

Kane Moon (SBN 249834)
E-mail: kane.moon@moonyanglaw.com
Brett Gunther (SBN 306448)
E-mail: brett.gunther@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Terry Clark

Maria C. Roberts (SBN 137907)
mroberts@greeneroberts.com
Dessi N. Day (SBN 207699)
dday@greeneroberts.com
GREENE & ROBERTS, LLP
402 West Broadway, Suite 1025
San Diego, California 92101
Telephone: (619) 398-3400
Facsimile: (619) 330-4907

Attorneys for Defendant ECMD, Inc.

Kenneth P. Roberts (SBN 74955)
Stuart E. Cohen (SBN 213810)
Ryan P. Tish (SBN 274284)
Kevin Y. Kanooni (SBN 292707)
K.P. ROBERTS & ASSOCIATES,
A PROFESSIONAL LAW CORPORATION
6355 Topanga Canyon Boulevard, Suite 403
Woodland Hills, CA 91367
Telephone: (818) 888-3553

Attorneys for Defendant Industrial Apple, Inc.
dba Apple One Staffing

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TERRY CLARK, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

INDUSTRIAL APPLE, INC., a California
corporation dba "APPLE ONE STAFFING";
ECMD, INC., a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV14956

[Remanded for Settlement Purposes from
USDC Case Number 2:21-cv-04460-JAK-KS]

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint filed: April 20, 2021
Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff Terry Clark, individually,
4 and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendants
5 Industrial Apple, Inc. dba “Apple” (“Industrial Apple”) and ECMD, Inc. (“ECMD”) (collectively,
6 hereinafter “Defendants”). Plaintiff and Defendants are collectively referred to herein as “the Parties.”

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. For purposes of this Settlement, “Complaint” refers to the operative complaint at the time
10 the Court grants Preliminary Approval of this Settlement.

11 2. For purposes of this Settlement, this matter, entitled *Terry Clark v. Industrial Apple, Inc.,*
12 *et al.*, Los Angeles Superior Court Case No. 21STCV14956, is referred to herein as the “Action.”

13 3. For purposes of this Settlement, the “Class Period” is April 20, 2017 through date the
14 Court preliminarily approves of the settlement, or December 10, 2021, whichever is sooner.

15 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All persons
16 who worked for Defendant Industrial Apple, Inc. and who were placed to work at any location of
17 Defendant ECMD, Inc. in California as an hourly, non-exempt employee, as well as all persons who
18 worked for Defendant ECMD, Inc. in California as an hourly non-exempt employee from April 20, 2017
19 to the date the Court preliminarily approves of the settlement, or December 10, 2021, whichever is sooner.
20 “Settlement Class Members” are Plaintiff and those Class Members who do not submit timely exclusion
21 requests to the Settlement Administrator.

22 5. For purposes of this Settlement, “Class Counsel” means Kane Moon, Esq. and Brett M.
23 Gunther, Esq. of MOON & YANG, APC.

24 6. “Class Representative Service Award” means the amount that the Court authorizes to be
25 paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of Plaintiff’s
26 efforts and risks in assisting with the prosecution of the Action.

27 7. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
28 Class Member was employed by Defendants in California during the Class Period. Defendants’ best

1 estimate is that the Class Members worked approximately 12,000 workweeks.

2 8. For purposes of this Settlement, "Response Deadline" means the date forty-five (45) days
3 after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date
4 on which Settlement Class Members may submit a request for exclusion or written objection to the
5 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 45 calendar days
6 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as
7 expressly described herein.

8 9. For purposes of the Settlement, "Defendants' Counsel" means Maria C. Roberts, Esq. and
9 Dessi N. Day, Esq. of GREENE & ROBERTS, LLP for Defendant ECMD, Inc. and Kenneth P. Roberts,
10 Esq., Stuart E. Cohen, Esq., Ryan P. Tish, Esq., and Kevin Y. Kanooni, Esq. of K.P. ROBERTS &
11 ASSOCIATES, APC, for Defendant Industrial Apple, Inc. dba "Apple One Staffing."

12 10. "Individual Settlement Payment" means the amount payable from the Net Settlement
13 Amount to each Class Member.

14 11. "Net Settlement Amount" means the Maximum Settlement Amount, less Attorneys' Fees
15 and Costs, the Class Representative Service Award, Settlement Administration Costs, and the PAGA
16 Penalty Payment.

17 12. For purposes of this Settlement, "PAGA Allocation" means the amount that the Parties
18 have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in connection with the
19 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The
20 Parties have agreed that the PAGA Allocation will be \$55,000.00 from the Gross Settlement Amount.
21 Pursuant to PAGA, Seventy Five Percent (75%), or \$41,250.00, of the PAGA Penalty Payment will be
22 paid to the LWDA ("PAGA Penalty Payment"), and Twenty Five Percent (25%), or \$13,750.00 of the
23 LWDA Payment will be included in the Net Settlement Amount for PAGA Employees ("PAGA
24 Settlement Payment").

25 13. For purposes of this Settlement, "PAGA Period" means the period between April 20, 2020
26 through the date the Court preliminarily approves of the settlement, or December 10, 2021, whichever is
27 sooner.

28 14. For purposes of this Settlement, "PAGA Employee" means all Class Members that worked

1 during the PAGA Period.

2 15. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
3 each PAGA Employee worked during the PAGA Period.

4 16. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

5 17. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
6 through California Labor Code §§ 2698, *et seq.*, that arise out of or are related to the Released Claims set
7 forth below, and are subject to assertion through PAGA.

8 18. For purposes of this Settlement, “Released PAGA Claims Period” means the period
9 between April 20, 2020 through the date the Court preliminarily approves of the settlement, or December
10 10, 2021, whichever is sooner.

11 19. “Request for Exclusion” means a written request by a Class Member to opt out of, or
12 exclude oneself, from the Settlement.

13 20. “Settlement” means the final and complete disposition of the Action pursuant to this
14 Stipulation.

15 21. For purposes of this Settlement, “Settlement Payments” means all of the payments to
16 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA
17 Employees (the “PAGA Settlement Payment”).

18 22. “Settlement Administrator” means a third-party class action settlement administrator
19 agreed to by the Parties and approved by the Court for purposes of administering this Settlement.

20 23. “Settlement Administration Costs” means the reasonable costs and fees of administration
21 of this Settlement, including, but not limited to: (i) printing, mailing and re-mailing (if necessary) Notice of
22 Settlement to the Class Members; (ii) preparing and submitting to Class Members and government entities
23 all appropriate tax filings and forms; (iii) preparing, with the assistance of Defense Counsel, and serving
24 the CAFA Notice; (iv) computing the amount of and distributing Individual Settlement Payments, the
25 Class Representative Service Award, Attorneys’ Fees and Costs, and the LWDA Payment; (vi) processing
26 and validating Requests for Exclusion and Notices of Objection; (vii) establishing a Qualified Settlement
27 Fund (“QSF”), as defined by the Internal Revenue Code; and (viii) calculating and remitting to the
28 appropriate government agencies all employer and employee payroll tax obligations arising from the

1 Settlement and preparing and submitting filings required by law in connection with the payments required
2 by the Settlement.

3 **STIPULATED BACKGROUND**

4 24. On April 16, 2021, Plaintiff submitted a “Notice of Labor Code Violations and PAGA
5 Penalties” online to the Labor & Workforce Development Agency to satisfy the administrative exhaustion
6 requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private
7 Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). More than 65 days have passed
8 since the Plaintiff’s submission of the notice letter and Plaintiff has not received any notice from the
9 LWDA of its intent to investigate the claims set forth in the April 16, 2021 PAGA letter.

10 25. On April 20, 2021, Plaintiff Terry Clark filed a putative Class Action (the “Complaint”)
11 alleging the following labelled causes of action: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§
12 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and
13 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and
14 Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses
15 [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-
16 203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair
17 Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].

18 26. On May 28, 2021, Defendant ECMD removed this case to the United States District Court
19 for the Central District of California under CAFA. On June 4, 2021, Defendant ECMD filed a motion to
20 strike the class claims. Defendant answered the FAC on April 25, 2019. The hearing on that motion was
21 set for October 4, 2021.

22 27. On June 25, 2021, Plaintiff filed a motion to remand the case to state court. The hearing on
23 that motion was set for October 25, 2021.

24 28. On or about August 10, 2021, the Parties entered into a stipulation to stay the proceedings
25 pending mediation and agreed to mediate the matter with the Honorable Calr West (Ret.).

26 29. On September 7, 2021, the Parties participated in a mediation in the Action with Hon. Carl
27 J. West (Ret.). and reached an agreement on the essential terms of a proposed class action settlement and
28 PAGA settlement and executed a memorandum of understanding reflecting their agreement.

1 30. As part of the proposed settlement, the Parties agreed to remand the Action to the Superior
2 Court for the State of California, County of Los Angeles, for purposes of settlement approval and
3 administration. The Parties also agreed that Defendants' consent to remand the Action to the Superior
4 Court did not constitute a waiver of their right to a federal forum.

5 31. On September 29, 2021, the United States District Court, Central District of California
6 entered an order to remand the matter to state court pursuant parties' stipulation.

7 32. Prior to submitting the instant Settlement to the Court for preliminary and final approval,
8 Plaintiff will file a First Amended Complaint to add a cause of action for Civil Penalties under the Labor
9 Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.].

10 33. In the Complaint, Plaintiff sought to represent all non-exempt employees who worked for
11 Defendants in California, and who were allegedly denied minimum and overtime wages on account of
12 Defendants' time-rounding practice, who allegedly did not receive all meal and rest periods legally
13 entitled, who allegedly did not receive minimum, overtime, meal period premium and rest period premium
14 wages at the correct rate of pay, who allegedly did not receive reimbursement for expenses incurred for
15 business purposes, who allegedly did not timely receive all wages upon their resignation or termination of
16 employment, and who allegedly did not received accurate itemized wage statements at any time during the
17 period beginning four years before the filing of the initial complaint and ending the date the Court
18 preliminarily approves of the settlement, or December 10, 2021, whichever is sooner.

19 34. The Parties stipulate and agree to the certification of the proposed class for settlement
20 purposes only. The Parties further agree that this Stipulation will not be admissible in this or any other
21 proceeding as evidence that (i) a class action should be certified, (ii) a representative action is appropriate
22 or manageable, or (iii) Defendant is liable to Plaintiff or any Class Member, other than according to the
23 terms of this Stipulation. Solely for purposes of settling this case, the Parties stipulate and agree that:

24 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
25 Class Members.

26 (b) There are common questions of law and fact including, but not limited to, the
27 following:

28 1) Whether or not Plaintiff and the Class Members were properly

1 compensated for all hours worked, including minimum and overtime
2 wages;

- 3 2) Whether or not Plaintiff and the Class Members were provided and/or
4 authorized and permitted all meal and rest periods, and/or were paid
5 premium pay at the proper rate of pay for failure to provide meal and rest
6 breaks ;
- 7 3) Whether or not Plaintiff and the Class Members timely received all wages
8 owed upon the termination and/or resignation of their employment;
- 9 4) Whether or not Defendants maintained accurate records of all hours
10 Plaintiff and the Class Members worked;
- 11 5) Whether or not Defendants failed to reimburse necessary business
12 expenses; and,
- 13 6) Whether or not Defendants engaged in unlawful or unfair business
14 practices affecting the Class in violation of California Business and
15 Professions Code §§ 17200-17208.

- 16 (c) Plaintiff's claims are typical of the claims of the Class Members.
- 17 (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
18 Class.
- 19 (e) The prosecution of separate actions by individual members of the Class would
20 create the risk of inconsistent or varying adjudications, which would establish
21 incompatible standards of conduct.
- 22 (f) With respect to the Class, questions of law and fact common to the members of the
23 Class predominate over any questions affecting any individual member in such
24 Class, and that a class action is superior to other available means for the fair and
25 efficient adjudication of the controversy.

26 35. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
27 were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
28 admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be

1 certified in a non-Settlement context in this Action or in any other lawsuit. Defendants expressly reserve
2 their right to oppose claim or class certification in this or any other action should this Settlement not
3 become effective.

4 36. Defendants expressly deny any liability or wrongdoing of any kind whatsoever associated
5 with the claims alleged in the Complaint, and Defendants further deny that, for any purpose other than
6 settling this lawsuit, the action is appropriate for class or representative treatment. With respect to
7 Plaintiff's claims, Defendants contend, among other things, that Plaintiff and the Class Members have
8 been paid proper wages, have been provided meal periods or they have been made available as required,
9 have been provided rest periods or they have been authorized and permitted as required, did not incur any
10 business expenses that were not reimbursed, have been paid timely wages upon separation of employment,
11 and have been provided with accurate itemized wage statements. Defendants contend, among other
12 things, that they have complied at all times with the California Labor Code and the applicable Wage
13 Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendants contend
14 that they have complied at all times with the California Business and Professions Code.

15 37. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
16 all disputes and claims arising from or related to the Complaint.

17 38. Class Counsel has conducted a thorough investigation into the facts of this Action,
18 including an extensive review of relevant documents, and has diligently pursued an investigation of the
19 claims of the Class against Defendants. Based on its own independent investigation and evaluation, Class
20 Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms set
21 forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the
22 Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
23 Class will not be certified by the Court, defenses asserted by Defendants, and numerous potential appellate
24 issues. Defendants and Defendants' Counsel also agree that the Settlement is fair and in the best interest
25 of the Class.

26 39. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
27 preliminary and final approval of this Settlement.

28 40. The Parties agree to stay all proceedings in the Action, except such proceedings necessary

1 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
2 Court.

3 **PRIMARY TERMS OF SETTLEMENT**

4 41. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
5 set forth herein, the Parties agree, subject to the Court's approval, as follows:

6 (a) It is agreed by and among the Class and Defendants that this case and any claims,
7 damages, or causes of action arising out of the disputes which are the subject of
8 this case, be settled and compromised as between the Class and Defendants,
9 subject to the terms and conditions set forth in this Settlement and the approval of
10 the Court.

11 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
12 effective when all of the following events have occurred: (i) this Joint Stipulation
13 of Settlement has been executed by all Parties and their respective counsel; (ii) the
14 Court has given preliminary approval to the Settlement; (iii) the Notice has been
15 given to the class, providing them with an opportunity to dispute information
16 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
17 (iv) the Court has held a final approval hearing and entered a final order and
18 judgment certifying the Class and approving this Settlement; and (v) the later of the
19 following events: (a) the date final approval is granted if there are no objections to
20 the settlement; (b) sixty-five (65) days following notice of entry of the Court's final
21 order approving the Settlement if there are any objections by any Class Member; or
22 (c) if any appeal, writ or other appellate proceeding opposing this Settlement has
23 been filed within sixty-five (65) days following notice of entry of the Court's final
24 order approving the Settlement, then twenty (20) days after when any appeal, writ
25 or other appellate proceeding opposing the Settlement has been resolved finally
26 and conclusively with no right to pursue further remedies or relief. In this regard, it
27 is the intention of the Parties that the Settlement shall not become effective until the
28 Court's order approving the Settlement is completely final, and there is no further

1 recourse by an appellant or objector who seeks to contest the Settlement.

2 (c) Gross Settlement Amount: Defendants' maximum total payment under the
3 Settlement, including all attorney's fees and costs, the Service Payment to the
4 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
5 any other payments provided by this Settlement, is \$530,000.00 ("Gross Settlement
6 Amount"), subject to the Escalator Clause and except that, to the extent that any
7 portions of the Class Members' Settlement Payments constitute wages, Defendants
8 will be separately responsible for any employer payroll taxes required by law,
9 including the employer FICA, FUTA, and SDI contributions. The Gross
10 Settlement Amount will be allocated as four hundred and eighty thousand dollars
11 and zero Cents (\$480,000.00) payable by Defendant ECMD, Inc. and fifty
12 thousand dollars and zero cents (\$50,000.00) payable by Defendant Industrial
13 Apple, Inc.

14 (d) Escalator Clause: If it is later determined that the number of Covered Workweeks
15 is more than 5% greater than the original estimates of 12,000 workweeks (i.e.
16 12,600 or more Covered Workweeks), the Gross Settlement Amount shall be
17 increased by the percentage that the actual number of class members or workweeks
18 exceeds the original estimates beyond 5% (the "Escalator Clause"). The Gross
19 Settlement Amount will not be reduced for any reason.

20 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
21 revert to Defendants.

22 (f) No Claims Required: Class Members will not be required to submit a claim to
23 receive their Settlement payment.

24 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
25 deducting from the Gross Settlement Amount (\$530,000.00) the following sums,
26 subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the
27 Gross Settlement Amount, or \$176,666.66); (2) reasonable litigation costs (not to
28 exceed \$20,000.00); (3) the Service Payment (not to exceed \$7,500.00); (4) the

1 PAGA Penalty Payment in the amount of \$41,250.00 (which is 75% of the
2 \$55,000.00 PAGA Allocation); and (5) costs of settlement administration
3 (estimated not to exceed \$20,000). Settlement Payments to the Class Members
4 will be calculated by the Settlement Administrator and paid out of the Net
5 Settlement Amount as set forth below.

6 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
7 Settlement Class Members' Settlement Payments constitute wages, Defendants
8 will be separately responsible for any **employer** payroll taxes required by law,
9 including the employer FICA, FUTA, and SDI contributions with Industrial
10 Apple's share of the payroll taxes to be capped at \$1,000. Except for any employer
11 payroll taxes, it is understood and agreed that Defendants' maximum total liability
12 under this Settlement shall not exceed the Gross Settlement Amount. The
13 Settlement Administrator will calculate and submit the Defendants' employer share
14 of payroll taxes after advising Defendants of the total amount owed, in aggregate,
15 as employer-side payroll taxes and receiving a lump sum payment from
16 Defendants in that amount when the Gross Settlement Amount is delivered to the
17 Settlement Administrator.

18 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
19 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
20 Member will be paid a pro-rata share of the Net Settlement Amount (less the
21 PAGA Settlement Payments), as calculated by the Settlement Administrator. The
22 pro-rata share will be determined by comparing the individual Settlement Class
23 Member's Covered Workweeks worked during the Class Period in California to
24 the total Covered Workweeks of all the Settlement Class Members during the
25 Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷
26 [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net
27 Settlement Amount – all PAGA Settlement Payments] = Individual Settlement
28 Payment for a Settlement Class Member. Settlement Class Payments in the

appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $[\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}] \times [\text{PAGA Settlement Payment}]$ = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but not limited to the Defendants' FICA and FUTA

1 contributions, based on the payment of claims to the Class Members. IRS Forms
2 1099 will be issued to each Class Member reflecting the payments for penalties and
3 interest. Class Members are responsible to pay appropriate taxes due on the
4 Settlement Payments they receive. To the extent required by law, IRS Forms 1099
5 and W-2 will be issued to each Class Member with respect to such payments.

6 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
7 Payments to individual Class Members shall be deemed to be paid to such Class
8 Member solely in the year in which such payments actually are received by the
9 Class Member. It is expressly understood and agreed that the receipt of such
10 Settlement Payments will not entitle any Class Member to additional compensation
11 or benefits under any company bonus, contest or other compensation or benefit
12 plan or agreement in place during the period covered by the Settlement, nor will it
13 entitle any Class Member to any increased retirement, 401(k) benefits or matching
14 benefits or deferred compensation benefits. It is the intent that the Settlement
15 Payments provided for in this Settlement are the sole payments to be made by
16 Defendants to the Class Members, and that the Class Members are not entitled to
17 any new or additional compensation or benefits as a result of having received the
18 Settlement Payments (notwithstanding any contrary language or agreement in any
19 benefit or compensation plan document that might have been in effect during the
20 period covered by this Settlement).

21 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendants will not
22 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
23 the Gross Settlement Amount (\$176,666.66) and reimbursement of litigation costs
24 and expenses not to exceed \$20,000.00. The difference between the amounts
25 requested as attorneys' fees and costs and the actual amounts awarded will be
26 distributed to the class as Settlement Payments.

27 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
28 Defendants will not object to Class Counsel's application for an additional

1 payment of up to \$7,500.00 to Plaintiff for service as a Class Representative
2 ("Service Payment"). It is understood that the Service Payment is in addition to the
3 individual Settlement Payment to which Plaintiff is entitled to along with the other
4 Class Members. In exchange, Plaintiff has agreed to release all claims, whether
5 known or unknown, under federal law or state law against the Releasees, to the
6 extent permitted by law, through the Class Period ("Plaintiff's Released
7 Claims"). Plaintiff understands that this release includes unknown claims and
8 that they are, as a result, waiving all rights and benefits afforded by Section
9 1542 of the California Civil Code, which provides:

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

18 Specifically excluded from Plaintiff's Released Claims are any claims for workers'
19 compensation benefits. The Service Payment will issue at the same time all
20 Settlement Payments are mailed to the Settlement Class. The difference between
21 the amounts requested as a service payment and the actual amounts awarded will
22 be distributed to the class as Settlement Payments.

- 23 (o) Defendants or the Settlement Administrator will issue an IRS Form 1099 for the
24 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
25 correctly characterizing this compensation on personal income tax returns for tax
26 purposes and for paying any taxes on the amounts received. Should the Court
27 approve a Service Payment in an amount less than that set forth above, the
28 difference between the lesser amount(s) approved by the Court and the Service
Payment amount(s) set forth above shall be added to the Net Settlement Amount.
Plaintiff agrees not to opt out or object to the Service Payment as the Class
Representative.

1 pro-rata share of the PAGA Settlement Payment. If the Court approves the
2 compromise of the PAGA Claim, all Class Members are bound by the Court's
3 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
4 California Labor and Workforce Development Agency at or before the time
5 Plaintiff file the motion for preliminary approval.

6 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
7 Defendants' records used to calculate Covered Workweeks, and the Parties'
8 counsel cannot resolve the dispute informally, the matter will be referred to the
9 Settlement Administrator. The Settlement Administrator will review Defendants'
10 records and any information or documents submitted by the Class Member and
11 issue a decision regarding the dispute. The Court reviewing this Settlement shall
12 have the authority to review and make a final decision regarding any Class
13 Member dispute. The Class Member must submit information or documents
14 supporting his or her position to the Settlement Administrator prior to the
15 expiration of the Response Deadline. Information or documents submitted after
16 the expiration of the Response Deadline will not be considered by the Settlement
17 Administrator, unless otherwise agreed to by the Parties.

18 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
19 Member may request to be excluded from the Class by mailing a "Request for
20 Exclusion" from the Settlement within the Response Deadline, stating, as follows
21 or in substantially similar terms:

22 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
23 *CLARK v. INDUSTRIAL APPLE, INC., ET AL*, CLASS
24 ACTION LAWSUIT, LOS ANGELES COUNTY SUPERIOR
25 COURT CASE NO. 21STCV14956. I UNDERSTAND THAT
26 IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL
27 NOT RECEIVE ANY MONEY FROM THE SETTLEMENT
28 OTHER THAN MY SHARE OF THE PAGA PAYMENT."

Any Request for Exclusion must include the name, address, telephone number, last
four digits of the Class Member's Social Security Number, and the signature of the
Class Member requesting exclusion. Any such request must be made in

1 accordance with the terms of the Notice, and the Notice will advise Class Members
2 of these requirements. Any Class Member who timely requests exclusion in
3 compliance with these requirements (i) shall not have any rights under this
4 Settlement other than a right to receive a pro-rata share of the portion of the PAGA
5 payment allocated to the Class Members if the Class Member is also PAGA
6 Employee; (ii) shall not be entitled to receive any Settlement Payments under this
7 Settlement other than as stated in (i) in this paragraph; and (iii) shall not be bound
8 by this Settlement or the Court's Order and Final Judgment other than as it applies
9 to the PAGA Claim. Exclusion requests may also be made by fax or email.

10 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
11 Member may object to the Settlement. To object, the Class Member may (1)
12 appear in person at the Final Approval Hearing to explain any objection, (2) have
13 an attorney object for the Class Member, or (3) submit a simple written brief or
14 statement of objection to the Settlement Administrator. If any Class Member
15 chooses to submit a written objection, the written objection could be submitted via
16 fax or email to counsel for the Parties no later than seven calendar days before the
17 Final Approval Hearing, and should contain sufficient information to confirm the
18 identity of the objector and the basis of the objection, including (1) the full name of
19 the Settlement Class Member; (2) the signature of the Settlement Class Member;
20 (3) the grounds for the objection; and (4) be postmarked within the Response
21 Deadline to permit adequate time for processing and review by the Parties of the
22 written statement or objection. Class Counsel shall ensure that any written
23 objections are transmitted to the Court for the Court's review (either by Class
24 Counsel or as an attachment to declaration from the Settlement Administrator). A
25 Class Member who does not object prior to or at the Final Approval Hearing, will
26 be deemed to have waived any objections and will be foreclosed from making any
27 objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the
28 Settlement and/or seeking any adjudication or review of the Settlement, by appeal

1 or otherwise.

2 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

3 42. Subject to the Court's approval, and subject to reconsideration by the Parties after a
4 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
5 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
6 both in English and Spanish, to the Class Members.

7 43. The Settlement Administrator will independently review the Covered Workweeks
8 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
9 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
10 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
11 Settlement Administrator shall be granted reasonable access to Defendants' records in order to perform its
12 duties.

13 44. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
14 Amount from Defendants, the Settlement Administrator will issue and send out the Settlement Payment
15 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
16 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
17 performance of its duties shall be referred to the Court, if necessary, which will have continuing
18 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
19 contemplated by this Settlement have been fully carried out.

20 45. The Settlement Administrator will mail the final judgment approving the Settlement along
21 with the settlement payments.

22 **ATTORNEY'S FEES AND COSTS**

23 46. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, including Plaintiff, and subject to approval by the Court, Defendants will take no
25 position on and will not oppose Class Counsel's application for attorney's fees not to exceed 33 1/3% of
26 the Gross Settlement Amount (\$176,666.66 of \$530,000.00) and litigation costs not to exceed \$20,000.00.
27 The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all
28 work to be performed and all fees and costs to be incurred in connection with the approval by the Court of

1 this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or
2 the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the
3 lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount.
4 Attorneys' fees and costs approved by the Court shall be paid to Class Counsel within 14 calendar days
5 after the funds are deposited with the Settlement Administrator. This Settlement is not conditioned upon
6 the Court awarding Class Counsel any particular amount of attorneys' fees or costs.

7 **THE NOTICE PROCESS**

8 47. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
9 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
10 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
11 the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the
12 Settlement Administrator to forward the Notices to the Class.

13 (a) Within fourteen (14) calendar days from the date of entry of the preliminary
14 approval order of this Settlement by the Court, Defendants shall provide to the
15 Settlement Administrator a class database containing the following information for
16 each Class Member: (1) name; (2) last known address; (3) social security number;
17 and (5) dates of employment at Defendants' locations in California. This database
18 shall be based on Defendants' payroll and other business records and shall be
19 provided in a format acceptable to the Settlement Administrator. Defendants agree
20 to consult with the Settlement Administrator prior to the production date to ensure
21 that the format will be acceptable to the Settlement Administrator. The Settlement
22 Administrator will run a check of the Class Members' addresses against those on
23 file with the U.S. Postal Service's National Change of Address List. Absent mutual
24 written agreement of counsel for the Parties or Court order, the Settlement
25 Administrator will keep this database confidential and secure and use it only for the
26 purposes described herein, and will return this database to Defendants upon final
27 approval of the settlement or destroy electronic records containing the database
28 after the Settlement is final and all payments are distributed as required under this

1 Agreement. The information provided to the Settlement Administrator shall be
2 kept confidential and shall not be disclosed, either in writing or orally, by the
3 Settlement Administrator at any time. The Settlement Administrator shall use due
4 care with respect to the storage, custody, use, and/or dissemination of the
5 confidential information. Such information must be stored in a secure fashion and
6 all persons who access the data must agree to keep it confidential.

7 (b) Within fourteen (14) calendar days after the Class database is provided to the
8 Settlement Administrator, the Settlement Administrator will mail the Notices to the
9 Class Members by First Class United States mail.

10 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
11 the initial Response Deadline shall be resent to the forwarding address, if any, on
12 the returned envelope. A returned Notice will be forwarded by the Settlement
13 Administrator any time that a forwarding address is provided with the returned
14 mail. If there is no forwarding address, the Settlement Administrator will do a
15 computer search for a new address using the Class Member's social security
16 number or other information. In any instance where a Notice is re-mailed, the
17 Settlement Administrator must complete re-mailing within three business days, that
18 Class Member will have to respond by the original response deadline or 14
19 calendar days after re-mailing, whichever is later. A letter prepared by the
20 Settlement Administrator will be included in the re-mailed Notice in that instance,
21 stating the extended response deadline. Upon completion of these steps by the
22 Settlement Administrator, Defendants and the Settlement Administrator shall be
23 deemed to have satisfied their obligations to provide the Notice to the affected
24 Class Member. The affected Class Member shall remain a member of the
25 Settlement Class and shall be bound by all the terms of the Settlement and the
26 Court's Order and Final Judgment.

27 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
28 final approval hearing, or such other date as set by the Court, a declaration by the

1 Settlement Administrator of due diligence and confirming mailing of the Notices.

2 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

3 48. As set forth above, each Class Member will have until the expiration of the applicable
4 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
5 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
6 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
7 Disputes can be communicated via fax or email. Each Class Member is responsible to maintain a copy of
8 any documents sent to the Settlement Administrator and a record of proof of mailing.

9 49. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
10 Settlement Class Members and PAGA Employees as provided herein. Prior to mailing the Settlement
11 Payment checks, the Settlement Administrator shall check for updated addresses for all recipients, and in
12 the event that any check is returned as undeliverable, the check must be re-mailed within three business
13 days. The check will be re-mailed to the forwarding address, if any, on the returned envelope. If there is no
14 forwarding address, the Settlement Administrator will attempt to determine a correct address by the use of
15 skip-tracing, or other type of automated search for a new address using the Class Member's social security
16 number or other information. Settlement Class Payments and PAGA Payments may be combined into one
17 check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date
18 of their issuance. Settlement Payment checks shall state the expiration date of the checks. Settlement
19 Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by
20 the Class Member within that time, and the Class Member's relevant claims will remain released by the
21 Settlement. Settlement Payment checks which have expired will not be reissued.

22 50. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
23 date shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
24 each Class Member who failed to cash their Settlement Payment check prior to the void date.

1 Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall
2 provide Class Counsel and Defendants' Counsel with a report listing the amounts of all
3 payments to be made to Class Members (to be identified anonymously by employee number or
4 other identifier). A Declaration attesting to completion of all payment obligations will be
5 provided to Class Counsel and Defendants' Counsel and filed with the Court by Class
6 Counsel.

7 **RELEASE BY THE CLASS**

8 51. Upon the final approval by the Court of this Settlement and payment of all funds due under
9 this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class
10 Representative, the Class and each Class Member who has not submitted a valid and timely request for
11 exclusion as to claims other than the PAGA claim, will release claims as follows:

- 12 (a) **Identity of Released Parties.** The released parties are Defendants, and each of
13 their former, present and future direct and/or indirect owners, dba's, parents,
14 subsidiaries, affiliated and related companies, divisions, successors, predecessors,
15 or assigns, and past, current and future employees, attorneys, officers, directors,
16 shareholders, owners, agents, trustees, heirs, executors, administrators,
17 predecessors, successors or assigns of any of the foregoing (collectively
18 "Releasees").
- 19 (b) **Date Release Becomes Active.** The Released Claims will be released upon the
20 Settlement's Effective Date and payment by Defendants of all funds due under the
21 settlement. Class Members will not release the Released Claims or Released
22 PAGA Claims until the Effective Date and payment by Defendants of all funds due
23 under the settlement.
- 24 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
25 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
26 submitted a timely and valid Request for Exclusion (which will not effectuate an
27 opt-out from the release of Released PAGA Claims), hereby releases Releasees
28 from the following claims for the entire Class Period:

- 1) any and all claims, charges, rights, complaints, liens, demands, obligations, damages, wages, penalties, interest, debts, liabilities, costs, compensation, damages, attorneys' fees, actions, and/or causes of action that were asserted or could have been asserted based upon the facts and circumstances alleged in the Complaint and arising at any time during the Class Period in this Action, including but not limited to all state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, unpaid minimum wages, unpaid overtime wages, off-the-clock work violations, failure to provide meal periods, failure to provide rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 223, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and Fair Labor Standards Act ("Released Claims"); and all other potential civil and statutory penalties based on or arising from the Released Claims, including but not limited to statutory, constitutional, contractual damages, costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief;
- 2) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member's consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly;

1 3) in addition, as to *all* Class Members employed during the Released PAGA
2 Claims Period, whether requesting exclusion from the Settlement or not,
3 claims arising under the Private Attorneys General Act of 2004, Labor
4 Code § 2698 et seq., to the extent asserted in Plaintiff's administrative
5 exhaustion letter submitted to the LWDA and any Complaint in this matter
6 (i.e., the Released PAGA Claims).

7 4) Plaintiff, on behalf of himself and the Class Members, acknowledges and
8 agrees that the claims for unpaid wages in the Action, and untimely
9 payment of wages in the Action, are disputed, and that California Labor
10 Code Section 206.5 is not applicable to the Parties hereto. Section 206.5
11 provides in pertinent part as follows:

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

16 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

17 52. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in
18 support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its
19 fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action
20 Settlement, the Parties shall apply to the Court for the entry of an order:

- 21 (a) Granting leave to Plaintiff to file a First Amended Complaint adding the cause of
22 action for PAGA penalties under the Private Attorneys General Act of 2004, Labor
23 Code § 2698 et seq.
24 (b) Scheduling a final approval and fairness hearing on the question of whether the
25 proposed Settlement, including payment of attorney's fees and costs, and the Class
26 Representative's service payment, should be finally approved as fair, reasonable,
27 and adequate as to the members of the Class;
28 (c) Certifying a Class;

- (d) Approving as to form and content the proposed Notice;
- (e) Directing the mailing of the Notice;
- (f) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (g) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (h) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

53. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement; and
- (f) Entering a final judgment in the action based on the Parties' Joint Stipulation of Class Action Settlement.

NULLIFICATION AND TERMINATION

54. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for

1 any reason fail to enter the final judgment based on the Parties' Joint Stipulation of Class Action
2 Settlement; (d) the final judgment is reversed, modified, or declared or rendered void; (e) the Settlement
3 does not become final for any other reason; or (f) if ten-percent (10%) or more of the Class members opt-
4 out of the settlement, Defendants may, at their sole discretion, within thirty (30) days of the expiration of
5 the opt-out period, elect to revoke the settlement and their stipulation to Class Certification. If Defendants
6 exercise this option, they will be relieved of any obligation to pay the Settlement Amount or any other
7 obligations from the Settlement, with the exception that Defendants will be responsible for any costs of
8 administration of the Settlement incurred prior to the election to nullify the Settlement, by giving notice to
9 Plaintiff's Counsel and the Settlement Administrator. In addition, in such event, the Settlement Agreement
10 and all negotiations, court orders, and proceedings relating thereto shall be without prejudice to the rights
11 of any and all Parties, and all evidence and/or information exchanged relating to mediation and/or the
12 Settlement Agreement and all negotiations shall not be admissible or discoverable in the Action or
13 otherwise.

14 **PARTIES' AUTHORITY**

15 55. The signatories hereto hereby represent that they are fully authorized to enter into this
16 Settlement and bind the Parties hereto to the terms and conditions thereof.

17 **MUTUAL FULL COOPERATION**

18 56. The Parties agree to fully cooperate with each other to accomplish the terms of this
19 Settlement including, but not limited to, execution of such documents and taking such other action as
20 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
21 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
22 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
23 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
24 assistance and cooperation of Defendants and Defendants' Counsel, take all necessary steps to secure the
25 Court's preliminary and final approval of this Settlement.

26 **NO PRIOR ASSIGNMENTS**

27 57. The Parties and their respective counsel represent, covenant, and warrant that they have not
28 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to

1 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
2 released and discharged except as set forth herein.

3 **NO ADMISSION OF LIABILITY**

4 58. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
5 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
6 Defendants deny all the claims and contentions alleged by the Plaintiff in this case. The Defendants have
7 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
8 attendant inconvenience and expenses.

9 **ENFORCEMENT ACTIONS**

10 59. In the event that one or more of the Parties to this Settlement institutes any legal action or
11 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
12 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
13 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
14 incurred in connection with any enforcement actions.

15 **INVALIDITY OF ANY PROVISION**

16 60. Before declaring any provision of this Settlement Agreement invalid, the Court shall first
17 attempt to construe the provision as valid to the fullest extent possible consistent with applicable
18 precedents so as to define all provisions of this Settlement Agreement valid and enforceable, and/or will
19 sever any provision that is found to be unenforceable.

20 **NOTICES**

21 61. Unless otherwise specifically provided herein, all notices, demands or other
22 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
23 third business day after mailing by United States registered or certified mail, return receipt requested,
24 addressed as follows:

25 \\\

26 \\\

27 \\\

28 \\\

1 Class Counsel:

2 Kane Moon
3 Brett M. Gunther
4 **MOON & YANG, APC**
5 1055 W. Seventh St., Suite 1880
6 Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
brett.gunther@moonyanglaw.com

Counsel for Defendants:

Maria C. Roberts (SBN 137907)
mroberts@greeneroberts.com
Dessi N. Day (SBN 207699)
dday@greeneroberts.com
GREENE & ROBERTS
402 West Broadway, Suite 1025
San Diego, California 92101
Telephone: (619) 398-3400
Facsimile: (619) 330-4907

7 Attorneys for Defendant ECMD, Inc.

8
9 Kenneth P. Roberts (SBN 74955)
10 Stuart E. Cohen (SBN 213810)
11 Ryan P. Tish (SBN 274284)
12 Kevin Y. Kanooni (SBN 292707)
13 K.P. ROBERTS & ASSOCIATES,
14 A PROFESSIONAL LAW CORPORATION
15 6355 Topanga Canyon Boulevard, Suite 403
16 Woodland Hills, CA 91367
17 Telephone: (818) 888-3553

18 Attorneys for Defendant Industrial Apple, Inc.
19 dba Apple One Staffing

20 **CONSTRUCTION**

21 62. The Parties hereto agree that the terms and conditions of this Settlement are the result of
22 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed
23 in favor of or against any party by reason of the extent to which any party or his, her or its counsel
24 participated in the drafting of this Settlement.

25 **CAPTIONS AND INTERPRETATIONS**

26 63. Paragraph titles or captions contained herein are inserted as a matter of convenience and
27 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision
28 hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

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

1 **INTEGRATION CLAUSE**

2 65. This Settlement contains the entire agreement between the Parties relating to the
3 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a party or such
5 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

6 **BINDING ON ASSIGNS**

7 66. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
8 their respective heirs, trustees, executors, administrators, successors and assigns.

9 **CLASS COUNSEL SIGNATORIES**

10 67. It is agreed that because the members of the Class are so numerous, it is impossible or
11 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
12 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
13 have the same force and effect as if this Settlement were executed by each member of the Class.

14 **COUNTERPARTS**

15 68. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
16 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
17 deemed an original, and, when taken together with other signed counterparts, shall constitute one
18 Settlement, which shall be binding upon and effective as to all Parties.

19 **CONFIDENTIALITY & PUBLIC COMMENT**

20 69. The Class Representative and Class Counsel agree they will not make any disparaging
21 comments about Defendants relating to this Settlement of this class action or disclose the negotiations of
22 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
23 other than to Class Members, who may receive information about the Settlement that is not in the public
24 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
25 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
26 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
27 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To
28 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a

statement that a matter was settled between a putative class and a “building materials distributor and staffing agency.” Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media (“Social Media Bar”). In the event of a proven breach of the Social Media Bar, the violating Plaintiff shall forfeit one-half of the class representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

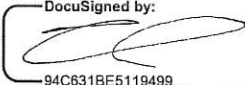
70. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendants as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

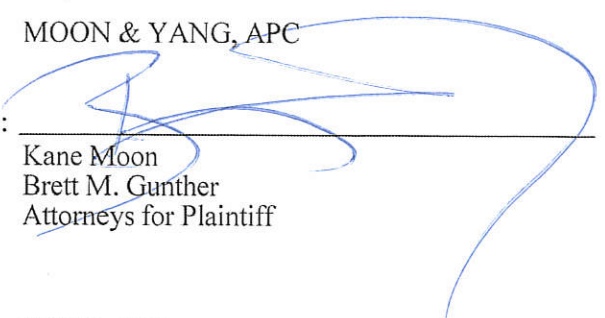
Dated: 12/6/2021

By: 
Terry Clark

1 **Plaintiff's Counsel:**

2 Dated: 12/7/21

MOON & YANG, APC

3
4 By: 

Kane Moon
Brett M. Gunther
Attorneys for Plaintiff

6 **Defendants:**

7 Dated: December 2, 2021

ECMD, INC.

8
9 By: Karen McQuinn

Print Name

Karen McQuinn

Signature

VP. Human Resources

Title

14 INDUSTRIAL APPLE, INC. DBA "APPLE ONE
15 STAFFING AGENCY"

16 By: _____

Print Name

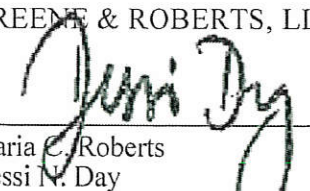
18 _____
Signature

20 _____
Title

21 **Defendants' Counsel:**

22 Dated: December 2, 2021

GREENE & ROBERTS, LLP.

23
24 By: 

Maria C. Roberts
Dessi N. Day
Attorneys for Defendant ECMD, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

K.P. ROBERTS & ASSOCIATES,
A PROFESSIONAL LAW CORPORATION

By: _____
Kenneth P. Roberts
Stuart E. Cohen
Ryan P. Tish
Kevin Y. Kanooni
Attorneys for Defendants Industrial Apple, Inc.
dba "Apple One Staffing Agency"

1 **Plaintiff's Counsel:**

2 Dated: MOON & YANG, APC

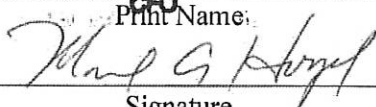
3
4 By: _____
Kane Moon
5 Brett M. Gunther
Attorneys for Plaintiff

6 **Defendants:**

7 Dated: ECMD, INC.

8
9 By: _____
Print Name
10
11 _____
Signature
12
13 _____
Title

14 INDUSTRIAL APPLE, INC. DBA "APPLE ONE
15 STAFFING AGENCY"

16 By: **MICHAEL A. HOYAL**
CFO
17 _____
Print Name:
18 
Signature
19 **C.F.O.**
20 _____
Title

21 **Defendants' Counsel:**

22 Dated: GREENE & ROBERTS, LLP.

23
24 By: _____
Maria C. Roberts
25 Dessi N. Day
Attorneys for Defendant ECMD, Inc.

1 Dated: 12/06/2021

K.P. ROBERTS & ASSOCIATES,
A PROFESSIONAL LAW CORPORATION

2
3
4 By: 

Kenneth F. Roberts

5 Stuart E. Cohen

Ryan P. Tish

6 Kevin Y. Kanooni

7 Attorneys for Defendants Industrial Apple, Inc.
8 dba "Apple One Staffing Agency"