible for the proper income tax treatment of their
6 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class
7 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors
8 concerning the tax consequences and treatment of payments they receive under the Settlement.

9 The workweeks you worked for Defendant during the Class Period will be calculated based on
10 Defendant's records. If you feel that you were not credited with the correct number of workweeks
11 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
12 [Response Deadline] with documentation to establish the number of workweeks you claim to have
13 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**
14 **not be returned or preserved, so do not send originals.** The Parties and the Settlement Administrator
15 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
16 be credited. The Settlement Administrator will make the final decision as to how many weeks are
17 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
18 may submit an objection, which is explained below.

19 Settlement checks will be mailed to all Class Participants after the Court grants final approval
20 of the Settlement and judgment is entered. Class Participants will have 180 days to cash their settlement
21 checks. Any unclaimed funds resulting from any uncashed checks after that 180-day period will be
22 remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for deposit
23 in the Unclaimed Property Fund in the name of the individual whose check was uncashed.

24 **5. THE RELEASE OF CLAIMS**

25 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
26 all Class Participants. The Class Participants will then be barred from bringing any "Released Claims"
27 against the "Released Parties" as those terms are defined below.
28

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

7 “Released Claims,” for the purposes of the class action portion of the Settlement Agreement,
8 shall mean all claims for wages, expenses, benefits, debts, liabilities, demands, obligations, guarantees,
9 statutory and civil penalties, damages, interest, attorneys’ fees, costs, and/or other amounts or relief
10 recoverable under state, local, or federal law that Plaintiff asserted or could have asserted in the Action
11 arising out of or related to the allegations set forth in the Complaint—on behalf of himself, the State of
12 California, and/or the putative Class Members—including, but not limited to, claims for: **(1)** failure to
13 pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
14 Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections
15 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and
16 pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage
17 Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation
18 of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate
19 employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during
20 employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing
21 at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business
22 expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and
23 accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive,
24 fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s
25 Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(11)** all claims for liquidated
26 damages, penalties, interest, fees, costs based on the foregoing.

27 “Released Claims,” for the purposes of the class action portion of the Settlement Agreement,
28 shall also include without limitation all claims that were alleged or could have been alleged in the

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

9 “Released Claims,” for the purposes of the PAGA portion of the Settlement Agreement, shall
10 mean all claims for civil penalties pursuant to PAGA that Plaintiff asserted in both Plaintiff’s PAGA
11 notice to the LWDA and the Complaint, including all claims for civil penalties related to alleged or
12 actual violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174,
13 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2084.

14 This Settlement Agreement will not release any person, party, or entity from claims, if any, by
15 Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
16 does it release any claims, actions, or causes of action which may be possessed by Class Members
17 under state or federal discrimination statutes, including, without limitation, the California Fair
18 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
19 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
20 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
21 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
22 interpretive guidelines.

23 Class Members who do not request exclusion from the Settlement will be deemed to have
24 acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and
25 that the Settlement payments constitute payment of all sums allegedly due to them. Class Members
26 will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not
27 applicable to the Settlement payments. That section provides in pertinent part as follows:
28

“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.”

6. YOUR OPTIONS

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

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

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

If you do *not* wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests exclusion from the Class Settlement. The request for exclusion must include your name, address, telephone number, last four digits of the social security number, and signature, and it must state your intent to be excluded (using any language of your choosing, so long as your intent to be excluded is made clear).

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

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

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

7 **Importantly**, Class Members who timely and validly request exclusion from the Class
8 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
9 the Class Settlement applies solely to the Class Members' entitlement to the class action portion of the
10 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
11 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

12 **6.3. THIRD OPTION: OBJECT TO THE SETTLEMENT**

13 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
14 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
15 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator
16 and the Court a written objection stating your full name, address, and last four digits of your social
17 security number, the case name and number (i.e., *Randy Colbert v. Activus Connect LLC*, pending the
18 Superior Court of California, County of Los Angeles, Case No. 21ST06019), and a statement of the
19 reasons why the you believe that the Court should find that the proposed Settlement is not in the best
20 interest of the Class Members and the reasons why the Settlement should not be approved, including
21 the legal and factual arguments supporting the objection.. Objections in writing must be mailed to the
22 Settlement Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, California 92780—
23 by no later than **[Response Deadline]** for your objection to be considered. **Objections that do not**
24 **include all required information, or that are not timely submitted, might not be considered by**
25 **the Court.**

26 If you choose to object to the Settlement, you may also appear at the final approval and fairness
27 hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]** in Department
28 14 of the Superior Court of California for the County of Los Angeles, at the Spring Street Courthouse

1 located at 312 North Spring Street, Los Angeles, California 90012. You have the right to appear either
2 in person or through your own attorney at this hearing. The location, date, and time of the Final
3 Approval Hearing may be moved without further notice to you. You may contact Class Counsel using
4 the contact information provided above to confirm the address and time of the hearing, if you wish to
5 appear in person or through LACourtConnect.

6 The Court may, at the time of the final approval and fairness hearing, have certain social
7 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement
8 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose
9 information is provided below, for more information about the Court's current social distancing
10 procedures. You may also review the most current information on the Court's website, at
11 www.lacourt.org.

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

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

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

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

22 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
23 Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens,
24 there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would
25 be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class
26 Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was
27 filed.
28

1 **9. 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 approving the Settlement, if it chooses to do so, the Settlement Administrator will post a
4 copy of that order and final judgment on its website at the following website address:

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

6 **10. QUESTIONS OR COMMENTS**

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

11
12 **Lawyers Representing Plaintiff and the Class Members**

13
14 **MELMED LAW GROUP P.C.**

15 Jonathan Melmed

16 jm@melmedlaw.com

17 Kyle D. Smith (SBN 280489)

18 ks@melmedlaw.com

19 1801 Century Park East, Suite 850

20 Los Angeles, California 90067

21 Phone: (310) 824-3828

22 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