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

MARCOS TAFOLLA, an individual, on
behalf of himself and others similarly situated,

PLAINTIFF,

v.

DAYLIGHT TRANSPORT, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV16822

[Case Assigned for All Purposes to Hon. Elihu
M. Berle in Dept. 6]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement;
Declaration of Marcos Tafolla; and
[Proposed] Order]*

Date: February 28, 2024

Time: 11:00 AM

Dept.: 6

Complaint Filed: May 3, 2021

Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

LITIGATION OVERVIEW AND PROCEDURAL HISTORY

4. Daylight Transport, LLC (“Defendant”) operates throughout California, specializing in providing transportation and logistics services.

5. Plaintiff worked as a warehouse worker for Defendant from approximately January 2020 to February 2021.

6. Plaintiff and the Proposed Class worked as non-exempt employees who earned hourly wages.

7. On May 3, 2021, Plaintiff MARCOS TAFOLLA filed a Class Action Complaint entitled *MARCOS TAFOLLA, on behalf of himself and others similarly situated, PLAINTIFF v. DAYLIGHT TRANSPORT, LLC; and DOES 1 thru 50; DEFENDANTS*, in the Los Angeles County Superior Court, case number 21STCV16822.

8. In the Complaint, Plaintiff alleged five causes of action for: (1) Failure to Pay Wages and/or Overtime under Labor Code §§ 510, 1194, 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Failure to Provide Accurate Itemized Wage Statements

Pursuant to Labor Code §§ 226(a); (4) Penalties Pursuant to Labor Code § 203; and (5) Violation of Business & Professions Code § 17200, *et seq.*

9. Also on May 3, 2021, Plaintiff sent a letter, pursuant to Labor Code § 2699, *et seq.*, the Private Attorneys General Act (“PAGA”), to the Labor Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the Labor Code violations above.

10. On July 7, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding an additional cause of action for penalties pursuant to Labor Code section 2699, *et seq.*

MEDIATION

11. Through this formal discovery, Plaintiff obtained employment records, paystubs, time records, employment handbooks, and arbitration agreements.

12. As such, the Parties engaged in extensive formal and informal discovery that allowed the Parties to fully investigate the claims at issue and understand their strengths and weakness.

13. After the meaningful exchange of information, the Parties agreed to attend private mediation with experienced wage and hour class action mediator Jeffrey Krivis, Esq. on April 5, 2022.

14. To effectuate the mediation, Defendant produced a data sample including a 77 person sample of time and pay records, out of class of 654 (at the time of mediation).

15. There were 29,685 shifts in the data analyzed. Plaintiff worked with an expert to review and analyze these records.

16. The matter did not settle that day, but the mediator worked with the Parties in follow up and made a mediator’s proposal.

17. The proposal was not accepted and the Parties moved forward with litigation and formal discovery.

THE DISCOVERY PROCESS

18. On May 12, 2022, Plaintiff served his First Set of Specially Prepared Interrogatories and his First Set of Requests for Production to Defendant. The discovery sought the identities of all

1 putative class members, time and pay records for all class members, applicable wage and hour
2 policies, among other things.

3 19. Defendant served its responses to Plaintiff's First Set of Specially Prepared
4 Interrogatories and Plaintiff's First Set of Requests for Production of Documents on August 12,
5 2022. Defendant's Supplemental Responses to Plaintiff's First Set of Specially Prepared
6 Interrogatories and First Set of Requests for Production of Documents was served on January 8,
7 2023.

8 20. On December 13, 2022, Plaintiff served his Second Set of Specially Prepared
9 Interrogatories and Requests for Production to Defendant.

10 21. Defendant served responses to Plaintiff's Second Set of discovery on January 17,
11 2023, and provided supplemental responses on January 26, 2023.

12 22. On June 22, 2023, the Parties agreed upon the form of a notice pursuant to *Belaire-*
13 *West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554 (the "*Belaire* Notice") giving
14 putative class members in the above-entitled action notice and the opportunity to opt out of having
15 their names, addresses, email and telephone information ("contact information") disclosed to
16 Plaintiff's counsel.

17 23. The Parties requested approval of the *Belaire-West* notice, and the Court approved
18 the *Belaire* notice on June 23, 2023.

19 24. The *Belaire* notice was disseminated on July 31, 2023.

20 **MOTION FOR DECERTIFICATION**

21 25. On December 9, 2022, Defendant filed a motion to deny class certification, arguing
22 that Plaintiff's wage claims on behalf of Defendant's California employees are defective as a
23 matter of law because most of the putative class members are subject to binding arbitration
24 agreements.

25 26. Because Plaintiff is not, Defendant maintained that Plaintiff is neither a typical
26 nor adequate class representative for those who did sign the agreement.

27 27. On March 13, 2023, the Court issued a Minute Order denying Defendant's
28 Motion.

28. Ultimately, the Court found that the issue is not ripe yet, but the Court indicated that Defendant's arguments could be raised in opposition to Plaintiff's motion for class certification.

RESOLUTION

29. After the completion of additional formal discovery and the filing of Defendant's Motion for Decertification, the Parties decided to refocus their efforts on resolution.

30. Through extensive and meaningful direct negotiations, the Parties were able to reach the proposed Settlement now present to the Court for preliminary approval.

31. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders.

32. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here.

THE PROPOSED SETTLEMENT

33. For purposes of Agreement, the settlement class is defined as: “all persons who are employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in the State of California since four (4) years prior to the filing of this action to the present.” (“Class” or “Class Members” or “Settlement Class Members”)

34. The Class Period is from May 3, 2017, through December 31, 2023.

35. Based on documents and other information produced by Defendant, there are

1 approximately 760 Settlement Class Members.

2 36. For purposes of the Agreement, the Aggrieved Employees are defined as: “all
3 persons who are employed or have been employed as an hourly employee by DAYLIGHT
4 TRANSPORT, LLC, in the State of California who worked one or more pay periods during the
5 PAGA Period.” (“Aggrieved Employees”)

6 37. The PAGA Period is May 3, 2020, through December 31, 2023.

7 38. Based on documents and other information produced by Defendant, there are
8 approximately 486 Aggrieved Employees.

9 39. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a
10 Gross Settlement Amount of \$425,000.00, which includes the sum of the Individual Class
11 Payments, Individual PAGA Payments, the Class Representative Service Payment, the Class
12 Counsel Fees and Class Counsel Expenses, LWDA PAGA Payment, and the Administrator’s
13 Expenses.

14 40. The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA
15 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel
16 Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses
17 Payment.

18 **CERTIFICATION FOR SETTLEMENT PURPOSES**

19 41. Plaintiff maintains that the proposed Class is ascertainable for several reasons:
20 First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing
21 the name, last known mailing address, social security number, and number of Class Period
22 Workweeks and PAGA Pay Periods for all putative class members after issuance of the
23 preliminary approval order.

24 42. Settlement Class Member consist of Defendant’s hourly employees, and
25 Defendant is required to keep records of its hourly employees’ names, home addresses, and social
26 security numbers.

27 43. Defendant formally produced Plaintiff’s personnel file and employment records,
28 paystubs, time records, employment handbooks, and arbitration agreements for Settlement Class

Members containing class member contact information, which confirms that all Settlement Class Members may be readily identified based on Defendant's records.

44. Plaintiff is confident he will be able to establish that the proposed Class is ascertainable and sufficiently numerous.

45. Plaintiff argues that there are questions of law and fact common to the proposed Class that predominate over any questions affecting only individual Class Members.

46. These common questions include:

- 1) Whether Defendant failed to pay all wages and/or overtime compensation due;
- 2) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 3) Whether Defendant failed to provide accurate itemized wage statements;
- 4) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 5) Whether Defendant engaged in unfair competition; and,
- 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

47. Defendant maintained common written policies such as a company handbook containing uniform meal break policies for all hourly employees. Plaintiff maintains that the presence of a company-wide meal policy suggests that Defendant applied the same policies to all employees, which would weigh in favor of class certification.

48. Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment.

49. Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not properly paid all wages/overtime; (2) Settlement Class Members did not receive their meal periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not paid all wages owed upon termination/resignation.

50. Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel

demonstrates that common meal and rest policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate.

51. Plaintiff worked as a warehouse worker for Defendant.

52. Plaintiff alleges that he: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal periods as required by law; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. He also alleges that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq.

53. Plaintiff also contends that he claims are typical of those of the Class.

54. Plaintiff believes that he is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members.

55. The members of the proposed Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law.

56. Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.

57. This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Class.

58. Plaintiff has been a very active participant in the litigation including having frequent contact with Settlement Class Members, preparing detailed responses to formal discovery, and working closely with Class Counsel to develop the theories of liability. He also made himself available for the full-day mediation in this matter and was informed of and involved in all of the Settlement negotiations.

59. Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed Settlement Class Members.

60. Plaintiff has provided his Counsel with all necessary and pertinent information.

61. The superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable.

62. The only alternative to certification would be to force over 760 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether.

63. Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified.

KULLAR ANALYSIS

64. The proposed settlement satisfies each of the *Kullar* factors.

65. Class Counsel conducted extensive formal and informal discovery before entering into meaningful settlement negotiations in this matter. This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

66. Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement.

a) The Risks Associated with the Minimum Wage/Overtime Claim

67. Plaintiff contends that he, like all Class Members, were required to work “off the clock” to complete temperature checks without being compensated for this time in compliance with California law.

68. Plaintiff alleges that he and all Class Members were required to report to the job site and complete temperature checks before the scheduled start of each shift.

69. Plaintiff contends that Defendant required Plaintiff and the Class Members to undergo these temperature checks before the scheduled start of each shift daily, without compensation for this time worked at the appropriate rate of pay.

70. Plaintiff contends that this was a daily requirement for the benefit of the employer, as temperature health screening procedures were necessary to ensure the safety and protection of employees’ health at all times.

71. Plaintiff argued that he and Class Members were entitled to be compensated for this time worked and Defendant is liable for unpaid wages and/or overtime at the appropriate rate.

72. Defendant vehemently denies the minimum wage/overtime claim is appropriate for class certification.

73. Defendant argued that any temperature checks were limited to the one facility

1 where Plaintiff worked and only in place for a limited number of months after the initial March
2 2020 statewide covid outbreak.

3 74. Defendant argued that Plaintiff was not a typical representative of the entire Class
4 and at most perhaps Plaintiff could attempt to certify a small subclass of employees who underwent
5 temperature checks at his facility for a period of a few months.

6 75. Defendant argued that any temperature checks merely took a few seconds to
7 complete as employees entered the one facility and were not compensable time.

8 76. Plaintiff felt confident he could certify this claim but had to acknowledge that
9 exposure may be extremely limited if the Court only certified a small, single-location subclass for
10 a limited time period thereby reducing the potential value of the claim significantly.

11 77. Plaintiff took this significant risk into consideration in determining that settlement
12 of this claim was reasonable.

13 78. Plaintiff also alleged that Defendant paid hazard pay and safety pay that it did not
14 properly blend for the purposes of determining the correct overtime rate.

15 79. Plaintiff felt confident that this claim was certifiable, but acknowledges the
16 potential damages are limited as this additional compensation was paid only during a limited
17 window as part of Defendant's covid protocols.

18 b) The Risks Associated with the Meal Break Claim

19 80. Plaintiff alleged that Defendant violated California's meal break laws by not
20 allowing Plaintiff and other members of the Class to take compliant daily meal breaks that were
21 timely, at least 30 minutes, and free of the employer's control.

22 81. Notable however is that expert analysis of the data revealed that 93% of shifts over
23 five hours show that a meal period was taken during shifts over 5 hours and only 0.2% of those
24 meal periods were taken after the 5th hour (495 meal periods out of 245,408) and only 0.10% were
25 less than 30 full minutes.

26 82. Plaintiff acknowledges that this purported "violation rate" is quite low.

27 83. The data did not support a strong meal break claim for missed, short, late or missed
28 meals.

1 84. In addition to the data analysis, this can be an extremely tough claim to prove on a
2 classwide basis because Defendant will argue that it meets the *Brinker* “provide” standard, facially
3 compliant meal breaks are consistently reflected in the records.

4 85. Defendant would argue that because the records largely show complaint breaks
5 were taken, it would become an individualized inquiry that would require questioning of each and
6 every Class Member as to each and every meal non-compliant period in the records as to whether
7 in fact it was “provided” in compliance with the law.

8 86. Such an expansive inquiry, Defendant would argue, necessarily defeats class
9 certification.

10 87. It could likewise devolve into a battle of declarations with each party securing class
11 member declarations that supported their arguments.

12 88. Based on the data analysis and the risks above, Plaintiff ultimately determined that
13 accepting a dramatic discount on the meal claim for settlement purposes was appropriate.

14 89. Plaintiff also alleged a *Ferra* violation for failing to pay meal period premiums at
15 the appropriate rate based on a failure to blend hazard pay and safety bonus for the purpose of
16 determining the correct regular rate for meal period premium payment.

17 90. As with the regular rate claim above, Plaintiff felt confident that this claim was
18 certifiable, but acknowledges the potential damages are limited as this additional compensation
19 was paid only during a limited window as part of Defendant’s covid protocols.

20 c) The Risks Associated with the Inaccurate Wage Statement Claim

21 91. Plaintiff alleged a derivative claim that Defendant issued wage statements that
22 allegedly violate Labor Code §§ 226(a)(2) and (9).

23 92. Plaintiff alleges that he and Class Members are issued wage statements that do not
24 accurately show the applicable overtime rate and the number of hours worked at the corresponding
25 rate based on Defendant’s alleged failure to blend discussed above.

26 93. Plaintiff has to recognize that this is a derivative claim.

27 94. Plaintiff does not argue that Defendant failed to show required information on the
28 paystubs it issued to Class Members, only that the paystubs do not accurately show the

1 information.

2 d) The Risks Associated with the Waiting Time Penalty Claim

3 95. Here, some Class Members, including Plaintiff, are no longer employed by
4 Defendant.

5 96. Plaintiff contends that Defendant has failed to pay employees wages immediately
6 or within 72 hours of termination and/or resignation by not paying all meal period premiums owed
7 and wages.

8 97. Under California Law, Plaintiff contends that “waiting time” penalties would be
9 triggered for each former employee in the class.

10 98. Defendant maintains that it has paid all wages due to employees at the separation
11 of employment. Defendant argues that a good-faith belief applies here and that if it inadvertently
12 did not pay final wages to an individual, its actions were not willful.

13 99. Plaintiff responds that the well-settled meaning of “willful,” as used in Labor
14 Code section 203, is that an employer has intentionally failed or refused to perform an act which
15 was required to be done. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.)

16 100. Plaintiff contends that Defendant knew wages were owed but failed to pay them.

17 101. The risk analysis for the section 203 claim flows from the risk analysis for the
18 underlying wage claims discussed above.

19 102. If Defendant could prove, as it contends, that wages were not unlawfully deduct
20 and all meal periods were provided as it contends, there would be no waiting time penalties that
21 flow therefrom.

22 103. Based on the risk articulated above, Class Counsel believed a discount was also
23 appropriate here for settlement purposes.

24 e) The Risks Associated with the PAGA Claim

25 104. Plaintiff discounted the PAGA claim for settlement purposes for multiple reasons.
26 First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class claims.
27 Second, a court has discretion to award less than the maximum penalty. Finally, the Class is
28 compensated for these violations in the proposed Agreement, and thus any PAGA recovery for

1 these same violations would be duplicative.

2 105. As such, the Agreement's contemplated PAGA payment of \$20,000.00 is
3 appropriate.

4 106. There is significant expense associated with the class certification process, which
5 the Parties can avoid by entering into the contemplated Agreement now.

6 107. If the Court did eventually certify a meal or wage class, trial of a case involving
7 approximately 760 Settlement Class Members would require the retention of expensive expert
8 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.

9 108. Moreover, given the complexity and unsettled nature of the issues in this case it is
10 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal
11 would result in further delay for the Settlement Class Members who are waiting for a resolution in
12 this matter.

13 109. This case has not been certified to be tried as a class action. While Plaintiff believes
14 there is strong evidence to support certification of several possible subclasses, certification is
15 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification
16 is always a possibility. In attempting to certify a class, the parties would need to conduct multiple
17 depositions, including of the Class Representative and of several person(s) most knowledgeable
18 regarding Defendant's meal and wage policies. There is a risk for both sides as to what these
19 depositions will reveal and whether they will support class certification to the extent expected.

20 110. It was very difficult for the Parties to reach this Settlement of \$425,000.00.

21 111. This Settlement is the result of adversarial, non-collusive, and arms-length
22 negotiations. The Parties arrived at it after extensive investigation and discovery; careful
23 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
24 likely to be awarded to the class were the trier of fact to find Defendant liable; the assistance of an
25 experienced mediator, Jeffrey Krivis, Esq.; expert analysis of the data; and through their own
26 meaningful meet and confer efforts in connection with direct negotiations.

27 112. Plaintiff assessed full value of the minimum wage/overtime claim, without any
28 discount, at approximately \$605,893.

1 113. This calculation assumed that Settlement Class Members worked 5 minutes of
2 unpaid off the clock work per shift (281, 369 shifts extrapolated to the class) and that 50% of the
3 time it resulted in unpaid overtime wages.

4 114. This resulted in 23,447 minutes of unpaid overtime/wages alleged to have been
5 worked off the clock.

6 115. Defendant argued this amount was overstated because any temperature checks
7 were a mere minute or two, were limited to one facility and only occurred for a few months of the
8 liability period after the statewide lockdown in March 2020.

9 116. Plaintiff assessed the unpaid overtime due to the alleged failure to blend hazard
10 pay and safety bonus into the regular rate for the purposes of determining the correct overtime rate
11 at \$30,638.

12 117. Plaintiff assessed the full value of the meal period claim, without any discount, at
13 approximately \$399,537.

14 118. This amount assumed all shifts that did not show a complaint meal period meal
15 period within the first 5 hours of work (missed, late, short) were automatically violations.

16 119. For the reasons above, Plaintiff determined that accepting a discount of the full
17 amount was appropriate.

18 120. Plaintiff assessed the unpaid wages/overtime due to the alleged failure to blend
19 hazard pay and safety bonus into the regular rate for the purposes of determining the correct meal
20 period premium amount at \$1,891.

21 121. Together, Plaintiff valued the maximum potential exposure for core damages at
22 \$1,037,959.00.

23 122. Plaintiff valued the Section 226(a) wage statement claim, without discount, at
24 \$1,221,150.

25 123. This analysis is based on \$50 for the initial pay period and \$100 thereafter for 484
26 employees during the wage statement liability period.

27 124. Based on the derivative nature of this claim and the risks as to recovery discussed
28 above, Plaintiff determined that a steep discount of this claim was fair for settlement purposes.

1 125. Plaintiff valued the Section 203 waiting time penalty claim, tied to the
2 wage/overtime claim, at \$1,529,215.

3 126. This analysis is based on 313 employees during the waiting time penalty liability
4 period.

5 127. Considering the derivate nature of Labor Code §203 and the dispute over whether
6 class members were owed any wages, Plaintiff determined that accepting a discount on this claim
7 was appropriate.

8 128. Finally, Plaintiff calculated the value of the PAGA claim at \$1,245,300 for
9 Aggrieved Employees. This is based upon \$100 per pay period for all 12,453 pay periods during
10 the PAGA liability period.

11 129. However, based on its confidence around certification, Plaintiff acknowledges the
12 more realistic exposure for the pay periods affected by the alleged failure to blend, assessed at
13 \$100/200 pay period, is \$144,700.

14 130. The main risk taken into account with PAGA is the discretionary nature of the
15 penalty award.

16 131. A judge can award the statutory maximum of \$100 for the initial violation and
17 \$200 thereafter or – in theory – one cent per wage statement.

18 132. While there is a dearth of available authority, in Plaintiff's view, were he to
19 succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also
20 award a large amount of penalties of top of any damages recovered.

21 133. Per Plaintiff's assessment, the maximum potential value of all the penalty claims
22 was approximately \$3,995,665.

23 134. Adding the damages and maximum penalties together the result is \$5,033,624.
24 However, when considering the regular rate exposure of \$30,638 plus the *Ferra* exposure of
25 \$1,891, and the most realistic PAGA exposure tied to those claims of \$144,700, the amount is
26 reduced dramatically to \$177,229.

27 135. Weighing this more conservative analysis against the maximum exposure and
28 considering the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount

of \$425,000.00 is fair and reasonable.

ATTORNEY COMPETENCE

136. Kingsley & Kingsley is extremely experienced in prosecuting employment litigation, and since 2000 we have focused our practice on wage, hour, and working condition violations. My firm is well versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court. Below is a small, but representative sampling of wage and hour cases handled by my firm:

- a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.
- e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of

1 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
2 fees request of 33.3%.

3 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
4 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
5 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
6 court granted attorneys' fees request of 38%.

7 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
8 2014, the Honorable William F. Highberger granted final approval of Settlement in
9 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of
10 33.33%.

11 i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-
12 00705 AWIJLT). This certified class action was approved for final settlement by
13 the Honorable Anthony W. Ishii in October 2015, in the gross amount of
14 \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

15 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
16 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement
17 in the gross amount of \$995,000.00, and the court granted attorney's fees request
18 of 33.33%.

19 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
20 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
21 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
22 fees.

23 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
24 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
25 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
26 33.33%.

27 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was
28 proposed for final settlement by the Honorable Richard L. Fruin on February 19,

2016, in the gross amount of \$5,250,000.

n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).

The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.

o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The matter was approved for final settlement by the Honorable Anthony W. Ishii in November 2017, in the gross amount of \$6,100,000.00, plus interest, with attorney's fees benchmark award of \$1,525,000.

p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-15-101333). The matter was approved for final settlement before the Hon. Stephen D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

137. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 17 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

a. *Lewis v. Collabrus, Inc.*, Santa Clara County Superior Court (109CV-142927), approved for Class Certification in 2011.

b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).

c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).

d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,

1 filed January 27, 2015) (court granted contested class certification and appointed
2 Kingsley & Kingsley as class counsel).

3 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214).
4 contested class certification granted in June 2020.

5 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
6 (BCV-16-102833), contested class certification granted in 2018.

7 g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
8 contested class certification granted in June 2020.

9 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
10 contested class certification granted in August 2020.

11 138. Class Counsel is experienced in the handling of wage and hour class actions and
12 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
13 and reasonable and in the best interest of the Class.

14 139. After factoring in the risks explained above, Class Counsel believes that the
15 proposed settlement is fair and reasonable.

16 140. This allocation distributes Agreement funds proportionally to each class member's
17 potential damages and should therefore be approved as fair, adequate, and reasonable.

18 **SERVICE AWARD TO THE NAMED PLAINTIFF**

19 141. The Class Representative is entitled to an enhancement for his valiant effort and
20 time expended in this matter. The time spent by Marcos Tafolla is significant and includes
21 researching and retaining competent counsel; providing information to Class Counsel regarding
22 the nature of the work at Defendant; compiling relevant documents; working closely with Class
23 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
24 status of the case with Class Counsel; discussing the case via telephone with many Settlement
25 Class Members; making himself available for a full-day of mediation; and responding promptly to
26 Class Counsel's communications regarding settlement.

27 142. As set forth in the Agreement, Plaintiff will also be entering into a general release
28 of liability pursuant to Civil Code Section 1542.

1 143. Class Counsel considers this to be a fair and reasonable enhancement. The
2 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
3 forward to litigate this matter on behalf of all Settlement Class Members. Plaintiff concurrently
4 provides a detailed declaration detailing his participation and further justification for the
5 enhancement.

6 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

7 144. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
8 email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as
9 Exhibit "3."

10 **EXHIBITS**

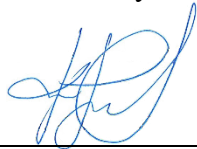
11 145. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed Class
12 Action and PAGA Settlement Agreement ("Agreement").

13 146. Attached hereto as Exhibit "2" is a true and correct copy of of Plaintiff's PAGA
14 notice letter to the LWDA and Defendant.

15 147. Attached hereto as Exhibit "3" is a true and correct copy of the proof of submission
16 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
17 receipt.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 This Declaration was executed this 30th day of January, 2024, in Altadena, California.

21
22 

23 _____
Kelsey M. Szamet

EXHIBIT "1"

TAFOLLA, et al. v. DAYLIGHT TRANSPORT, LLC, 21STCV16822 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT** **AND CLASS NOTICE**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff MARCOS TAFOLLA (“Plaintiff”) and Defendant DAYLIGHT TRANSPORT, LLC (“Defendant” or “Daylight”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against DAYLIGHT TRANSPORT, LLC captioned *MARCOS TAFOLLA, an individual, on behalf of himself and others similarly situated, PLAINTIFF, v. DAYLIGHT TRANSPORT, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. 21STCV16822 initiated on May 3, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means ILYM Group, Inc., 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 of the Settlement.
- 1.4. “Aggrieved Employee” means all persons who are employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in the State of California who worked one or more pay periods during the PAGA Period.
- 1.5. “Class” means all persons who are employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in the State of California since four (4) years prior to the filing of this action to the present.
- 1.6. “Class Counsel” means Kingsley & Kingsley, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute 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, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement 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.
- 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, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from May 3, 2017 to December 31, 2023.
- 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 payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means named Defendant DAYLIGHT TRANSPORT, LLC.
- 1.17. “Defense Counsel” means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- 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.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means \$425,000.00 which is the total amount Defendant agrees to pay under the Settlement 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.
- 1.23. “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.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “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 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from May 3, 2020 to December 31, 2023.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiff’s May 3, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount in the amount of \$20,000, allocated 25% to the Aggrieved Employees (\$5,000.00) and the 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means MARCOS TAFOLLA, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means: Defendant and each of its former and present parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, as well as all past and present directors, officers, employees, shareholders and agents, owners, members, attorneys, insurers, and any individual or entity that could be jointly liable with Defendant.
- 1.42. "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.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On May 3, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199; Wage Order 9-2001; California Code of Regulations, Title 8, Section 11090, and violation of Business & Professions Code § 17200. Also on May 3, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice

to Defendant and the Labor and Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties under PAGA for the Labor Code violations alleged previously. On July 7, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding an additional claim for penalties under Labor Code § 2699 et seq., the Private Attorneys General Act (“PAGA”), for the causes of action alleged previously. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) 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.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On April 5, 2022, the Parties participated in an all-day mediation presided over by Jeff Krivis. The mediation was unsuccessful, and the Parties refocused their efforts on litigation. Those efforts helped the Parties understand their strengths, weaknesses, and potential risks which led to this Agreement to settle the Action.
- 2.4. Prior to negotiating the Settlement, Plaintiff obtained, through formal discovery, employment records, paystubs, time records, employment handbooks, and arbitration agreements. 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*”).
- 2.5. The Court has not granted class certification.
- 2.6. 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 8 below, Defendant promises to pay \$425,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. 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. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (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.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$141,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that 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 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.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$17,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$17,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. 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.
- 3.2.4.1. 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. The 75% of each

Participating Class Member's Individual Class Payment will be allocated to settlement of claims for 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.

3.2.4.2. 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.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) 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.

3.2.5.2. 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 760 Class Members who collectively worked a total of 83,500 Workweeks, and 486 of Aggrieved Employees who worked a total 22,800 of PAGA Pay Periods.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. The Class Data shall not be shared with either Plaintiff or Class Counsel unless expressly approved by Defendant and Defense Counsel, or if a Class Member requests that their personal data be shared with Class Counsel. 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 Defendant 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 Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. 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. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. 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 date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement 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 Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. 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.

4.4.3. 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).] The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

4.4.4. 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.

5. 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, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's General Release of All Known and Unknown Claims: In addition to the claims released under paragraphs 5.2 and 5.3 below, Plaintiff and Plaintiff's former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns agree to a general release of any and all claims, transactions, or occurrences against Released Parties which will include without limitation any and all claims which in any way relate to Plaintiff's employment with Defendant, under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the Operative Complaint or not, including but not limited to any claims under the Fair Labor Standards Act ("FLSA"), Title VII, Americans with Disabilities Act ("ADA"), Fair Employment and Housing Act ("FEHA"), Age Discrimination in Employment Act ("ADEA"), Private Attorneys General Act ("PAGA"), California Labor Code, or any Industrial Welfare Commission Wage Order now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof ("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, and 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.

5.1.1. Plaintiff's Waiver of Rights Under California 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.

5.2. 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 the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, including all claims under Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199; Wage Order 9-2001; California Code of Regulations, Title 8, Section 11090, and Business & Professions Code § 17200, and claims for failure to pay minimum wages and/or overtime, failure to provide meal breaks, wage statement violations, waiting time penalties, and unfair competition. Except as set forth in Paragraph 5.3 of 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.

5.3. Release by Aggrieved Employees: All Aggrieved Employees, 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, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the factual allegations and primary rights stated in the Operative Complaint, including all claims under Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199; Wage Order 9-2001; California Code of Regulations, Title 8, Section 11090, and Business & Professions Code § 17200, failure to pay minimum wages and/or overtime, failure to provide meal breaks, wage statement violations, waiting time penalties, and unfair competition.

6. 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 current checklist for Preliminary Approvals.

6.1 Class Counsel's Responsibilities. Class Counsel 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/or the proposed Cy Pres; 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 and/or the proposed Cy Pres; (v) 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. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration 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.

6.2 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.

6.3 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.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. 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 Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 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.
- 7.4 Notice to Class Members.
- 7.4.1 No later than seven (7) 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, Aggrieved Employees, Class Workweeks, and Pay Periods in the PAGA Period.
- 7.4.2 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, if applicable 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.
- 7.4.3 Not later than 7 business 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/or “skip trace,” 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.
- 7.4.4 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 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant 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, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 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 30 days after the Administrator mails the Class Notice (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.

7.5.2 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.

7.5.3 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 Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 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 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (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 (with identifying information other than names redacted) and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

7.7.1 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.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, 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 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 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.

7.8.1 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.

- 7.8.2 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 5 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 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), with personal identifying information redacted.
- 7.8.3 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 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 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.
- 7.8.5 Administrator’s Declaration. Not later than 14 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), the number of written objections and 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.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in 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 15 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.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, Defendant estimates that, as of December 1, 2023, (1) there are 760 Class Members and 83,500 Total Workweeks during the Class period and (2) there were 486 Aggrieved Employees who worked 22,800 Pay Periods during the PAGA Period.

8.1 Increase in Compensable Work Weeks. Upon receipt of the Class Data, in the event that the number of Compensable pay periods exceed this estimate by more than 5%, the Administrator shall notify the Parties that of the number of Class Members. To the extent the number of Compensable pay periods in the Class Settlement Period increases by more than 5%, Defendant shall have the option to increase the Gross Settlement Amount by a proportionate amount. For example, if the number of pay periods increase by 7%, Defendant shall have the option to increase the Gross Settlement Amount by 2%. In the alternative, Defendant may elect to shorten the Class Period in order to stay within the 5% cushion.

9. **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, 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 to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than ten days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** 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, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Class Counsel shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 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 five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 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 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 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 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.

10.4 Waiver of 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 reflected 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.

10.5 Appellate Court 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 a 50-50 basis, any additional Administration Expenses reasonably incurred after 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.

11. 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 and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 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 grant Preliminary Approval, Final Approval or enter Judgment, 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 (including the requirement to arbitrate claims), 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 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).

- 12.2 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 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, any with 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.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees 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.
- 12.4 No Publicity. Plaintiff and Plaintiff's Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and his respective counsel also will not post any information about the settlement on social media or their firms' websites.
- 12.5 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.

- 12.6 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.
- 12.7 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.
- 12.8 No 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are 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.
- 12.10 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.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12 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.
- 12.13 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.
- 12.14 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.

- 12.15 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 unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.16 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.
- 12.17 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.
- 12.18 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 Plaintiff:

Kingsley & Kingsley, APC
 Eric B. Kingsley
 Kelsey M. Szamet
 Ari J. Stiller
 16133 Ventura Blvd., Suite 1200
 Encino, CA 91436

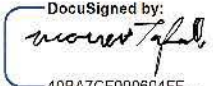
To Defendant:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
 David A. Garcia
 Robert R. Vorhees
 Park Tower, Fifteenth Floor
 695 Town Center Drive
 Costa Mesa, CA 92626

- 12.19 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.
- 12.20 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 that upon the signing of this Agreement that pursuant to CCP section 583.330

to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DATED: December 22, 2023

DocuSigned by:

By: 40BA7CF000604FF...
PLAINTIFF Marcos Tafolla

DATED: January 11, 2024

By: James P McCarthy VP- Finance and CFO
DEFENDANT Daylight Transport, LLC

DATED: December 22, 2023

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet
Attorneys for Plaintiff and the proposed class

DATED: January 11, 2024

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
David A. Garcia
Robert R. Vorhees
Attorneys for Defendant

EXHIBIT A

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

*MARCOS TAFOLLA, an individual, on behalf of himself and others similarly situated,
PLAINTIFF v. DAYLIGHT TRANSPORT, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS,*
Los Angeles County Superior Court Case No. 21STCV16822

***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.***

You may be eligible to receive money from an employee class action lawsuit ("Action") against DAYLIGHT TRANSPORT, LLC (abbreviate name; "Defendant" or "Daylight" is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a former Daylight employee Marcos Tafolla ("Plaintiff") and seeks payment of (1) back wages and other relief for a class of persons who are employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in the State of California from May 3, 2017 to December 31, 2023. ("Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all persons who are employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in the State of California who worked one or more pay periods from May 3, 2020 to December 31, 2023 ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Daylight to fund Individual Class Payments, and (2) a PAGA Settlement requiring Daylight to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Daylight's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment 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 Individual PAGA Payment, then according to Daylight's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Daylight's records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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 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 Daylight to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Daylight.

If you worked for Daylight 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 an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Daylight.
- (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. You will, however, preserve your right to personally pursue Class Period wage claims against Daylight, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

DAYLIGHT TRANSPORT, LLC 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 an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Daylight that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [date]	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. 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 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Daylight must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	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

Written Objections Must be Submitted by [date]	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 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. 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 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (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 Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Daylight's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Daylight Transport, LLC employee. The Action accuses Daylight of violating California labor laws by failing to pay wages and/or overtime, failing to provide meal breaks, failing to provide accurate itemized wage statements, failing to pay wages due at the time of termination, and engaging in unfair business practice. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Kingsley & Kingsley, APC ("Class Counsel.")

Daylight strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Daylight or Plaintiff is correct on the merits. In the meantime, Plaintiff and Daylight worked with an experienced neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. Following the mediation, the parties continued to discuss settlement. Those negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Daylight have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Daylight does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Daylight has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Daylight Will Pay \$425,000.00 as the Gross Settlement Amount (Gross Settlement). Daylight has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Daylight will fund the Gross Settlement not more than 21 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ 141,666.67 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000.00. for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$17,000 to the Administrator for services administering the Settlement.
 - D. Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages (“Wage Portion”) and 75% to penalties and interest.] (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Daylight will separately pay employer payroll taxes it owes on the Wage Portion.)) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments 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 monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Unclaimed Property Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. 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 enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs 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.

8. Administrator. The Court has appointed a neutral company, ILYM (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the claims resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, including all claims for: (1) failure to pay wages and/or overtime pursuant to Labor Code §§ 510, 1194, 1194.2 and 1199; failure to provide meal breaks pursuant to Labor Code §§226.7 and 512; violation of Labor Code §226(a); penalties pursuant to Labor Code §203; and violation of Business & Professions Code § 17200. Except as set forth in Paragraph 5.3 of 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.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA claims resolved by this Settlement.

The Aggrieved Employees’ Releases are as follows:

All Aggrieved Employees, 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, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the factual allegations and primary rights stated in the Operative Complaint, including, all claims for 1.) failure to pay minimum wages and/or overtime pursuant to labor Code §§ 510, 1194, 1194.2 and 1199; 2.) failure to provide meal breaks pursuant to Labor Code §§226.7 and 512; violation of Labor Code §226(a); 3.) penalties pursuant to Labor Code §203; and 4.) violation of Business & Professions Code § 17200;

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)

including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Marcos Tafolla v. Daylight Transport, LLC, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. 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 [insert] days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff 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 Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [need details] or the Court's website [need details].

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award 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 deadline for sending written objections to the Administrator is [date].** 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 Marcos Tafolla v. Daylight Transport, LLC and include your name, current address, telephone number, and approximate dates of employment for [Daylight] and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department [6] of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Los Angeles County Superior Court's website at [lacourt.org](http://www.lacourt.org). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21STCV16822. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling (213) 310-7000.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
 KINGSLEY & KINGSLEY, APC
 Eric B. Kingsley
 Kelsey M. Szamet
 Ari J. Stiller
eric@kingsleykingsley.com
kelsey@kingsleykingsley.com
 16133 Ventura Blvd., Suite 1200
 Encino, CA 91436
 Tel: (818) 990-8300

Settlement Administrator:

[Name of Company]

[Email Address]

[Mailing Address]

[Telephone]

[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void [you should consult the Unclaimed Property Fund [website] for instructions on how to retrieve the funds] [you will have no way to recover the money].

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT "2"

KINGSLEY & KINGSLEY

| L A W Y E R S |

May 3, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Daylight Transport, LLC
1501 Hughes Way Suite 200
Long Beach, CA 90810

Re: Marcos Tafolla v. Daylight Transport, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Marcos Tafolla (“Plaintiff”) and a proposed group of current and former employees working for Daylight Transport, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Daylight Transport, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked at the appropriate regular rate of pay and were not paid for all overtime hours worked at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week.

Plaintiff and all aggrieved employees were not properly compensated for all hours worked at the beginning of their shift due to the fact that Defendant required Plaintiff and all aggrieved employees to report to the job site and complete temperature checks before the scheduled start of each shift. Plaintiff and the aggrieved employees are not paid any wages for these temperature

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

May 3, 2021

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checks. As such, Plaintiff and the aggrieved employees were routinely required to work “off the clock” to complete temperature checks.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided. Specifically, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512. In addition, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including gross wages earned, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to maintain accurate itemized wage statements that include gross wages earned under Labor Code § 226(a)(1), net wages under Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code § 226(a)(9). Specifically, Defendant has had a consistent policy of blending wages for hazard pay on two separate paystubs. As such, it is impossible for Plaintiff and the aggrieved employees to tell their accurate gross wages, rates of pay and net pay from the itemized wage statements alone all in violation of Labor Code 226(a). Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

May 3, 2021

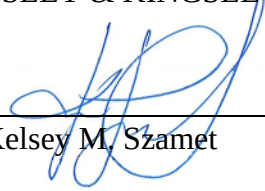
Page 3 of 3

Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Daylight Transport, LLC via USPS Certified Mail # 7018 1130 0001 5815 0928

(Proof of Submission to Labor and
Workforce Development Agency)

EXHIBIT "3"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On January 30, 2024 I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Robert R. Vorhees
robert.vorhees@ogletree.com
David A. Garcia
david.garcia@ogletree.com
Susan M. Susebach
susan.susebach@ogletreedekins.com
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.
Park Tower, 695 Town Center Drive, Fifteenth Floor
Costa Mesa, CA 92626

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 30, 2024 at Woodland Hills, California.



Michelle Tanzer