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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

LAURO GONZALEZ-ARIAS, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MXB BATTERY OPERATIONS, LP, a
Limited Partnership; and DOES 1 through
50, inclusive,

Defendants.

Case No. CGC-21-595687

(Consolidated with Case No. CGC-21-595759)

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: March 30, 2023

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer

Dept: 302

Action Filed: October 1, 2021

Trial Date: Not Set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiff Lauro Gonzalez-Arias("Plaintiffs") in this matter. As such, I am
4 fully familiar with the facts, pleadings and history of this matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein.

7 2. This declaration is being submitted in support of the motion for preliminary approval
8 of the proposed class action settlement with Defendant MXB Battery Operations, LP ("Defendant"),
9 and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class action
10 with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which is
11 comprised of "all individuals who are or previously were employed by Defendant MXB Battery
12 Operations, LP in California who were classified as hourly, non-exempt employees at any time
13 during the Class Period" of October 1, 2017 through December 21, 2022; (3) provisionally
14 appointing Plaintiff as the representatives of the Class; (4) provisionally appointing Norman B.
15 Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
16 Blouw LLP as Class Counsel for the Class; (5) approving the form and method for providing class-
17 wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing
18 ILYM Group as the Administrator, and (8) scheduling a final approval hearing date to consider
19 Plaintiff's motion for final approval of the settlement and entry of the Judgment, and Plaintiff's
20 motion for approval of attorneys' fees and expenses. Attached hereto as Exhibit #1 is a copy of the
21 fully executed Class Action and PAGA Settlement Agreement ("Agreement") along with exhibits
22 thereto. This Declaration incorporates by reference the definitions in the Agreement, and all terms
23 defined therein shall have the same meaning as set forth in the Agreement. The form of the
24 Agreement is based upon the Los Angeles Superior Court model for for a class and PAGA
25 settlement.

26
27 Fairness of Settlement

28 3. As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred

1 Thirty-Five Thousand Dollars (\$935,000) to be paid by Defendant, as set forth in the Agreement.
2 The Gross Settlement Amount will settle all issues pending in the Action between the Parties and
3 will be made in full and final settlement of the Released Class Claims. The Gross Settlement
4 Amount includes all payments of Individual Class Payments to the Participating Class Members,
5 Administration Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation
6 Expenses Payment, Class Representative Service Payment, and the PAGA Payment. The Gross
7 Settlement Amount does not include the employer's share of payroll taxes which will be separately
8 paid by Defendant. The Settlement is all-in with no reversion to Defendant and no need to submit a
9 claim form.

10 4. The relief provided in the Settlement will benefit all members of the Class. The
11 Settlement does not grant preferential treatment to Plaintiff or segments of the Class in any way.
12 Payments to the Class Members are all determined under a neutral methodology. Each
13 Participating Class Member will receive the same opportunity to participate in and receive payment
14 through a neutral formula that is based upon the weeks worked by that individual.

15 5. On September 21, 2022, the Parties participated in an all-day mediation session
16 presided over by Jeffrey A. Ross, Esq., a respected and experienced mediator of wage and hour
17 class actions. In preparation for the mediation, Defendant provided Class Counsel with necessary
18 information for the members of the Class, including time data, payroll data and data concerning the
19 composition of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger
20 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
21 Following this all-day mediation, the Parties agreed to this Settlement. The final settlement terms
22 were negotiated and set forth in the Agreement now presented for this Court's approval.
23 Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
24 adequate.

25 6. For the 591 Class members who worked 30,000 work weeks, the Gross Settlement
26 Amount provides an average value of \$1,582 per Class Member and \$31 per work week, and after
27 deductions, the Net Settlement Amount provides an average recovery of \$927 per Class Member
28 and \$18 per work week. The calculations to compensate for the amount due to the Class Members

1 at the time this Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting,
2 in advance of mediation. Class Counsel analyzed the data for putative class members and
3 determined the potential maximum damages for the class claims. For the Class, the maximum value
4 of the claim for unpaid wages due to off the clock work was potentially \$113,098, the maximum
5 value of the unpaid wages due to the alleged miscalculation of the regular rate was \$1,447, the
6 maximum potential damages for unpaid meal premiums and sick pay were estimated to be \$24,687,
7 the maximum potential rest period damages were estimated to be \$235,429, and the maximum
8 potential damages for failure to provide expense reimbursement were calculated to be \$234,630. In
9 total, the damages for the Class were calculated to have a maximum potential total value of
10 \$609,290. In addition, Plaintiffs calculated that the maximum value of the potential waiting time
11 penalties were \$1,601,924, and the maximum value of the potential wage statement penalties were
12 between \$85,000 and \$483,850 depending on the predicate violation.¹ Consequently, the Gross
13 Settlement Amount represents more than the value of the potential maximum damages at issue for
14 the Class in this case and more than 34% of the maximum combination of damages and statutory
15 penalties, assuming these amounts could all be proven in full at trial.² The above maximum
16 calculations should then be adjusted in consideration for both the risk of class certification and the
17 risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
18 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.

19 20 Procedural History of the Litigation

21 7. On October 1, 2021, Plaintiff filed a Class Action Complaint against Defendant in
22 _____

23 ¹ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
24 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
25 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages
26 for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were
27 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
28 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
to whether and when the wages were due.").

² Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
the PAGA claim in this discussion of the class claim valuation. The PAGA claim is below at ¶ 33.

1 the Superior Court of the State of California, County of San Francisco (Plaintiffs "Class Action").
2 The Class Action asserted class claims against Defendant for: (1) unfair competition in violation of
3 Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of
4 California Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of
5 Cal. Labor Code § 510; (4) failure to provide required meal periods in violation of Cal. Labor Code
6 §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§
7 226.7 and 512; (6) failure to reimburse employees for required expenses in violation of California
8 Labor Code § 2802; (7) failure to provide accurate itemized wage statements in violation of
9 California Labor Code § 226; (8) failure to provide wages at termination in violation of Cal. Lab.
10 Code § 201, 202, and 203; and (9) failed to provide gratuities in violation of California Labor Code
11 § 351.

12 8. On October 5, 2021, Plaintiff filed a separate Representative Action Complaint
13 against Defendant in the Superior Court of the State of California, County of San Francisco
14 (Plaintiffs "PAGA Action"). Plaintiff asserted the single claim against Defendant for violation of
15 the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq.* ("PAGA") based upon the
16 above alleged violations.

17 9. On December 21, 2022, the Court issued an Order consolidating the class action case
18 no. CGC-21-595687 with the PAGA Action Case No. CGC-21-595759 and granting leave to file
19 the First Amended Class and Representative Action Complaint. The Order designated the class
20 action Case No. CGC-21-595687 as the lead case. On December 28, 2023 Plaintiff filed the First
21 Amended Class and Representative Action Complaint which is the operative complaint in the
22 Action (hereinafter the "Operative Complaint").

23 10. Over the course of litigation, the Parties engaged in the investigation of the claims,
24 including production of documents, class data, and other information, allowing for the full and
25 complete analysis of liabilities and defenses to the claims in the Action. The information for
26 mediation obtained by Plaintiffs included: (1) a Class list; (2) time punch data showing employees'
27 meal periods and their time worked as to 121,185 shifts analyzed, which is nearly the entire Class;
28 (3) Payroll data for employees; (4) Defendant's employee wage and hour policies; (5) the

1 employment files for the Plaintiff; and, (6) samples of wage statements provided by Defendant. As
2 such, Class Counsel received the data and information for the Class, which was sufficient for
3 Plaintiff's expert to prepare the valuations of the claims for the Class.

4 11. Plaintiff and Defendant agreed to discuss resolution of the Action through a
5 mediation. Prior to mediation, the Parties engaged in the above investigation and the exchange of
6 documents and information in connection with the Action. On September 21, 2022, the Parties
7 participated in an all-day mediation presided over by Jeffrey A. Ross, a respected and experienced
8 mediator of wage and hour class actions, but were unable to reach a settlement. Following the
9 mediation, each side, represented by its respective counsel, engaged in continued negotiations
10 through the mediator and ultimately were able to agree to settle the Action based on a mediator's
11 proposal which was memorialized in the form of a Memorandum of Understanding executed by the
12 Parties. At all times, the negotiations were arm's length and contentious.

13 12. The Parties continued to negotiate the terms of the settlement and prepared the long
14 form Agreement. Accordingly, for purposes of this Settlement, the "Class" is defined as "all
15 individuals who are or previously were employed by Defendant MXB Battery Operations, LP in
16 California who were classified as hourly, non-exempt employees at any time during the Class
17 Period." (Agreement at ¶ 1.5.) The Class Period is from October 1, 2017 through December 21,
18 2022. (Agreement at ¶ 1.12.) The Class consists of 591 Class Members who worked approximately
19 30,000 weeks. (Agreement at ¶ 4.1.) The Agreement includes an escalator clause in the event the
20 work weeks ultimately exceed this amount by more than 10%. (Agreement at ¶ 9.)

21 13. Although a settlement has been reached, Defendant denies any liability or
22 wrongdoing of any kind associated with the claims alleged in the Action and further denies that, for
23 any purpose other than settlement, the Action are appropriate for class treatment. Defendant
24 contends, among other things, that it has correctly compensated the Class Members and complied at
25 all times with the California Labor Code, applicable Wage Order, and all other laws and
26 regulations. Further, Defendant contends that class certification would be inappropriate for any
27 reason other than for settlement. Plaintiff contends that Defendant violated California wage and
28 hour laws. Plaintiff further contends that the Action is appropriate for class certification on the

1 basis that the claims meet the requisites for class certification. Without admitting that class
2 certification is proper, Defendant has stipulated that the above Class may be certified for settlement
3 purposes only. ((Agreement at ¶ 2.8.) The Parties agree that certification for settlement purposes is
4 not an admission that class certification would be proper if the class certification issue were
5 litigated. Further, the Agreement is not admissible in this or any other proceeding as evidence that
6 the Class could be certified absent a settlement. Solely for purposes of settling the Action, the
7 Parties stipulate and agree that the requisites for establishing class certification with respect to the
8 Class are satisfied.

9 14. Class Counsel has conducted a thorough investigation into the facts of the class
10 action. Over the course of more than a year, Class Counsel diligently evaluated the Class
11 Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant
12 provided Class Counsel with access to necessary information for the Class. In addition, Class
13 Counsel previously negotiated settlements with other employers in actions involving nearly
14 identical issues and analogous defenses. Based on the foregoing data and their own independent
15 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant
16 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of
17 the Class in light of all known facts and circumstances, including the risk of significant delay,
18 defenses asserted by Defendant, and potential appellate issues.

19
20 Settlement Terms and Plan of Allocation

21 15. The Gross Settlement Amount is Nine Hundred Thirty-Five Thousand Dollars
22 (\$935,000). (Agreement at ¶ 1.21.) Under the Settlement, the Gross Settlement Amount consists of
23 the following elements: (1) payment of the Individual Class Payments to the Participating Class
24 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
25 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and
26 (5) the PAGA Penalties payment. (Agreement at ¶ 1.21.) The Gross Settlement Amount does not
27 include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount
28 shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.)

1 16. Within fifteen (15) days of the Effective Date, Defendant shall deposit the Gross
2 Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual
3 Class Payments to Participating Class Members along with the other Court-approved distributions
4 shall be made by the Administrator within fourteen (14) days after Defendant funds the Gross
5 Settlement Amount. (Agreement at ¶ 5.1.)

6 17. The amount remaining in the Gross Settlement Amount after the deduction of
7 Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class
8 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
9 Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be
10 allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.27 and 3.2.)
11 From the Net Settlement Amount, the Individual Class Payment for each Participating Class
12 Member will be calculated by (a) dividing the Net Settlement Amount by the total number of
13 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying
14 the result by each Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks
15 will be based on Defendant's records; however, Class Members will have the right to challenge the
16 number of Workweeks.

17 18. Class Members may choose to opt-out of the Settlement by following the directions
18 in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be
19 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
20 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees,
21 including those who submit an opt-out request, will still be paid their allocation of the PAGA
22 Penalties and will remain subject to the release of the Released PAGA Claims regardless of their
23 request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the
24 Class Members of their right to object to the Settlement and/or dispute their Workweeks.
25 (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)

26 19. A Participating Class Member must cash his or her Individual Class Payment check
27 within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within
28 180 days will be voided and any funds from such uncashed checks will be paid to the California

1 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
2 residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b), as
3 the entire Net Settlement Amount will be paid out to Participating Class Members or Aggrieved
4 Employees, whether or not they all cash their checks. (Agreement at ¶ 5.4.)

5 20. Subject to Court approval, the Parties have agreed on ILYM Group to administer the
6 settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid
7 for settlement administration in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(c).)

8 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
9 a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment.
10 (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of
11 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶
12 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
13 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ 3.2(a).)

14 22. Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid
15 from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys
16 General Act, Cal. Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express
17 requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75%
18 (\$18,750) shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share
19 of the civil penalties and and 25% (\$6,250) allocated to the Individual PAGA Payments to be
20 distributed to the Aggrieved Employees based on the number of their respective PAGA Pay
21 Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompany proof of service, the LWDA has
22 been served with this motion and the Agreement.

23
24 Risks of Continued Litigation and Standards for Approval

25 23. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
26 and trying this Action against Defendant and then litigating possible appeals which could take
27 several years. Class Counsel has also taken into account the uncertain outcome and risk of
28 litigation, especially in complex class actions such as these Action. Class Counsel is also mindful

1 of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted
2 in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the
3 Settlement set forth in the Agreement is in the best interest of the Class Members.

4 24. Here, a number of defenses asserted by Defendant present serious threats to the
5 claims of the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices
6 complied with all applicable Labor laws. Defendant argued that all work time was properly paid for
7 and that there was no miscalculation of the regular rate. Defendant contended that its meal and rest
8 period policies fully complied with California law and that Defendant's timekeeping system
9 recorded meal periods, paid for missed meal periods, and was not required to record rest periods.
10 Defendant established that meal period premiums were paid for the potential violations observed in
11 the time records. As to expenses reimbursement, Defendant contended that it did not fail to provide
12 reimbursement for necessary business expenses and that there were no such expenses that had not
13 already been reimbursed or that claimed expenses were incurred voluntarily and/or for the
14 convenience of employees and therefore not required reimbursement. Defendant argued that the
15 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
16 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85
17 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and
18 rest period claims. Defendant also argues that based on its facially lawful practices, they acted in
19 good faith and without willfulness, which if accepted would negate the claims for waiting time
20 penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or
21 substantially reduce any recovery to the Class. While Plaintiff believe that these defenses could be
22 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
23 recovery by the Class.

24 25. There was also a significant risk that, if the Actions were not settled, Plaintiff would
25 be unable to obtain class certification and thereby not recover on behalf of any employees other
26 than himself. Defendant argued that the individual experience of each putative class member varied
27 with respect to the claims. Defendant could also contest class certification by arguing injury and
28 good faith were case-by-case determinations that precluded class certification. Plaintiff is aware of

1 other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*,
2 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Defendant also contended
3 that it would be able to establish that Plaintiff was not an adequate class representative as to some,
4 if not all, of his claims. Finally, even if class certification was successful, as demonstrated by the
5 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
6 there are significant hurdles to overcome for a class wide recovery even where the class has been
7 certified. While other cases have approved class certification in wage and hour claims, class
8 certification in this action would have been hotly disputed and was by no means a foregone
9 conclusion.

10 26. This settlement is therefore certainly entitled to preliminary approval. Were this
11 case to go to trial, the Plaintiff and the other class members would need to prove, among other
12 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

13 27. Plaintiff will apply to the Court for Class Representative Service Payment in
14 consideration for his service and for the risks undertaken on behalf of the class. (Agreement at ¶
15 3.2(a).) Plaintiff performed his duties admirably by working with Class Counsel. Plaintiff will
16 present a detailed declaration addressing his work and service at the time of final approval. For
17 purposes of this preliminary approval stage, the requested service award of \$10,000 is well within
18 the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1*
19 *Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average
20 class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
21 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was
22 \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D.
23 Or. 2007) (approving award of \$10,000 where class member recoveries were as little as \$150);
24 *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008)
25 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
26 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding \$25,000 service award in
27 overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
28 awards are routinely awarded to class representatives to compensate the employees for the time and

1 effort expended on the case, for the risk of litigation, for the fear of suing an employer and
2 retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees.
3 2007 WL 221862 at *16-17.

4 28. The stage of the proceedings at which this Settlement was reached also militates in
5 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
6 conducted a thorough investigation into the facts of the class action. Class Counsel began
7 investigating the Class Members' claims before the Action was filed. Class Counsel engaged in an
8 investigation of the claims and conducted a review and analysis of the relevant documents and data.
9 Class Counsel was also experienced with the claims at issue here, as Class Counsel previously
10 litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not
11 occur until Class Counsel possessed sufficient information to make an informed judgment regarding
12 the likelihood of success on the merits and the results that could be obtained through further
13 litigation.

14 29. Based on the foregoing data and their own independent investigation and evaluation,
15 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the
16 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
17 Class in light of all known facts and circumstances, including the risk of significant delay, defenses
18 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
19 Counsel for both parties possessed sufficient information to make an informed judgment regarding
20 the likelihood of success on the merits and the results that could be obtained through further
21 litigation.

22 23 Class Certification Issues

24 30. Plaintiff contends that the proposed settlement meets all of the requirements for class
25 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
26 the Court may appropriately approve the Class as defined in the Agreement. This Court should
27 conditionally certify the Class for settlement purposes only, defined as follows:

28 All individuals who are or previously were employed by Defendant MXB Battery

1 Operations, LP in California who were classified as hourly, non-exempt employees
2 at any time during the Class Period.

3 (Agreement at ¶ 1.5.)

4 The “Class Period” is from October 1, 2017 through December 21, 2022. (Agreement at ¶ 1.12.)

5 a. **Numerosity** - Here, Plaintiff asserts that the 591 current and former
6 employees that comprise the Class can be identified based on Defendant’s records and are
7 sufficiently numerous for class certification.

8 b. **Common Issues Predominate** - Here, Plaintiff contends that common
9 questions of law and fact are present, and specifically the common questions of whether Defendant
10 properly calculated wages, whether the Defendant failed to provide all legally required rest periods
11 to class members, whether class members were lawfully compensated for all hours worked, whether
12 Defendant failed to provide required expense reimbursement, and whether Class Members are
13 entitled to damages and penalties as a result of these practices.

14 c. **Typicality** - In the instant case, Plaintiff contends that there can be little
15 doubt that the typicality requirement is satisfied. The Plaintiff, like every other member of the
16 Class, worked for Defendant as a non-exempt employee during the Class Period. Plaintiff contends
17 that, like every other member of the Class, they were subject to the same practices and policies of
18 Defendant and are subject to the same defenses. Thus, Plaintiff asserts that the claims of the
19 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
20 the same employment policies and practices of Defendant, and are based on the same legal theories.

21 d. **Adequacy** - Plaintiff contends that the Class Members are adequately
22 represented here because Plaintiff and representing counsel (a) do not have any conflicts of interest
23 with other class members, and (b) will prosecute the case vigorously on behalf of the class. This
24 requirement is met here. First, Plaintiff is well aware of his duties as the representative of the Class
25 and has actively participated in the prosecution of this case to date. He effectively communicated
26 with counsel, provided documents to counsel and participated in the investigation and negotiations
27 in the Action. Second, Plaintiff retained competent counsel who are experienced in employment
28 class actions and who have no conflicts. Third, there is no antagonism between the interests of the

1 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief
2 under the same set of facts and legal theories.

3 31. Class Counsel's Adequacy of Representation and Absence of Conflict: Blumenthal
4 Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting class action lawsuits and can
5 competently represent the Class. Other lawyers at my firm and I have extensive class litigation
6 experience. We have handled a number of class actions and complex cases and have acted both as
7 counsel and as lead and co-lead counsel in a variety of these matters. We have successfully
8 prosecuted and obtained significant recoveries in numerous class action lawsuits and other lawsuits
9 involving complex issues of law and fact. My firm is particularly experienced in wage and hour
10 employment law class actions, including claims for misclassification, overtime, expense
11 reimbursement, unlawful deduction of wages, and missed rest and meal periods. Blumenthal
12 Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over hundreds of wage
13 and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has been found to be
14 adequate counsel by the courts throughout California. We have been approved as experienced class
15 counsel by both state and federal courts in California in contested class certification proceedings. A
16 true and correct copy of the resume of my firm is attached hereto as Exhibit #2. The Class in this
17 settlement is defined as "all individuals who are or previously were employed by Defendant MXB
18 Battery Operations, LP in California who were classified as hourly, non-exempt employees at any
19 time during the Class Period." I have reviewed my firm's cases and representation of other
20 plaintiffs and there is no conflict or representation which would prevent my firm from representing
21 the interests of the Class this case. My firm only represents employees, and not employers. My
22 firm has never represented Defendant nor any affiliate of the Defendant. My firm's only interest in
23 the subject matter of this litigation is to ensure a recovery to the Class and to maximize that
24 recovery. Finally, our allegiance to the Class and the claims of the Class is not inconsistent with
25 our allegiance to pursue the claims on behalf of other employees and classes as the claims are all
26 against different and distinct employers. I can think of no conflict that would arise in our
27 representation of the Class and our adequate representation of the Class is evidenced by the
28

1 successful prosecution of the class claims to reach an excellent recovery for the Class. Thus, the
2 adequacy requirement for my firm is satisfied.

3 32. The Class Notice: The Class Notice, drafted jointly and agreed upon by the Parties
4 through their respective counsel and to be approved by the Court, includes all relevant information.
5 (*See Exhibit "A"* to the Agreement.) The Class Notice will include, among other information: (i)
6 information regarding the Action; (ii) the impact on the rights of the Class Members if they do not
7 opt out, including a description of the applicable release; (iii) information to the Class Members
8 regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class
9 Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be
10 sought; (v) the amount of the Plaintiff's service award request; and (vi) the anticipated expenses of
11 the Administrator. The Class Notice will state that the Class Members shall have forty-five (45)
12 days from the date that the Notice is mailed to them (the "Response Deadline") to request exclusion
13 (opt-out) or to submit an objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given
14 the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to
15 appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a
16 timely and proper request to opt-out will automatically receive a payment of their Individual Class
17 Payment. This notice program was designed to meaningfully reach the Class Members and it
18 advises them of all pertinent information concerning the Settlement. The mailing and distribution of
19 the Class Notice satisfies the requirements of due process, and is the best notice practicable under
20 the circumstances and constitutes due and sufficient notice to all persons entitled thereto.

21
22 33. The PAGA Claims -

23 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
24 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
25 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
26 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the
27 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
28 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on

1 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
2 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
3 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
4 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
5 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
6 class members." (LWDA Response at p.4).

7 b. **Valuation of the PAGA Claim for Allegedly Aggrieved Employees.**

8 For mediation, Plaintiffs' calculated the value of the alleged PAGA claim as to the Allegedly
9 Aggrieved Employees for civil penalties to be between \$301,050 and \$602,100 for a single
10 violation in every one of the 6,021 pay periods at issue in the PAGA Period, depending on whether
11 the violation was \$50 per pay period as in the case of Labor Code § 558(a)(1) or the standard
12 amount of \$100 per pay period for violation of Labor Code § 1198. This valuation assumed that
13 PAGA civil penalties would be awarded at the maximum rate per pay period but without stacking.
14 The PAGA allocation in the Settlement is the amount of \$25,000. This allocation is justified by
15 several important considerations. First, the PAGA claim was subject to the same risks as the
16 underlying class claims. Second, Defendant asserted additional defenses to the PAGA claim, not
17 only as to liability but also as to the amount of the penalties. Defendant could also argue that no
18 penalties prior to the PAGA notification should be awarded, and I am aware of one Court which has
19 so ruled. These additional defenses present a risk to the PAGA claim and the potential that some or
20 all of the PAGA penalties sought may not be awarded. Third, civil penalties may not be awarded at
21 the maximum rate. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court
22 affirmed a judgment which only provided for a PAGA penalty of \$5 per violation. Therefore, at
23 trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even
24 where Plaintiffs prevailed on the PAGA claim. Even if we assume that violations for all 6,021 pay
25 periods were established, using the valuation from *Carrington* results in a more realistic recovery of
26 \$30,105 under PAGA. This means that the \$25,000 PAGA allocation is a reasonable percentage of
27 this potential PAGA recovery. Fourth, the interests of PAGA are also served by the Class recovery
28 under the reasoning of the LWDA in *O'Connor v. Uber*.

1 c. **Similar PAGA Settlements.** In reaching the settlement of the PAGA claim,
2 Class Counsel was also aware of what allocations other Courts have approved for similar PAGA
3 settlements as compared to the total settlement amount. A class settlement that allocates
4 approximately 2% of the total settlement value to resolve the PAGA claims applicable to the class
5 is also supported by what has been approved in other wage-and-hour class settlements. Indeed,
6 Courts typically approve PAGA settlement amounts in the range of between 0.27 to 2 percent of the
7 total settlement. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015)
8 (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated*
9 *Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for
10 PAGA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637
11 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs,*
12 *Inc.*, 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA
13 for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
14 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9
15 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13
16 (E.D. Cal. 2012) (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million
17 common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009)
18 (approving PAGA allocation that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon*
19 *Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement
20 of \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*,
21 CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount
22 of \$8.25 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay,*
23 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000
24 allocated to PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted
25 as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive*
26 *Educational Services Inc.*, Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000
27 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell*
28 *Banker Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016)

1 (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los*
2 *Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or
3 0.40% of \$3,775,000 settlement amount); *Scott-George v. PVH Corporation*. No., 2:13CV00441
4 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
5 *Nehrlich v. RPM Mortgage Inc.*, Orange County Superior Court Case No.
6 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of
7 \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San Bernardino Superior Court Case
8 No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement
9 amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino Superior Court Case No.
10 CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000 settlement
11 amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino Superior Court Case
12 No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of \$900,000 settlement
13 amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No. BC471369 (2013)
14 (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount); *Mejia v. DHL*
15 *Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or
16 0.34% of \$1,450,000 settlement amount).

17
18 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
19 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
20 reasonable, and at the time of final approval, my firm will present lodestar to further support the
21 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
22 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
23 of the class action awards obtained by Class Counsel in similar employment actions throughout the
24 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total
25 settlement value: On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles
26 Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a one-third fee
27 award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage and Hour*
28 *Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded Class

1 Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in *Erickson v.*
2 *John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge Edward Weil
3 awarded Class Counsel a one-third fee award in a wage and hour class settlement. On December
4 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case No.
5 BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage and
6 hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
7 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-
8 third award in a wage and hour class settlement. On October 23, 2020, in *Ontiveros v. Baker*
9 *Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian Walsh awarded Class
10 Counsel a one-third fee award in a wage and hour class settlement. On December 3, 2020, in
11 *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court Case No. 34-2018-
12 00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a wage and hour
13 class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles Superior Court Case
14 No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee award in a wage and
15 hour class settlement. On September 24, 2021, in *Prologistics Wage and Hour Cases* (Los Angeles
16 Superior Court Case No. JCCP 4881), Judge William Claster awarded Class Counsel a one-third fee
17 award in a wage and hour class settlement. On November 8, 2021, in *Securitas Wage and Hour*
18 *Cases* (Los Angeles Superior Court Case No. JCCP4837) Judge David Cunningham awarded a
19 one-third fee award in a wage and hour class settlement. On November 17, 2021, in *Leon v. Sierra*
20 *Aluminum Company* (San Bernardino Superior Court Case No. CIVDS2010856) Judge David Cohn
21 awarded a one-third fee award in a wage and hour class settlement. On March 17, 2022, in *See's*
22 *Candies Wage and Hour Cases* (Los Angeles Superior Court Case No. JCCP5004) Judge Maren
23 Nelson awarded a one-third fee award in a wage and hour class action settlement. On April 12,
24 2022, in *O'Donnell v. Okta, Inc.*, (San Francisco Superior Court Case No. CGC-20-587665) Judge
25 Richard Ulmer awarded a one-third fee award in a wage and hour class action settlement. On June
26 30, 2022, in *Armstrong, et al. v. Prometric LLC* (Los Angeles Superior Court Case No.
27 20STCV29967), Judge Maren E. Nelson awarded a one-third fee award in a wage and hour class
28 action. On July 13, 2022, in *Crum v. S&D Carwash Management LLC*, (Sacramento Superior Court

1 Case No. 2019-00251338), Judge Christopher E. Krueger awarded a one-third fee award in a wage
2 and hour class action settlement. On August 10, 2022, in *Spears, et al. v. Health Net of California,*
3 *Inc.*, (Sacramento Superior Court Case No. 34-2017-00210560-CU-OE-GDS), Judge Christopher E.
4 Krueger awarded a one-third fee award in a wage and hour class action settlement. On September
5 19, 2022, in *Stevenson v. Mother's Nutritional Center, Inc.*, (Los Angeles Superior Court Case No.
6 19STCV36472), Judge Theresa M. Traber awarded a one-third fee award in a wage and hour class
7 action settlement. On November 4, 2022, in *Infinity Energy Wage and Hour Cases* (San Diego
8 Superior Court, Case No. JCCP5139), Judge Keri Katz awarded a one-third fee award in a wage
9 and hour class action settlement. A fee award equal to one-third of the common fund is therefore
10 reasonable in light of the fees that have been awarded in other similar cases.

11
12 35. Class Representative Service Payment - The reasonableness of the requested service
13 award is also established by reference to the amounts that other California courts have found to be
14 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,
15 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service
16 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,
17 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.
18 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);
19 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
20 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,
21 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service
22 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.
23 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);
24 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,
25 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.
26 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);
27 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior
28 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*

1 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,
2 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los
3 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*
4 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,
5 2011)(awarding \$10,000 service award together with additional compensation for their general
6 release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court
7 (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
8 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award);
9 *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior
10 Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*,
11 Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000
12 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los
13 Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser*
14 *Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28,
15 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa
16 Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v.*
17 *Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22,
18 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS
19 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award);
20 *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding
21 \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside
22 County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security*
23 *Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000
24 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange
25 County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security*
26 *Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23,
27 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior
28 Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The*

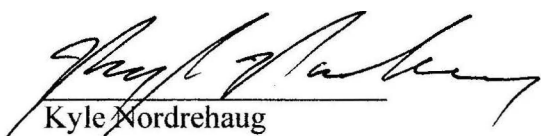
1 *Inductrial Complany*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug.
2 1, 2018) (awarding \$10,000 service award).

3
4 36. Settlement Administration - After seeking bids from qualified administrators,
5 the estimate from ILYM Group is was selected, as it provided for an estimate of \$15,585 to perform
6 the settlement administration for a Class of up 650, with any difference between the actual expenses
7 and the budget of \$20,000 to be retained in the Net Settlement Amount for distribution to the Class.
8 A true and correct copy of the estimate from ILYM Group is attached hereto as Exhibit #3. I have
9 used ILYM Group successfully as the administrator in more than twenty class settlements in the last
10 few years and know them to be competent and experienced.

11
12 Service on the LWDA:

13 37. At the same time as the filing and service of this declaration, I am also serving the
14 LWDA with the entire motion for preliminary approval which includes the Class Action Settlement
15 Agreement. This service is verified by the accompanying proof of service.

16
17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed this 1st day of March, 2023, at La Jolla, California.

19
20
21 By: 
22 Kyle Nordrehaug
23
24
25
26
27
28

CLASS ACTION AND PAGA ACTION SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Lauro Gonzalez-Arias, on behalf of himself and all Class Members and Aggrieved Employees (“Plaintiff”), and Defendant MXB Battery Operations, LP (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Lauro Gonzalez-Arias v. MXB Battery Operations, LP*, Case No. CGC-21-595687, initiated on October 1, 2021 (and consolidated with the lawsuit captioned *Lauro Gonzalez-Arias v. MXB Battery Operations, LP*, Case No. CGC-21-595759 alleging Private Attorneys General Act claims) and pending in Superior Court of the State of California, County of San Francisco.
- 1.2. “Administrator” ILYM Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the PAGA Period.
- 1.5. “Class” means all individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendant), and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation (other than formatting changes to facilitate printing by the Administrator) attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period of time from October 1, 2017 through December 21, 2022 or preliminary approval, whichever is sooner.
- 1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, and undertaking the risk of liability for Defendant’s expenses.
- 1.15. “Court” means the Superior Court of California, County of San Francisco.
- 1.16. “Defendant” means MXB Battery Operations, LP.
- 1.17. “Defense Counsel means Patricia A. Murphy of Law Office of Patricia Murphy.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to

the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by reference into this Agreement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.21. “Gross Settlement Amount” means Nine Hundred Thirty-Five Thousand Dollars (\$935,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class

Members as Individual Class Payments.

- 1.28. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.30. “PAGA Period” means the period of time from October 1, 2020 through the earlier of December 21, 2022 or preliminary approval, whichever is sooner.
- 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. “PAGA Notice” means the Plaintiff’s May 13, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties of \$25,000 to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.
- 1.34. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.35. “Plaintiff” means Lauro Gonzalez-Arias, the named plaintiff in the Actions.
- 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.37. “Operative Complaint” means the First Amended Class and Representative Action Complaint filed on December 28, 2022 in *Lauro Gonzalez-Arias v. MXB Battery Operations, LP*, Case No. CGC-21-595687 pending in Superior Court of the State of California, County of San Francisco.
- 1.38. “Released Class Claims” means all class claims pled or that could have been pled based on the factual allegations contained in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.
- 1.39. “Released PAGA Claims” means all PAGA claims pled or that could have been pled based on the factual allegations contained in the Operative Complaint and PAGA

Notice that occurred during the PAGA Period as to the Aggrieved Employees. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

- 1.40. "Released Parties" means: Defendant and each of its former and present directors, officers, partners, beneficial owners, shareholders, owners, attorneys, insurers, agents, predecessors, successors, affiliates, assigns and subsidiaries and any individual or entity that could be jointly liable with Defendant.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means forty-five (45) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline to submit a Request for Exclusion from the Settlement or an Objection to the Settlement.
- 1.43. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

2. RECITALS

- 2.1. On October 1, 2021, Plaintiff commenced this Action by filing a Complaint against Defendant in the Superior Court of the State of California, County of San Francisco. Plaintiff's Complaint asserted claims that Defendant:
 - (a) Violated California Business and Professions Code § 17200 et seq.;
 - (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
 - (c) Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
 - (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 - (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 - (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
 - (g) Failed to provide accurate itemized wage statements in violation of California

- Labor Code § 226;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
 - (i) Failed to provide gratuities in violation of California Labor Code § 351.
- 2.2. On October 5, 2021, Plaintiff filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Francisco, asserting a single cause of action for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA"), Case No. CGC-21-595759 (hereinafter "PAGA Action").
- 2.3. On December 21, 2022, the Court issued an Order consolidating the class action case no. CGC-21-595687 with the PAGA Action Case No. CGC-21-595759 and granting leave to file the First Amended Class and Representative Action Complaint. The Order designated the class action Case No. CGC-21-595687 as the lead case.
- 2.4. The First Amended Class and Representative Action Complaint filed December 28, 2022 is the operative complaint in the Action (hereinafter the "Operative Complaint").
- 2.5. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.6. On September 21, 2022, the Parties participated in an all-day mediation presided over by Jeffrey A. Ross, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, agreed to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- 2.7. Prior to mediation, Plaintiff obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.8. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

- 2.9. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$935,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

- (a) To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

In addition to and separate from the Gross Settlement Amount, Defendant shall pay Plaintiff an Individual Settlement Payment in exchange for Plaintiff's Civil Code §1542 Release of all claims. Plaintiff agrees to the extent permitted by the Court to keep the Individual Settlement Amount confidential and to advise the Court of the amount if necessary for the Court's *in camera* review.

- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$311,666, and a Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees

Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

- (c) To the Administrator: An Administration Expenses Payment not to exceed \$20,000, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$20,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (\$18,750) allocated to the LWDA PAGA Payment and 25% (\$6,250) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages,

expense reimbursement, interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that as of September 21, 2022, the Class consisted of 591 Class Members who collectively worked a total of 30,000 Workweeks. Defendant estimates that as of December 8, 2022, there were 304 Aggrieved Employees who collectively worked a total of 6,274 of PAGA Pay Periods. Defendant will update the number of Class members, Class workweeks, PAGA Aggrieved Employees and PAGA Pay Periods for purposes of the motion for preliminary approval motion.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount no later than 15 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
6. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against Defendant and all Released Parties as follows:

6.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

(a) Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and the Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. The State of California and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and the Released Parties from all of the Released PAGA Claims with respect to the Aggrieved Employees.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

7.1. Defendant's Responsibilities. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. In this Declaration, Defendant shall also aver as to the number of Class Members and the number of Workweeks for the Class during the Class Period.

7.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement

7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

8.1. Selection of Administrator. The Parties have jointly selected ILYM Group to serve as the Administrator and verified that, as a condition of appointment, ILYM Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's

duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest in or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- (c) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no

obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- (d) The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Members of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement,

regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for

Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Requests for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations

under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid) and the number of written objections and will attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, Defendant is providing a declaration as set forth in paragraph 7.1 above. Should the number of Workweeks stated in paragraph 4.1 increase by more than 10%, Defendant will have the option to either (a) increase the Gross Settlement Amount proportionally with added Workweeks or (b) shorten the Class Period so that there is no increase in the amount of Workweeks.

10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on the 5% threshold for an election.

11. MOTION FOR FINAL APPROVAL. Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for

Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a

material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity including but not limited to electronically, by way of any web page, blog, tweet, social media, or other electronic means, except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.3. No Disclosure or Publicity. The Parties agree that they will not publicize this agreement beyond what is necessary for settlement approval including but not limited to electronically, by way of any web page, blog, tweet, social media, or other electronic means. Class Counsel may, however, post publicly filed documents on Class Counsel's website in order to make these documents available to the Class Members for their review. Nothing in this paragraph shall prevent Defendant from disclosing and discussing information concerning the Settlement, the Settlement Amount, or the circumstances surrounding or giving rise to the Settlement, prior to the filing of the preliminary approval motion either internally among company management or to the extent otherwise required by law. Nothing in this paragraph shall restrict or limit the right of Defendant to disclose the terms and circumstances of the Settlement to employees who have responsibility for overseeing or managing Defendant's litigation, law firms, accounting firms, and/or insurers that represent Defendant, or persons who have an obligation to be informed about Defendant's litigation. For purposes of this section, media includes all print and digital media, including but not limited to newspapers, newsletters, magazines, articles, radio, blogs, websites, and social media sites.
- 13.4. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.8. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,

or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 13.9. Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel is providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant.
- 13.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter

13.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Patricia A. Murphy
Law Office of Patricia Murphy
220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Tel.: (415) 992-4356
Fax: (415) 362-2006
Email: pmurphy@pmurphyllaw.com

13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement, that pursuant to CCP section 583.330, the date to bring a case to trial under CCP section 583.310 shall be extended for the entire period of this settlement process from the mediation on September 21, 2022 until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

13.21. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and

have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Feb 13, 2023



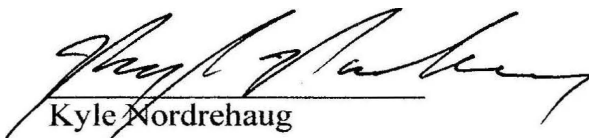
[Lauro González-Arias \(Feb 13, 2023 12:30 PST\)](#)
Plaintiff Lauro Gonzalez-Arias

Dated: 2-8-23



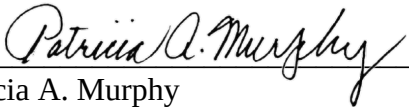
Suzan Canli [name]
For Defendant MXB Battery Operations, LP

Dated: 2/14/23



Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 2-8-23



Patricia A. Murphy
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

***Gonzalez-Arias v. MXB Battery Operations, LP, Superior Court of the State of California,
County of San Francisco, Case No. CGC-21-595687
(consolidated with Case No. CGC-21-595759)***

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It’s not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant MXB Battery Operations, LP (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiff Lauro Gonzalez-Arias (“Plaintiff”) and seeks payment of (1) wages and other relief for the Class of all individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the Class Period which is October 1, 2017 through December 21, 2022 (“Class Members”), and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the PAGA Period which is October 1, 2020 through December 21, 2022 (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> (less withholding) and your share of the PAGA Penalties is estimated to be <<\$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your share of the PAGA Penalties, then according to Defendant’s records you are not eligible for share of the PAGA Penalties under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and in exchange requires Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendants as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Period wage claims against Defendants. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is ____.	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of

	this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, CA 94102, in Department 302 before Judge Richard Ulmer. This hearing may change as explained below in Section 9. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment and your share of the PAGA Penalties (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in

the Superior Court of the State of California, in and for the County of San Francisco (the “Court”), has been reached between Plaintiff and Defendant and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

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

All individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the Class Period.

The “Class Period” is October 1, 2017 through December 21, 2022.

2. What is this class action lawsuit about?

On October 1, 2021, Plaintiff filed a class action complaint against Defendant in the Superior Court of the State of California, County of San Francisco. Plaintiff asserted the following class claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods and unpaid premiums, failure to provide required rest periods and unpaid premiums, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, failure to provide wages when due, and failure to provide gratuities.

On October 5, 2021, Plaintiff filed a representative action complaint against Defendant in the Superior Court of the State of California, County of San Francisco, asserting a single cause of action for violation of the Private Attorneys General Act (Labor Code §§ 2698. et seq.) (“PAGA”) alleging violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and California Code of Regulations, Title 8, Section 1 1070(14).

These two lawsuits are referred to in this Class Notice as the “Action.” On December 21, 2022, the Court issued an Order consolidating the class action case no. CGC-21-595687 with the PAGA Action Case No. CGC-21-595759 and granting leave to file the First Amended Class and Representative Action Complaint. The Order designated the class action Case No. CGC-21-595687 as the lead case. This First Amended Class Action Complaint filed December 28, 2022 is the operative complaint in Case No. CGC-21-595687 and is referred to as the “Operative Complaint”.

Defendant denies that it has done anything wrong and disputes all the claims in the Action. Specifically, Defendant contends that Plaintiff and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant did not fail to pay to Plaintiff or any Class Members any wages allegedly due at the time of their termination; the Defendant did not fail to reimburse Class Members for required expenses; that Defendant complied with California wage statement requirements; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant is not liable for

any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendant, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after mediation and arm's-length negotiations between the Parties. The Plaintiff and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, who expressly denies all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. **Defendant has agreed to pay an "all in" amount of Nine Hundred Thirty-Five Thousand Dollars (\$935,000) (the "Gross Settlement Amount") to fund the settlement of the Action.** The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fully fund the Gross Settlement Amount no later than 15 days after the Effective Date. The "Effective Date" is the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- Administration Expenses Payment. Payment to the Settlement Administrator, estimated not to exceed \$20,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.

- Attorneys' Fees and Costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$311,666, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. A Class Representative Service Payment in an amount not more than \$10,000 to Plaintiff, or such lesser amount as may be approved by the Court, to compensate for services on behalf of the Class in initiating and prosecuting the Action, and for the risks Plaintiff undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$25,000 relating to Plaintiff's claim under PAGA, \$18,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$6,250 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period (October 1, 2020 through December 21, 2022).

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$_____. The Settlement Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty-Five Percent (25%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Seventy-Five Percent (75%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged statutory damages, expense reimbursement, penalties, and interest due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and the Released Parties from the Released Class Claims. The "Released Class Claims" are all class claims pled or that could have been pled based on the factual allegations contained in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

Released PAGA Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendants, State of California and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and the Released Parties from all of the Released PAGA Claims with respect to the Aggrieved Employees. The "Released PAGA Claims" are all PAGA claims pled or that could have been pled based on the factual allegations contained in the Operative Complaint and PAGA Notice that occurred during the PAGA Period as to the Aggrieved Employees. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

Released Parties. The Released Parties are: Defendant and each of its former and present directors, officers, partners, beneficial owners, shareholders, owners, attorneys, insurers, agents, predecessors, successors, affiliates, assigns and subsidiaries and any individual or entity that could be jointly liable with Defendant.

5. How much will my payment be?

Defendant's records reflect that you worked <<_____>> Workweeks during the Class Period (October 1, 2017 through December 21, 2022).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is <<_____>>.

[Defendant's records reflect that you worked <<_____>> PAGA Pay Periods during the during the PAGA Period (October 1, 2020 through December 21, 2022). Based on this information your estimated Individual PAGA Payment is <<_____>>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [forty-five (45) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your

address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: ILYM Group _____ (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Gonzalez-Arias v. MXB Battery Operations* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Gonzalez-Arias v. MXB Battery Operations*, Case No. CGC-21-595687. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

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

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Attorneys' Fees, Litigation Expenses and Service Award stating (a) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (b) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you.

You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Gonzalez-Arias v. MXB Battery Operations* or on the Case Query page for the California Superior Court for the County of San Francisco (<https://www.sfsuperiorcourt.org/>) and entering the Case No. CGC-21-595687.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorneys' Fees, Litigation Expenses and Service Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [forty-five (45) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Gonzalez-Arias v. MXB Battery Operations*, Case No. CGC-21-595687, and include your name, current address, email or telephone number, and approximate dates of employment with Defendant and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely through the Court's procedure at <https://www.sfsuperiorcourt.org/divisions/civil/law-motion>. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANT:

Patricia A. Murphy
Law Office of Patricia Murphy

220 Montgomery Street, Suite 2100
San Francisco, CA 94104

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 302 of the Superior Court of California, County of San Francisco County Superior Court, located at 400 McAllister St., San Francisco, CA 94102, before Judge Richard Ulmer. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing using the procedure at <https://www.sfsuperiorcourt.org/divisions/civil/law-motion>.

It is possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Gonzalez-Arias v. MXB Battery Operations*. In addition, hearing dates are posted on the Internet via the Case Query page for the California Superior Court for the County of San Francisco (<https://www.sfsuperiorcourt.org/>) and entering the Case No. CGC-21-595687.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Gonzalez-Arias v. MXB Battery Operations* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Gonzalez-Arias v. MXB Battery Operations*. You may get more details by examining the Court's file on the Internet via the Case Query page for the California Superior Court for the County of San Francisco (<https://www.sfsuperiorcourt.org/>) and entering the Case No. CGC-21-595687. If you wish to view the Court files in person, you should go to the Clerk's Office at the Civic Center Courthouse, 400 McAllister St., Room 103, San Francisco, CA 94102.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check.

In such event, the Administrator shall pay all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.

- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LAURO GONZALEZ-ARIAS, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiffs,

v.

MXB BATTERY OPERATIONS, LP, a
Limited Partnership; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **CGC-21-595687**
[Consolidated with Case No. CGC-21-595759]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge:
Dept.:

Action Filed: October 1, 2021
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter came before the Honorable _____ of the Superior Court of the
2 State of California, in and for the County San Francisco, on _____[DATE], for the motion
3 by Plaintiff Lauro Gonzalez-Arias (“Plaintiff”) for preliminary approval of the class settlement
4 with Defendant MXB Battery Operations, LP (“Defendant”). The Court, having considered the
5 briefs, argument of counsel and all matters presented to the Court and good cause appearing,
6 hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

7 **IT IS HEREBY ORDERED:**

8 1. The Court preliminarily approves the Class Action and PAGA Action Settlement
9 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
10 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This
11 preliminary approval is based on the Court’s determination that the Settlement set forth in the
12 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
13 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

14 2. This Order incorporates by reference the definitions in the Agreement, and all
15 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

16 3. The Gross Settlement Amount is Nine Hundred Thirty-Five Thousand Dollars
17 (\$935,000). It appears to the Court on a preliminary basis that the settlement amount and terms
18 are fair, adequate and reasonable as to all potential Class Members when balanced against the
19 probable outcome of further litigation and the significant risks relating to certification, liability and
20 damages issues. It further appears that investigation and research have been conducted such that
21 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
22 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
23 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
24 It further appears that the Agreement has been reached as the result of serious and non-collusive,
25 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
26 adequate, and reasonable when balanced against the probable outcome of further litigation and the
27 significant risks relating to certification, liability, and damages issues.

1 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Twenty
3 Thousand Dollars (\$20,000), and a proposed Class Representative Service Payment to the Plaintiff
4 in an amount not to exceed Ten Thousand Dollars (\$10,000) The Court will not approve the
5 amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval
6 Hearing. Plaintiff will be required to present evidence supporting these requests prior to final
7 approval.

8 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
9 certification of a class for settlement purposes only. This stipulation will not be deemed
10 admissible in this or any other proceeding should this Settlement not become final. For settlement
11 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
12 previously were employed by Defendant MXB Battery Operations, LP in California who were
13 classified as hourly, non-exempt employees at any time during the Class Period." The Class
14 Period is October 1, 2017 through December 21, 2022.

15 6. The Court concludes that, for settlement purposes only, the Class meets the
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
19 community of interest amongst the members of the Class with respect to the subject matter of the
20 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class;
21 (d) the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a
22 class action is superior to other available methods for the efficient resolution of this controversy;
23 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an
24 adequate representative of the Class.

25 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
26 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
27 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 8. The Court hereby approves, as to form and content, the Court Approved Notice of
2 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), submitted
3 as Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
12 Settlement Administrator will promptly search for a more current address for the Class Member
13 and re-mail the Class Notice Packet to the Class Member no later than seven (7) business days
14 after the receipt of the undelivered Class Notice.

15 9. The Court hereby appoints ILYM Group as Administrator for the Settlement. No
16 later than fifteen (15) calendar days after issuance of this Order, Defendant shall provide to the
17 Administrator an electronic spreadsheet with the Class Data. This information will otherwise
18 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
19 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s express
20 written authorization or by order of the Court. The Administrator will perform address updates
21 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
22 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
23 Data spreadsheet, the Administrator will mail the Class Notice to all Class Members via first-class
24 U.S. Mail.

25 10. The Court hereby preliminarily approves the proposed procedure for exclusion
26 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
27 from the Class as provided in the Class Notice by following the instructions set forth in the Class
28

1 Notice. All requests for exclusion must be postmarked by no later than the Response Deadline,
2 which is forty-five (45) calendar days after the Administrator mails the Class Notice Packet to
3 Class Members. If the Class Notice Packet is re-mailed, this Response Deadline will be extended
4 an additional fourteen (14) calendar days. Any person who chooses to opt-out of and be excluded
5 from the Class will not be entitled to any recovery under the Settlement and will not be bound by
6 the Settlement or have any right to object, appeal or comment thereon. Aggrieved Employees shall
7 be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA
8 Claims regardless of whether they opt-out of the Class. Class Members who have not requested
9 exclusion shall be bound by all determinations of the Court, the Agreement, and the Judgment. A
10 request for exclusion applies only to the individual submitting the request for exclusion, and any
11 attempt to effect an opt-out on behalf of any other individual or individuals (including a group,
12 class, or subclass of individuals) is not permitted and will be deemed invalid.

13 11. Any Class Member who has not opted-out may appear at the Final Approval
14 Hearing and may object or express the Member's views regarding the Settlement and may present
15 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
16 and determined by the Court as provided in the Class Notice. Class Members will have until the
17 Response Deadline set forth in the Class Notice to submit their written objections to the
18 Settlement Administrator in accordance with the instructions in the Class Notice. If the Class
19 Notice is re-mailed, the Response Deadline will be extended an additional fifteen (15) calendar
20 days. Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
21 objection.

22 12. A Final Approval Hearing shall be held before this Court on _____
23 _____ at _____ in Department 302 at the Civic Center Courthouse of the San
24 Francisco County Superior Court to determine all necessary matters concerning the Settlement,
25 including: whether the proposed settlement of the Action on the terms and conditions provided for
26 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
27 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
28

1 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
2 Class Members; and to finally approve attorneys' fees and costs, the service award, and the
3 expenses of the Administrator. The motion for final approval and the motion for attorneys' fees,
4 costs and service award shall be filed with the Court and served on all counsel no later than sixteen
5 (16) court days before the hearing and both motions shall be heard at the Final Approval Hearing.

6 13. Neither the Settlement nor any exhibit, document, or instrument delivered
7 thereunder shall be construed as a concession or admission by Defendant in any way that the
8 claims asserted have any merit or that this Action was properly brought as a class or representative
9 action, and shall not be used as evidence of, or used against Defendant as, an admission or
10 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
11 omission by Defendant or with respect to the truth of any allegation asserted by any person.
12 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
13 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
14 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
15 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
16 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
17 liability, fault, wrongdoing, omission, concession or damage.

18 14. In the event the Settlement does not become effective in accordance with the terms
19 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
20 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
21 and the Parties shall revert to their respective positions as of before entering into the Agreement,
22 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
23 including all available defenses and affirmative defenses, and arguments that no claim in the
24 Action could be certified as a class action and/or managed as a representative action. In such an
25 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
26 referred to in litigation or otherwise for any purpose.

15. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to further orders of the Court at the Final Approval Hearing.

IT IS SO ORDERED.

Dated: _____

HON.
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LAURO GONZALEZ-ARIAS, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

MXB BATTERY OPERATIONS, LP, a
Limited Partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CGC-21-595687**

[Consolidated with Case No. CGC-21-595759]

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: _____

Hearing Time: _____

Judge: _____

Dept.: _____

Action Filed: October 1, 2021

Trial Date: Not set

Exhibit C-1

On [REDACTED], a hearing was held on the motion of Plaintiff Lauro Gonzalez-Arias (“Plaintiff”) for final approval of the Class Action and PAGA Action Settlement Agreement (the “Agreement”) with Defendant MXB Battery Operations, LP (“Defendant”) and payments to the Plaintiff, Class Counsel, Aggrieved Employees, the Labor and Workforce Development Agency (“LWDA”) and the Administrator.

The parties have submitted their Agreement, which this Court preliminarily approved by its [REDACTED], 2023, order (“Preliminary Approval Order”). In accordance with the Preliminary Approval Order, Class Members have been given notice of the terms of the Agreement and the opportunity to comment on or object to it or to exclude themselves from its provisions.

Having received and considered the Settlement, the supporting papers filed by the parties, and the evidence and argument received by the Court at the hearing before it entered the Preliminary Approval Order and the final approval hearing on [REDACTED], 2023, the Court grants final approval of the Settlement, and HEREBY ORDERS as follows:

1. The certification of the Class is confirmed for the sole and exclusive purpose of entering a settlement in this matter:

All individuals who are or previously were employed by Defendant MXB Battery Operations, LP in California who were classified as hourly, non-exempt employees at any time during the Class Period. The Class Period is October 1, 2017 through December 21, 2022.

2. The Administrator received [REDACTED] valid requests for exclusion from the Class. [The individuals who timely submitted valid requests for exclusion are _____.]

3. The Court confirms the appointment of Plaintiff as the Class Representative, and Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

4. Pursuant to the Preliminary Approval Order, a Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) was sent to each Class Member by first-class mail. These papers informed Class Members of the terms of the Settlement, their right to receive an Individual Class Payment, their right to comment on or object

Exhibit C-1

1 to the Settlement or to opt-out of the Settlement and pursue their own remedies, and their right to
2 appear in person or remotely or by counsel at the Final Approval Hearing and be heard regarding
3 final approval of the Settlement. Adequate periods of time were provided by each of these
4 procedures to provide notice of their rights and time for Class Members to act with respect to these
5 rights. _____ objected to the Settlement as part of this notice process or stated an intent to
6 appear at the final approval hearing. [The Court overrules the objections raised by objecting
7 Participating Class Members.]

8 5. The Court finds and determines that this notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding approval of the Settlement based on the responses of Class Members. The Court finds
11 and determines that the Class Notice provided in this case was the best notice practicable and it
12 satisfied the requirements of law and due process.

13 6. For the reasons stated in the Preliminary Approval Order, the Court finds and
14 determines that the proposed Class, as defined in the definitions section of the Agreement and
15 Paragraph 1 herein, meets all the legal requirements for class certification, and it is hereby ordered
16 that the Class is finally approved and certified as a class for purposes of the Settlement.

17 7. The Court further finds and determines that the Gross Settlement Amount of Nine
18 Hundred Thirty-Five Thousand Dollars (\$935,000) and the terms of the Settlement are fair,
19 reasonable, and adequate to the Class and to each Class Member. The Class Members who have
20 not opted-out will be bound by the Settlement. Aggrieved Employees (as defined in the Agreement
21 as all individuals who are or previously were employed by Defendant MXB Battery Operations,
22 LP in California who were classified as hourly, non-exempt employees at any time during the
23 PAGA Period which is October 1, 2020 through December 21, 2022 will be subject to the release
24 of the Released PAGA Claims as set forth in the Agreement, and will be sent an Individual PAGA
25 Payment, regardless of whether they opt-out of the Class. The Settlement is ordered finally
26 approved, and all terms and provisions of the Settlement should be and hereby are ordered to be
27 consummated.

Exhibit C-1

1 8. The Court finds and determines that the Individual Class Payments to be paid to
2 the Participating Class Members, as provided for by the Agreement, are fair and reasonable. The
3 Court hereby grants final approval to and orders the payment of those amounts to be made to the
4 Participating Class Members out of the Net Settlement Amount in accordance with the Agreement.

5 9. Pursuant to the Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab.
6 Code §§ 2699(1)(2), (1)(4), the LWDA has been given notice of the Settlement. Pursuant to PAGA,
7 on the date the parties filed the motion seeking approval of the Settlement with the Court, Plaintiff
8 served the LWDA with the motion which included a copy of the Agreement. The Court finds and
9 determines that the notice of the Settlement complied with the statutory requirements of PAGA.

10 10. The Court finds and determines that the resolution of the Released PAGA Claims
11 and the PAGA Penalties of Twenty-Five Thousand Dollars (\$25,000), which includes payment to
12 the LWDA of \$18,750 as its share of the settlement of civil penalties and the allocation of \$6,250
13 to the Aggrieved Employees, in this case is fair, reasonable, and appropriate. The Court hereby
14 grants approval of the resolution of the PAGA claims and orders that the PAGA Penalties be paid
15 out of the Gross Settlement Amount in accordance with the Agreement.

16 11. The Court finds and determines that the fees and expenses of ILYM Group in
17 administering the settlement, in the amount of \$ [REDACTED], are fair and reasonable. The
18 Court hereby grants final approval to such amount and orders that the payment of approximately
19 that amount be paid out of the Gross Settlement Amount in accordance with the Agreement.

20 12. In addition to any recovery that Plaintiff may receive from the Net Settlement
21 Amount and PAGA Penalties, and in recognition of the Plaintiff's efforts on behalf of the Class,
22 and the risks he undertook, the Court hereby approves the payment of the Class Representative
23 Service Payment to Plaintiffs in the amount of \$10,000. The Class Representative Service
24 Payments shall be paid from the Gross Settlement Amount.

25 13. Pursuant to the authorities and argument presented to the Court, the Court approves
26 the payment of attorneys' fees to Class Counsel in the sum of \$ [REDACTED], plus costs and
27 expenses in the amount of \$ [REDACTED]. Said amount shall be paid from the Gross Settlement
28 Amount.

Exhibit C-1

1 14. The parties are hereby ordered to comply with the terms of the Settlement.

2 15. Without affecting the finality of this order in any way, pursuant to California Code
3 of Civil Procedure section 664.6 the Court retains jurisdiction of all matters relating to the
4 interpretation, administration, implementation, effectuation, and enforcement of this order and the
5 Settlement.

6 **IT IS SO ORDERED.**

7 Dated: _____

8 _____
9 The Honorable [REDACTED]
10 Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LAURO GONZALEZ-ARIAS, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

MXB BATTERY OPERATIONS, LP, a
Limited Partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CGC-21-595687**

[Consolidated with Case No. CGC-21-595759]

[PROPOSED] FINAL JUDGMENT

Hearing Date: _____

Hearing Time: _____

Judge: _____

Dept.: _____

Action Filed: October 1, 2021

Trial Date: Not set

Exhibit C-2

The parties having settled this action and the Court having entered an Order Granting Final Approval of Settlement and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:

1. Except as set forth in the Class Action and PAGA Action Settlement Agreement (the “Agreement”) and the Order Granting Motion for Final Approval of Class Action Settlement, Plaintiff Lauro Gonzalez-Arias (“Plaintiff”), and all members of the Class, shall take nothing by their complaint(s) in this Action.

2. Without affecting the finality of this judgment in any way, pursuant to California Code of Civil Procedure section 664.6 the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this order and the Settlement.

3. The Court finds that in consideration of Plaintiff’s awarded Class Representative Service Payment, and the other terms and conditions of the Settlement, as of the date the Defendant MXB Battery Operations, LP (“Defendant”) fully funds the Gross Settlement Amount, Plaintiff generally releases and discharges the Released Parties (as defined in the Agreement) from all claims, transactions, or occurrences that occurred during the Class Period as fully set forth in the Agreement.

4. The Court finds that in consideration for their Individual Class Payments, effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and the Released Parties from the Released Class Claims. The “Released Class Claims” are all class claims pled or that could have been pled based on the factual allegations contained in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,

Exhibit C-2

1 unemployment insurance, disability, social security, workers' compensation, or claims based on
2 facts occurring outside the Class Period.

3 5. The Court finds that in consideration for the approved PAGA Penalties payment,
4 effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
5 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, the State
6 of California and the LWDA are deemed to release, on behalf of themselves and their respective
7 former and present representatives, agents, attorneys, heirs, administrators, successors, and
8 assigns, Defendant and the Released Parties from all of the Released PAGA Claims with respect
9 to the Aggrieved Employees. The "Released PAGA Claims" are all PAGA claims pled or that
10 could have been pled based on the factual allegations contained in the Operative Complaint and
11 PAGA Notice that occurred during the PAGA Period as to the Aggrieved Employees. The
12 Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims,
13 claims for wrongful termination, discrimination, unemployment insurance, disability and worker's
14 compensation, and claims outside of the PAGA Period.

15 6. The Parties shall bear his, her, its or their own respective attorneys' fees and costs
16 except as otherwise provided in the Agreement, the Order Granting Motion for Final Approval of
17 Class Action Settlement, and this Judgment.

18 7. The Court enters final judgment in the Action in accordance with the Agreement
19 and this Order, subject to the Court's retention of continuing jurisdiction over the Action and the
20 Settlement, including jurisdiction pursuant to California Rule of Court 3.769(h), solely for
21 purposes of (a) enforcing the Agreement, (b) addressing settlement administration matters, and (c)
22 addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

23 8. Upon completion of administration of the settlement, the Settlement Administrator
24 will provide written certification of such completion to the Court and counsel for the parties. The
25 Court sets a compliance hearing date of _____, at _____ a.m. / p.m., and
26 the written certification of the Administrator shall be filed no later than fourteen (14) days before
27 this hearing.

28 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY.**

Exhibit C-2

Dated: _____

The Honorable [REDACTED]
Judge of the Superior Court

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FIRM RESUME

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Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

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Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

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Admitted: 2012, California

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

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In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

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County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Navajo Express, Inc. – San Bernardino County Superior Court, Case No. CIVDS1613846; Lara v. Commercial Protective Service, Inc. – Los Angeles County Superior Court, Case No. BC648921; Picos v. Culinart of California, Inc. – San Diego County Superior Court, Case No. JCCP 4892; Samaniego v. A&I Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV01894; Bailey v. Romanoff Floor Covering, Inc. – U.S. District Court, Eastern District of California, Case No. 17-CV-00685-TLN-CMK; Aguirre v. Bitech, Inc. – Sacramento County Superior Court, Case No. 34-2016-002022; Phillips v. DI Overnite LLC – San Diego County Superior Court, Case No. 37-2016-00016800-CU-OE-CTL; Jacob v. Pride Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV1337; Bennett v. Heartland Express, Inc. of Iowa – San Diego County Superior Court, Case No. 37-2016-00015056-CU-OE-CTL; Stapf v. Mercer Health & Benefits Administration LLC – Los Angeles County Superior Court, Case No. BC643007; Armstrong v. Ruan Transport Corporation – San Bernardino County Superior Court, Case No. CIVDS1605897; Geiger v. Floyd’s 99-California LLC – Orange County Superior Court, Case No. 30-2016-00874943-CU-OE-CXC; Mondrian v. Trius Trucking, Inc. – Fresno County Superior Court, Case No. 16CECG01501; Johnson v. Fedex Office and Print Services, Inc. – Alameda County Superior Court, Case No. RG17856291; Rios v. Pacific Western Bank – San Diego County Superior Court, Case No. 37-2016-00038083; Sanders v. Old Dominion Freight Lines, Inc. – San Diego County Superior Court, Case No. 37-2016-00030725-CU-OE-CTL; Taylor v. Gardner Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1614280; Couture v. Wal-Mart Associates, Inc. – U.S. District Court, Eastern District of California, case No. 16-CV-02202-VC; Bertuol v. AHMC Anaheim Regional Medical Center LP – Orange County Superior Court, Case No. 30-2017-00899024-CO-OE-CXC; Espinoza v. Prime Communications of California, LLC – San Mateo County Superior Court, Case No. 16CIV01563; Archuletta v. Tidy Services, Inc. – Orange County Superior court, Case No. 30-2016-008611892-CU-OE-CXC; Puccini v. Earthbound Farm, LLC – Santa Clara County Superior Court, Case No. 17CV308643; Vikram v. First Student Management, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-04656-KAW; Blair v. Ashley Distribution Services, LTD. – U.S. District Court, Central District of California, Case No. 17-CV-01427-JAK-SP; Richardson v. Service Staffing, LLC – Orange County Superior Court, Case No. 30-2017-00899039-CU-OE-CXC; Coffin v. Certified Freight Logistics, Inc. – San Diego County Superior Court, Case No. 37-2016-00036523-CU-OE-CTL; Encarnacion v. S.A.S. Services Group, Inc. – San Diego County Superior Court, Case No. 37-2017-00026726-CU-OE-CTL; Vasquez v. Golden State Overnight Delivery Service, Inc. – Alameda County Superior Court, Case No. RG17862924; Karr v. Tristar Managed Care, Inc. – Contra Costa Superior Court, case No. MSC17-00650; Gouveia v. Central Cal Transportation – San Joaquin County Superior Court, Case No. STK-CV-UOE-2017-0001765; Miranda v. Genex Services, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-01438-JD; Spears v. Health Net of California, Inc. – Sacramento County Superior Court, Case No. 34-2017-00210560; Martinez v. Geil Enterprises, Inc. – Fresno County Superior Court, Case No. 17CECG01879; McComack v. Marriott Ownership Resorts, Inc. – U.S. District Court, Southern District of California, Case No. 17CV1663 BEN WVG; Velasco v. Lemonade Restaurant Group, LLC – Los Angeles County Superior Court, Case No. BC672235; Smith v. Personnel Services, Inc. – U.S. District Court, Northern District of California, Case NO. 17-CV-03594-SK; Gabriel v. Kuni SDA, LLC – San Diego County Superior Court, Case No. 37-2017-000251191-CU-OE-CTL; Miller v. Mattress Firm, Inc. – Santa Clara County Superior Court, Case No. 17CV313148; Provost v. Yourmechanic, Inc. – San Diego County Superior Court, Case No. 37-2017-00024056-CU-OE-CTL; Zirpolo v. UAG Stevens Creek II, Inc. – Santa Clara County Superior Court, Case No. 17CV313457; Salazar v. Aids Healthcare Foundation – San Diego County Superior Court, Case No. 37-2017-00033482-CU-OE-CTL; Knipe v. Amazon.com, Inc. – San Diego County Superior Court, Case No. 37-2017-00029426-CU-OE-CTL; Erwin v. Caremeridian, LLC – Fresno County Superior Court, Case No. 17CECG03048; Davis v. Cox Communications California, LLC – U.S. District Court, Southern District of California, Case No. 16-CV-00989-BAS-BLM; Lara v. RMI International, Inc. – Los Angeles County Superior Court, Case No. BC597695; Harper v. C.R. England, Inc. – U.S. District Court, Utah Central

Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: MXB Battery

Requesting Attorneys Name: Kyle Nordrehaug
 E-Mail: kyle@bamlawca.com
 ILYM Contact: Sean Hartranft
 E-Mail: Sean@ilymgrouppclassaction.com
 Contact Number: 949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	650
NCOA	Yes
Certified Spanish Translation	Yes
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	3	\$450.00
Programming of Class Database	Hourly	\$175.00	3	\$525.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$975.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	7	\$840.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s) via mail, e-mail & fax	Hourly	\$70.00	3	\$210.00
Report Processing	Hourly	\$70.00	5	\$350.00
NCOA	Flat Rate	\$100.00	1	\$100.00
Toll Free Customer Service Representative	Flat Fee	\$150.00	1	\$150.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$3,720.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.75	650	\$1,137.50
USPS First Class Postage	Per Piece	\$0.55	650	\$357.50
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	130	\$260.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$2,055.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	5	\$750.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	5	\$625.00
Check, Stub & Release - Print & Mail (W-2 and/or 1099)	Per Check	\$1.50	650	\$975.00
USPS First Class Postage	Per Piece	\$0.55	650	\$357.50
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$2.00	130	\$260.00
Reminder Postcard, Includes Postage	Per Piece	\$1.00	228	\$227.50
Reminder Notice via Email and Social Media	Flat Fee	\$150.00	1	\$150.00
Preparation of Taxes	Hourly	\$120.00	12	\$1,440.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$6,285.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	5	\$500.00
Project Manager Final Reporting	Hourly	\$120.00	5	\$600.00
Process Unclaimed Funds to State Controller	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$2,350.00

TOTAL CASE ESTIMATE: \$15,385.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.