

1 William L. Marder, Cal Bar No. 170131
POLARIS LAW GROUP, LLP
2 501 San Benito Street, Suite 200
Hollister, California 95023
3 Telephone: 831.531.4214
Facsimile: 831.634.0333

4 Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
5 515 S. Figueroa St., Suite 1250
6 Los Angeles, CA 90071
(213) 488-6555
7 (213) 488-6554 facsimile

8 Attorneys for Plaintiff and the Class

9 Tracy A. Agrall, Esq. (No. 100013)
Michael C. Titus, Esq. (No. 309153)
10 WILD, CARTER & TIPTON, A Professional
Corporation
11 246 West Shaw Avenue
Fresno, California 93704
12 Tel: 559-224-2131
Fax: 559-229-7295
13 E-Mail: tagrall@wctlaw.com; mtitus@wctlaw.com
Attorneys for Defendants, THE DEMMON FAMILY
14 PARTNERSHIP, a California limited partnership,
THE DEMMON FAMILY PARTNERSHIP II, a
15 California limited partnership and DEMMON
FAMILY LLC, a California limited liability company

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SACRAMENTO

18 NICOLE MCGARITY, as an individual
19 and on behalf of all others similarly
situated,

20 Plaintiffs,

21 v.

22 THE DEMMON FAMILY
23 PARTNERSHIP, a California limited
partnership; The Demmon Family
24 Partnership II, a California limited
partnership; and Demmon Family LLC, a
25 California limited liability company; and
DOES 1 through 50, inclusive,

26 Defendants.
27

CASE NO. 34-2021-00308214

[Assigned for case management purposes to the
Hon. Jill H. Talley, Dept. 27]

JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE

Action Filed: September 10, 2021
Trial Date: Not Set

1 This Joint Stipulation for Class Action and PAGA Settlement Agreement and Release
2 (“Agreement” or “Stipulation”) is made by and between Plaintiff Nicole McGarity (“Plaintiff”),
3 on behalf of herself and all members of the Settlement Class, as defined below, and as proxy for
4 the State of California, on the one hand, and Defendants The Demmon Family Partnership, The
5 Demmon Family Partnership II, and Demmon Family LLC (“Demmon” or “Defendant”), on the
6 other hand (collectively, “the Parties”), in the above-captioned matter.

7 DEFINITIONS

8 In addition to the terms defined above, the terms below shall have the following
9 meanings:

10 A. “Action” means Plaintiff’s lawsuit against Demmon captioned *McGarity v. The*
11 *Demmon Family Partnership, et al.*, Case No. 34-2021-00308214, initiated on September 10,
12 2021, in the Superior Court of the State of California, County of Sacramento.

13 B. “Class(es),” or “Settlement Class(es)” means and collectively refers to the
14 following classes:

15 i. All current and former non-exempt employees who have worked for Defendant in
16 California at any time from September 10, 2017, through the earlier of 60 days
17 from today, or the date of preliminary approval (“Class Period End Date”), and
was paid overtime and earned non-discretionary pay covering the same pay period
(the “Regular Rate Class”); and

18 ii. All current and former non-exempt California employees who were paid sick pay
19 in the same workweek in which they earned any non-discretionary incentive wages
20 from Defendant at any time from September 10, 2017, through the Class Period
End Date (the “Sick Pay Class”)

21 C. “Class Counsel” means William L. Marder of Polaris Law Group and Dennis S.
22 Hyun of Hyun Legal APC. The term “Class Counsel” shall be used synonymously with the term
23 “Plaintiff’s Counsel.”

24 D. “Class Counsel Award” means the amount allocated to Class Counsel for
25 reimbursement of its reasonable attorneys’ fees and expenses incurred to prosecute the Action, as
26 approved by the Court.

27 E. “Class Data” means information regarding Class Members that Defendant shall
28 compile from its records, as authorized by the Court, and transmit securely to the Settlement

1 Administrator, including each Class Member's name, last known mailing address; Social Security
2 number; last known telephone number; dates of employment, and other information necessary for
3 the Settlement Administrator to calculate the number of Compensable Workweeks worked during
4 the Class and PAGA Periods.

5 F. "Class Member" or "Settlement Class Member" means a member of the Class, as
6 either a Participating Class Member or Non-Participating Class Member (including a Non-
7 Participating Class Member who qualifies as a PAGA-Aggravated Employee.)

8 G. "Class Members' Released Claims" means the claims being released by the
9 Participating Class Members, as described in Paragraph 17 below.

10 H. "Class Notice" means the Court-Approved Notice of Pendency of Class Action
11 Settlement and Final Hearing, to be mailed to Class Members in the form, without material
12 variation, attached as Exhibit 1 and incorporated by reference into this Agreement.

13 I. "Class Period" means the period from September 10, 2017, through the Class
14 Period End Date.

15 J. "Class Period End Date" means the earlier of December 18, 2023, or the date that
16 the Court grants preliminary approval of class action settlement.

17 K. "Class Representative" means Nicole McGarity, the named Plaintiff in the
18 operative complaint in the Action, who is seeking Court approval to serve as the Class
19 Representative.

20 L. "Class Representative Service Award" means the amount to be paid to the Class
21 Representative for initiating the Action and providing services in support of the Action, as
22 approved by the Court.

23 M. "Compensable Workweeks" means any workweek during the Class Period,
24 including the PAGA Period, in which a Class Member was paid overtime earned non-
25 discretionary pay covering the same pay period and/or sick pay wages in the same workweek in
26 which they earned any non-discretionary incentive wages at any time during the Class Period.

27 N. "Court" means the Sacramento County Superior Court presiding over the
28 settlement approval process.

1 O. "Defense Counsel" means Tracy A. Agrall, Esq., and Michael C. Titus, Esq., of
2 Wild, Carter & Tipton, A Professional Corporation.

3 P. "Effective Date" is the date on which the Settlement becomes "Final," which
4 means the latest date on which the following events have occurred: (i) the Superior Court has
5 granted Final Approval and entered its Final Judgment approving the Settlement, without material
6 modification, if there are no objections, or (ii) if there are any objections, the day after the
7 deadline for filing a notice of appeal from the Final Judgment has passed without a timely appeal
8 having been filed; or (iii) if a timely appeal from the Final Judgment is filed, the day after the
9 appellate court affirms the Judgment and issues a remittitur.

10 Q. "Final Approval" means the Court's order granting final approval of the
11 Settlement

12 R. "Final Approval Hearing" means the Court's hearing on the Motion for Final
13 Approval of the Settlement.

14 S. "Final Judgment" means the Judgment entered by the Court upon granting Final
15 Approval of the Settlement.

16 T. "Individual Class Payment" means the Participating Class Member's pro rata share
17 of the Net Settlement Amount calculated according to the number of Compensable Workweeks
18 worked during the Class Period, as explained below in Paragraph 13.

19 U. "Individual PAGA Payment" means the pro rata share of 25% of the PAGA
20 Payment, calculated according to the number of Compensable Workweeks worked during the
21 PAGA Period by the Class Members, whether or not they requested to be excluded from the
22 Settlement, as explained below in Paragraph 14.

23 V. "LWDA" means the California Labor and Workforce Development Agency.

24 W. "LWDA Notice" means the July 8, 2021 PAGA letter that Class Counsel sent to
25 the LWDA and Defendant on behalf of Plaintiff, providing notice pursuant to Labor Code section
26 2699.3(a).

27 X. "LWDA PAGA Payment" means the 75% of the PAGA Payment paid to the
28 Labor and Workforce Development Agency under Labor Code section 2699(i).

1 Z. “Maximum Settlement Amount” means \$87,500.00, which is the total amount
2 Defendant shall have to pay under the Settlement, except as provided in Paragraph 8 below
3 regarding employer payroll taxes on the wage payments being made under the Settlement. The
4 Maximum Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
5 Payments, the LWDA PAGA Payment, the Class Counsel Award for fees and costs, the Class
6 Representative Service Payment, and the Settlement Administration Costs. This excludes the
7 employer’s contribution of payroll taxes due on the settlement payments apportioned as wages,
8 which Defendant will pay outside of the Maximum Settlement Amount.

9 AA. “Net Settlement Amount” means the Maximum Settlement Amount, less the Class
10 Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement
11 Administration Costs.

12 BB. “Non-Participating Class Member” means any Class Member who opts out of the
13 Settlement by sending the Settlement Administrator a valid and timely Request for Exclusion.

14 CC. “Objection” means a Class Member’s valid and timely submission of a written
15 objection to the Settlement to the Settlement Administrator within the Response Deadline,
16 provided that the Class Member did not submit a Request for Exclusion.

17 DD. “PAGA” means the California Private Attorneys General Act (Labor Code §§
18 2698. *et seq.*

19 EE. “PAGA-Agrieved Employees” means those Class Members who have been
20 employed as non-exempt employees of Defendant during the PAGA Period, i.e.:

- 21 i. All current and former non-exempt employees who have worked for Defendant in
22 California at any time during the PAGA Period and was paid overtime and earned
23 non-discretionary pay covering the same pay period.
24 ii. All current and former non-exempt California employees who were paid sick pay
25 in the same workweek in which they earned any non-discretionary incentive wages
26 from Defendant at any time during the PAGA Period.

25 FF. “PAGA Payment” means \$8,750.00, which is the total amount of PAGA civil
26 penalties to be paid from the Maximum Settlement Amount, subject to the Court’s approval, in
27 settlement of the PAGA claims in this Action. Of this amount, 75% (\$6,562.50) will be paid to
28 the LWDA and 25% (\$2,187.50) will be distributed as the Individual PAGA Payments to the

1 PAGA-Aggravated Employees, whether or not they opted out of the Class Settlement.

2 GG. "PAGA Period" means the period from July 8, 2020, through the Class Period End
3 Date.

4 HH. "PAGA Released Claims" means the PAGA claims being released as described in
5 Paragraph 18 below.

6 II. "Participating Class Member" means a Class Member who does not submit a valid
7 and timely Request for Exclusion from the Settlement.

8 JJ. "Preliminary Approval Order" means the Court's Order Granting Preliminary
9 Approval of the Settlement.

10 KK. "Released Parties" means Defendant, and all of its former and present parents,
11 corporate members, subsidiaries, divisions, and affiliated companies, and their respective officers,
12 directors, employees, partners, shareholders, agents, insurers, successors, assigns, and legal
13 representatives.

14 LL. "Released Claims Period" for Participating Class Members means the period from
15 September 10, 2017, through the Class Period End Date. For the PAGA claims it means the
16 period from July 8, 2020, through the Class Period End Date.

17 MM. "Request for Exclusion" means a Class Member's valid and timely submission of a
18 written request to the Settlement Administrator to be excluded from the Class Settlement, signed
19 by the Class Member.

20 NN. "Response Deadline" means 45 days after the Settlement Administrator mails the
21 Class Notice to the Class Members, and shall be the last date on which Class Members may mail
22 (1) Requests for Exclusion from the Settlement, (2) an Objection to the Settlement, or (3) a
23 dispute over the number of Compensable Workweeks attributed to them in the Class Notice.

24 OO. "Settlement" means the final and complete disposition of the Action effected by
25 this Agreement and the Judgment.

26 PP. "Settlement Administrator" or "Administrator" means ILYM Group, Inc., the
27 neutral entity the Parties have agreed to appoint to administer the Settlement, as approved by the
28 Court.

QQ. “Settlement Administration Costs” means the Court-approved fees and reasonable costs incurred by the Settlement Administrator to administer the Settlement, to be reimbursed to the Settlement Administrator from the Maximum Settlement Amount.

RECITALS

1. **Procedural History.** On September 10, 2021, Plaintiff filed her initial Complaint in this Action in Sacramento County Superior Court on behalf of herself and all others similarly situated asserting claims pursuant to the California Labor Code and the Business & Professions Code § 17200, *et seq.*, based on the substantive claims in the original complaint: 1) Violation of Labor Code §§ 201-204, 233, and 246; 2) Violation of Labor Code §§ 201-204, 510, 558, 1194, and 1197.1; 3) Violation of Labor Code § 226; 4) Violation of Labor Code § 2698, *et seq.*; and 5) Violation of Business & Professions Code § 17200, *et seq.*

2. **Mediation.** On October 18, 2023, the Parties participated in an arms-length mediation before Christopher M. Panetta, Esq., of Fenton & Keller, LLP. With the assistance of the mediator, the Parties were able to come to a settlement of the claims in the Action, subject to the Court's approval. The settlement was memorialized in a Memorandum of Understanding, subject to later completion of this long-form Settlement Agreement.

3. **Benefits of Settlement to Plaintiff and the Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate Plaintiff's disputes in the Lawsuit through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages, penalties, restitution and other relief sought in the Action. Plaintiff and Class Counsel also have taken into account Defendant's agreement to enter into a settlement that confers substantial benefits upon the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is fair, adequate, and reasonable and is in the best interests of all Class Members.

1 4. **Defendant's Reasons for Settlement.** Defendant has concluded that further defense
2 of the Action would be protracted and expensive. Substantial amounts of Defendant's time,
3 energy, and resources have been, and unless this Settlement is completed, shall continue to be,
4 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account
5 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
6 Defendant contends it is not liable for any of the claims alleged by Plaintiff in the Action and
7 denies any liability whatsoever, Defendant, nonetheless, has agreed to settle in the manner and
8 upon the terms set forth in this Stipulation and to fully and finally put to rest the claims alleged in
9 the Action. Defendant has asserted and continues to assert that the claims alleged by Plaintiff
10 have no merit and do not give rise to any liability, damages, restitution, penalties or other
11 payments. This Settlement is a compromise of highly-disputed claims. Nothing contained in this
12 Agreement, no documents referred to herein, and no action taken to carry out this Agreement,
13 shall be construed or used as an admission by or against Defendant as to the merits or lack thereof
14 of the claims asserted in the Lawsuit. Defendant contends that it has complied with all applicable
15 state, federal and local laws. In the event this Settlement does not obtain final approval,
16 Defendant retains all rights it has to defend itself in this matter and to take any actions in defense
17 of itself that are available to it.

18 CLASS CERTIFICATION

19 5. **Stipulated Settlement Class.** Solely for purposes of settling the Action, the
20 Parties have agreed to the certification of the Settlement Classes as defined in Paragraph B above
21 and stated again as follows:

- 22 a. All current and former non-exempt employees who have worked for Defendant
23 in California at any time from September 10, 2017, through the earlier of 60
24 days from today, or the date of preliminary approval ("Class Period End
25 Date"), and was paid overtime and earned non-discretionary pay covering the
26 same pay period (the "Regular Rate Class"); and
27 b. All current and former non-exempt California employees who were paid sick
28 pay in the same workweek in which they earned any non-discretionary
 incentive wages from Defendant at any time from September 10, 2017, through
 the Class Period End Date (the "Sick Pay Class")

6. **Certification Is for Settlement Only.** For purposes of this Settlement, the Parties

1 stipulate and agree that the requisites for establishing class certification with respect to the Class
2 have been met and are met. More specifically, for purposes of settlement only, the Parties
3 stipulate and agree that the Settlement Class is ascertainable and so numerous as to make it
4 impracticable to join all Class Members; and that there are common questions of law and fact
5 including, but not limited to, whether Defendant failed to pay sick pay and overtime wages based
6 on the regular rate of pay; whether Defendant derivatively failed to furnish accurate, itemized
7 wage statements to all Class Members in accordance with Labor Code section 226; and whether
8 Defendant is liable to the Class Members for derivative waiting time penalties pursuant to Labor
9 Code section 203, among other common issues.

10 7. **Certification Stipulation Nullified if Settlement Not Approved.** Should this
11 Settlement not become final, for whatever reason, the fact that the Parties were willing to stipulate
12 provisionally to class certification as part of the Settlement shall have no bearing on, and shall not
13 be admissible in connection with, the issue of whether a class should be certified in a non-
14 settlement context in the Action. Defendant expressly reserves its right to oppose class
15 certification should this Settlement not become final.

16 **MONETARY TERMS OF THE SETTLEMENT**

17 8. **Maximum Settlement Amount.** The claims of all members of the Settlement
18 Classes and the PAGA-Aggravated Employees, collectively, are settled for a maximum sum of
19 Eighty-Seven Thousand and Five Hundred Dollars and No Cents (\$87,500.00) ("the Maximum
20 Settlement Amount"). This Maximum Settlement Amount is inclusive of the Class Counsel
21 Award, which includes Class Counsel's reasonable attorneys' fees and costs; the Class
22 Representative Service Payment to Plaintiff; the Settlement Administration Costs; and the PAGA
23 Payment to the LWDA and the PAGA-Aggravated Employees, all as approved by the Court. This
24 excludes the employer's contribution of payroll taxes due on the settlement payments apportioned
25 as wages, which Defendant will pay outside of the Maximum Settlement Amount.

26 9. **Class Counsel Award.** Class Counsel shall be entitled to request attorneys' fees
27 in an amount not to exceed Thirty-Three and 1/3 Percent (33.33%) of the Maximum Settlement
28 Amount, which is currently Twenty-Nine Thousand One Hundred and Sixty-Six Dollars and

1 Sixty-Seven Cents (\$29,166.67). In addition, Class Counsel shall be entitled to request an award
2 of costs associated with Class Counsel's prosecution of the Action not to exceed Twenty-Five
3 Thousand Dollars and Zero Cents (\$25,000.00). Class Counsel's request for such attorneys' fees
4 and costs shall be subject to approval from the Court. Defendant agrees not to oppose or object to
5 Class Counsel's requests for attorneys' fees or costs up to these amounts. In the event the Court
6 awards Class Counsel less than these (or any other) requested amounts, the difference shall
7 become part of the Net Settlement Amount and shall be distributed to Participating Class
8 Members as part of their Individual Settlement Awards. Class Counsel shall be solely and legally
9 responsible to pay all applicable taxes on the Class Counsel Award. Class Counsel shall provide
10 the Settlement Administrator with properly completed and signed copies of IRS Form W-9 in
11 order for the Settlement Administrator to process the Class Counsel Award approved by the
12 Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the
13 amount of the Class Counsel Award.

14 10. **Class Representative Service Award.** For purposes of this Settlement only, the
15 Parties agree to the designation of Plaintiff Nicole McGarity as the Class Representative. In
16 recognition of her time and effort in bringing and presenting the Action and for releasing the
17 Plaintiff's Released Claims, Plaintiff shall request a Class Representative Service Award not to
18 exceed Ten Thousand Dollars (\$10,000.00). Plaintiff's request for such award shall be subject to
19 approval from the Court. Defendant agrees not to oppose or object to Plaintiff's request for a
20 Class Representative Service Award that does not exceed this amount. The Class Representative
21 Service Award will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to
22 the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for her
23 Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any
24 and all applicable taxes on her Class Representative Service Award. Any amount requested by
25 Plaintiff for the Class Representative Service Award and not awarded by the Court shall become
26 part of the Net Settlement Amount and shall be distributed to Participating Class Members as part
27 of their Individual Settlement Awards.

28 11. **Settlement Administration Costs.** Subject to the Court's approval, Defendant

1 shall reimburse the Settlement Administration Costs, which are estimated at Three Thousand Six
2 Hundred and Fifty Dollars and No Cents (\$3,650.00), which shall be paid from the Maximum
3 Settlement Amount. Prior to the filing of Plaintiff's Motion for Final Approval of the Settlement,
4 the Settlement Administrator shall provide the Parties with a statement detailing the Settlement
5 Administration Costs to date.

6 12. **PAGA Payments.** Defendant shall pay a total of \$8,750.00 to resolve the claims
7 asserted by Plaintiff in the Action, as proxy for the State of California, for civil penalties under
8 PAGA. Of this amount, Six Thousand Five Hundred and Sixty-Two Dollars and Fifty Cents
9 (\$6,562.50) will be paid to the LWDA as the State of California's 75% settlement share of the
10 civil penalties claimed by Plaintiff pursuant to PAGA. This payment will be made from the
11 Maximum Payment. The remaining 25% (\$2,187.50) will be paid to the PAGA Aggrieved
12 Employees, based on their proportionate share of Compensable Workweeks worked during the
13 PAGA Period.

14 13. **Individual Class Payments.** The Settlement Administrator will determine the
15 Net Settlement Amount by deducting the Class Counsel Award of fees and costs, the Class
16 Representative Service Award, the PAGA Payment and the Settlement Administrator Costs from
17 the Maximum Settlement Amount. The Settlement Administrator will distribute the Individual
18 Class Payments to the Participating Class Members from the Net Settlement Amount. The
19 Administrator will calculate each Participating Class Member's Individual Class Payment by
20 determining the total number of Compensable Workweeks worked by all Participating Class
21 Members during the Class Period, dividing that number into the Net Settlement Amount to
22 determine the per-workweek value of each Compensable Workweek, and then multiplying that
23 sum by the number of Compensable Workweeks worked by each Participating Class Member
24 during the Class Period.

25 14. **Individual PAGA Payments.** The Settlement Administrator will calculate each
26 eligible employee's Individual PAGA Payment by dividing the 25% portion of the PAGA
27 Payment to be distributed to those individuals, i.e. \$2,187.50, by the total number of
28 Compensable Workweeks worked by all of the PAGA-Aggrieved Employees during the PAGA

Period to derive the per-workweek value of the Individual PAGA Payments, and then multiplying that sum by the number of Compensable Workweeks worked by each such employee during the PAGA Period.

15. **Tax Treatment of Individual Class and PAGA Payments.** Individual Settlement Awards shall be allocated as follows: 20% as alleged unpaid wages subject to all applicable tax withholdings; and 80% as alleged unpaid interest and penalties. The Settlement Administrator shall issue an IRS Form W-2 to each Participating Class Member for the portion of each Individual Settlement Award allocated as alleged unpaid wages and subject to all applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each Participating Class Member for the remaining portion of each Individual Settlement Award. The Settlement Administrator shall also issue an IRS Form 1099 for the Individual PAGA Payments. The non-wage portions of the Individual Settlement Awards and the entirety of the Individual PAGA Payments will be allocated as non-wage penalties and interest and not be subject to payroll tax withholdings.

16. **Employer Payroll Taxes.** The Maximum Settlement Amount shall resolve, satisfy and completely extinguish all of Defendant's liability with respect to the Class Members, except that Defendant shall be responsible for paying the employer's share of payroll taxes on the portion of the Individual Settlement Awards that constitute wages. Defendant will pay these taxes, as calculated by the Settlement Administrator, in addition to the Maximum Settlement Amount. Upon Defendant's funding of the Maximum Settlement Amount and the employer portion of payroll taxes on the portion of the Individual Settlement Awards that constitutes wages, Defendant shall have no further payment or defense obligation whatsoever with respect to any claims covered by this Settlement made or asserted by any person or entity anywhere in the world in connection with the Class Members.

RELEASES

17. **Class Members' Released Claims.** Upon the Effective Date and Defendant's funding of the Maximum Settlement Amount and its share of employer-side payroll taxes, Plaintiff and each member of the Settlement Class other than those who submit a timely request

1 to opt out of the Settlement will release and discharge the Released Parties, from any and all
2 claims, rights, demands, liabilities, and causes of action of every nature and description, arising
3 from September 10, 2017, through the Class Period End Date, including statutory, contractual, or
4 common law claims for damages, penalties, liquidated damages, interest, attorneys' fees,
5 litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code,
6 Business and Professions Code §§ 17200 *et seq.*, the applicable wage orders at California Code of
7 Regulations, Title 8, Section 11000 *et seq.*, or otherwise – that arise out of or are reasonably
8 related to the factual allegations that were alleged or could have been alleged in Plaintiff's
9 Complaint herein, *i.e.*: (a) any and all claims for failure to pay sick leave at the correct regular
10 rate of pay; (b) any and all claims for unpaid overtime wages at the correct regular rate of pay; (c)
11 any and all derivative claims for failure to furnish accurate itemized wage statements in
12 accordance with Labor Code section 226 based on alleged failures to pay sick pay and overtime
13 wages at the correct regular rate of pay; (d) any and all derivative claims for failure to provide
14 wages when due upon separation of employment under Labor Code §§ 201-203 based on alleged
15 failures to pay sick pay and overtime wages at the correct regular rate of pay; (e) any and all
16 derivative claims for "late payment" penalties under Labor Code §§ 204 and 210 based on alleged
17 failures to pay sick pay and overtime wages at the correct regular rate of pay; and (f) any and all
18 claims for attorneys' fees and costs arising from alleged failures to pay sick pay and overtime
19 wages at the correct regular rate of pay.

20 **18. PAGA Released Claims.** Upon the Effective Date and Defendant's funding of
21 the Maximum Settlement Amount and its share of employer-side payroll taxes, Plaintiff, the State
22 of California and all PAGA-Aggravated Employees shall release the Released Parties from any
23 and all claims for PAGA civil penalties arising during the PAGA Period, that were alleged or
24 reasonably could have been alleged based on the facts contained in Plaintiff's operative
25 Complaint, as enumerated in Paragraph 17 above, and/or in Plaintiff's LWDA Notice. It is
26 understood and agreed that PAGA-Aggravated Employees will not have the opportunity to opt out of
27 this PAGA Release.

28 **19. Plaintiff's Additional Release.** In addition to the Class Members' Released

1 Claims, Plaintiff, in her individual capacity, agrees to release the Released Parties from any and
2 all claims she may have, known and unknown, under federal, state and/or local law, statute,
3 ordinance, regulation, common law, or other source of law, arising as of the date of execution of
4 this Agreement, including but not limited to claims arising from or related to her employment
5 with Defendant, her termination, her compensation while in Defendant's employ, and all other
6 dealings she may have had with the Released Parties. Plaintiff expressly waives and relinquishes
7 all rights and benefits of section 1542 of the Civil Code of the State of California, and does so
8 understanding and acknowledging the significance and consequence of specifically waiving her
9 rights under section 1542 not to otherwise release unknown claims. Section 1542 of the Civil
10 Code of the State of California states as follows:

11 A general release does not extend to claims that the creditor or
12 releasing party does not know or suspect to exist in his or her favor
13 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.

14 Notwithstanding the provisions of section 1542, and to implement a full and complete release and
15 discharge of the Released Parties, Plaintiff expressly acknowledges that this Agreement is
16 intended to include in its effect, without limitation, all claims that Plaintiff does not know or
17 suspect to exist in her favor at the time of signing this Agreement, and that this Agreement
18 contemplates the extinguishment of any such claims.

19 MOTION FOR PRELIMINARY APPROVAL

20 20. **Mutual Duty of Cooperation to Seek Approval.** The Parties agree to work
21 diligently and cooperatively to have this Settlement expeditiously jointly presented to the Court
22 for preliminary approval. Promptly upon execution of this Agreement, the Parties shall apply to
23 the Court for the entry of an order scheduling a fairness hearing on the question of whether the
24 proposed settlement, including payment of attorneys' fees and costs, the Class Representative's
25 Service Award payment, and the PAGA Payment, should be approved as fair, reasonable and
26 adequate as to the members of the Settlement Class. Class Counsel shall prepare a draft motion
27 for preliminary approval, including a proposed Preliminary Approval Order, and will circulate the
28 draft to Defense Counsel at least five business days in advance of its filing. If the Parties disagree

1 on any aspect of the proposed motion for preliminary approval and/or the supporting declarations
2 and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf
3 of the Parties to resolve the disagreement.

4 21. **Contents of Preliminary Approval Order.** As part of the motion for preliminary
5 approval, the Parties shall apply to the Court for the entry of an Order as follows:

- 6 a. Certifying the Settlement Class for settlement purposes only;
7 b. Approving, as to form and content, the proposed Class Notice (Exhibit 1
8 attached hereto);
9 c. Approving the manner and method for Class Members to object to or request
10 exclusion from the Settlement, as contained herein and within the Class Notice;
11 d. Directing the mailing of the Settlement Notices to Class Members, by first
12 class mail;
13 e. Preliminarily approving the Settlement subject only to the objections of Class
14 Members and final review by the Court; and
15 f. Setting a date and time for the Final Approval Hearing.

16 22. **Resolution of Court Concerns.** If the Court does not initially grant Preliminary
17 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
18 Counsel and Defense Counsel will expeditiously work together, and in good faith, to modify the
19 Agreement and/or otherwise satisfy the Court's concerns.

20 **SETTLEMENT ADMINISTRATION**

21 23. **Selection of Settlement Administrator.** The Parties have jointly selected ILYM
22 Group, Inc. ("ILYM") to serve as the Settlement Administrator and verified that, as a condition of
23 appointment, ILYM agrees to perform, as a fiduciary, all duties specified in this Agreement in
24 exchange for payment of the Settlement Administration Costs. The Parties and their Counsel
25 represent that they have no interest or relationship, financial or otherwise, with the Settlement
26 Administrator other than a professional relationship arising out of prior experiences administering
27 settlements.

28 24. **Qualified Settlement Fund.** The Settlement Administrator shall establish a

1 settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under U.S.
2 Treasury Regulation section 468B-1. The Administrator shall have and use its own Employer
3 Identification Number for purposes of calculating payroll tax withholdings and providing reports
4 to state and federal tax authorities.

5 **25. Transmission of Class Data to Administrator.** Within twenty-one (21) calendar
6 days after the Court grants preliminary approval of the Settlement, to the extent practicable,
7 Defendant will securely provide the Settlement Administrator with the Class Data, including the
8 names, last known addresses and telephone numbers, and social security numbers of the Class
9 Members, along with data sufficient to enable the Administrator to determine the number of
10 Compensable Workweeks worked by each Class Member during the relevant Class Period and
11 PAGA Period, as reflected in Defendant's records. The Settlement Administrator will retain the
12 class data and will not share it with Class Counsel, except as otherwise permitted herein.

13 **26. Mailing of Class Notices.** Within twenty-one (21) calendar days after receiving
14 the Class Data from Defendant, the Settlement Administrator shall mail copies of the Court-
15 approved Class Notice to all Class Members via regular First-Class U.S. Mail. The Settlement
16 Administrator shall exercise its best judgment to determine the current mailing address for each
17 Class Member. The address identified by the Settlement Administrator as the current mailing
18 address shall be presumed to be the most current mailing address for each Class Member. The
19 Settlement Administrator shall perform a search based on the National Change of Address
20 Database maintained by the United States Postal Service to update and correct any known or
21 identifiable address changes. The Parties agree that this procedure for notice provides the best
22 notice practicable to Class Members and fully complies with due process.

23 **27. Undeliverable Class Notices.** Any Settlement Notice returned to the Settlement
24 Administrator as non-deliverable on or before the Response Deadline shall be re-mailed to the
25 forwarding address affixed thereto within five (5) calendar days of receipt of the returned Class
26 Notice by the Settlement Administrator. If no forwarding address is provided, the Administrator
27 shall attempt to determine a correct address by the use of skip-tracing, or other type of automated
28 search, using the name, address and/or Social Security number of the Class Member involved,

1 and shall then perform a re-mailing to the Class Member whose Class Notice was returned as
2 non-deliverable within five (5) calendar days of receipt of the returned Notice by the
3 Administrator, assuming another mailing address is identified by the Administrator. The
4 deadlines for Class Members to submit written Objections, Requests or Exclusion, or challenges
5 to Compensable Workweeks will be extended an additional 7 calendar days from the date of the
6 re-mailing, even if this results in an extension of the otherwise-applicable 45-day Response
7 Deadline. If these procedures are followed, notice to Class Members shall be deemed to have
8 been fully satisfied, and if the intended recipient of the Settlement Notice does not receive the
9 Class Notice, the intended recipient shall nevertheless remain a Class Member and shall be bound
10 by all terms of the Settlement and the Final Order and Judgment.

11 **28. Determination of Individual Settlement Awards and Individual PAGA**

12 **Payments.** The Settlement Administrator shall determine the eligibility for, and the amounts of,
13 each Individual Settlement Award and Individual PAGA Payment under the terms of this
14 Agreement based on the number of Compensable Workweeks worked by each Class Member in
15 the applicable Class and/or PAGA Periods. The Administrator will then include the estimated
16 number of Compensable Workweeks and the individual payment amounts in each Class
17 Member's Class Notice.

18 **29. Workweek Disputes.** Any Class Member who does not dispute the number of
19 eligible Compensable Workweeks set forth in the Class Notice need not take any further action to
20 participate in the Settlement. Class Members who wish to dispute the number of eligible
21 Compensable Workweeks set forth in the Notice, or assert that they should have been included as
22 a member of the Class, may submit a written statement to the Settlement Administrator within the
23 Response Deadline setting forth the number of Compensable Workweeks they believe should be
24 credited to them within the applicable Class or PAGA Period, accompanied by any supporting
25 documentation of their claim. The Settlement Administrator, in consultation with Class Counsel
26 and Defense Counsel, will review the pertinent payroll records, which Defendant agrees to make
27 available to the Settlement Administrator as needed. Defendant's payroll records will be
28 presumed to be correct unless a Class Member proves otherwise by credible evidence. The

1 Settlement Administrator's decision as to the total number of eligible Compensable Workers shall
2 be final and non-appealable, subject to the ultimate oversight and approval of the Court if
3 necessary.

4 **30. Objections to the Settlement.** Any Participating Class Member may object to the
5 Settlement by submitting a written objection to the Settlement Administrator within the 45-day
6 Response Deadline, unless that deadline has been extended by a re-mailing of the Class Notice.
7 An objection should include: (a) the objector's full name, signature, address, and telephone
8 number; (b) a written statement of all grounds for the objection accompanied by any legal support
9 for such objection; and (c) copies of any papers, briefs, or other documents upon which the
10 objection is based. Objecting Class Members may appear at the Final Approval Hearing either in
11 person, or through counsel retained at Class Member's own expense, to have their objection
12 heard, whether or not they had submitted a prior written objection as specified in this section. The
13 Court will rule on any objections to the settlement at the Final Approval Hearing. An objection
14 may be withdrawn at any time. The Settlement Administrator shall provide objections, if any, to
15 Class Counsel and Defense Counsel via email within three (3) calendar days of receipt, and the
16 Settlement Administrator shall attach any objections to its declaration of due diligence, which is
17 to be filed with the Court prior to the Final Approval Hearing. Any Participating Class Member
18 who files an objection remains eligible to receive monetary compensation from the Settlement. At
19 no time shall any of the Parties, Class Counsel, or Defense Counsel seek to solicit or otherwise
20 encourage or discourage Class Members from submitting a Notice of Objection or filing an
21 appeal from the Final Order and Judgment. Class Members who submit a Request for Exclusion
22 are ineligible to object to the Settlement.

23 **31. Requests for Exclusion.** Any Class Member may request to be excluded from
24 ("opt out of") the Settlement by submitting a signed, written request to the Settlement
25 Administrator, clearly communicating that the Class Member wishes to be excluded from the
26 Settlement. To be timely and valid, the Request for Exclusion must be mailed (postmarked) by
27 the Response Deadline, 45 days from the Settlement Administrator's mailing of the Class Notice,
28 unless that deadline has been extended by a re-mailing of the Class Notice. The Request for

1 Exclusion should contain the Class Member's name, address, signature, date, telephone number
2 or email address, and the name of the case (McGarity v. Demmon Family Partnership). Persons
3 who submit a timely Request for Exclusion will be referred to as Non-Participating Class
4 Members. The Settlement Administrator will accept any Request for Exclusion as valid if the
5 Administrator can reasonably ascertain the identity of the person as a Class Member and the Class
6 Member's desire to be excluded. Non-Participating Class Members will not be entitled to receive
7 an Individual Class Payment under the Settlement, will not be bound by the terms and conditions
8 of the Class Settlement, and will not be releasing any of the Class Members' Released Claims.
9 However, Non-Participating Class Members who are PAGA-Aggravated Employees will still
10 receive Individual PAGA Payments and will be deemed to have released their PAGA claims for
11 civil penalties as described in Paragraph 18. Any Class Member who does not submit a timely
12 Request for Exclusion will be deemed to be a Participating Class Member and will be bound by
13 the terms and condition of the Settlement.

14 **32. Weekly Status Reports.** Following the mailing of the Class Notice, the
15 Settlement Administrator will provide Class Counsel and Defense Counsel with weekly reports
16 of, among other things: the number of Class Notices mailed or re-mailed, Class Notices returned
17 undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and
18 challenges to Workweeks received and/or resolved. The Administrator will promptly provide
19 counsel for the Parties with copies of any objections received. Additionally, the Settlement
20 Administrator will provide to counsel for the Parties any other updated reports regarding the
21 administration of the Settlement as may be needed or requested from time to time, including any
22 declarations required by the Court.

23 **33. Other Duties of the Settlement Administrator.** The Settlement Administrator
24 shall perform such other duties as may be necessary from time to time, as directed by Counsel or
25 the Court. This shall include, among other things, (1) maintaining and monitoring an email
26 address and toll-free telephone number to receive Class Member calls, faxes and emails; (2)
27 establishing and maintaining an internet website to post necessary information for Class Members
28 regarding this Agreement and the Final Approval Hearing, among other things; (3) providing

1 Counsel for the Parties with a declaration suitable for filing in Court at least 14 days before
 2 Plaintiff is required to file her motion for Final Approval of the Settlement, attesting to the
 3 Administrator's compliance with all of its obligations under the Agreement and other necessary
 4 information regarding the Class Notices, Requests for Exclusion and objections; and (4)
 5 providing a final report and compliance declaration suitable for filing with the Court following
 6 the Administrator's disbursement of all the payments required by this Agreement, in accordance
 7 with any deadlines set by the Court.

8 MOTION FOR FINAL APPROVAL

9 34. **Final Settlement Approval Hearing and Entry of Final Order and Judgment.**

10 Following expiration of the Response Deadline, Plaintiff shall prepare and file a motion on behalf
 11 of both Parties seeking final approval of the Settlement, including a request for approval of the
 12 PAGA settlement under Labor Code section 2699(1)(2), a proposed Final Approval Order, and a
 13 proposed Judgment. Plaintiff shall provide drafts of the motion for final approval and proposed
 14 Final Order and Judgment to Defense Counsel not later than seven days prior to filing the motion.
 15 Class Counsel and Defense Counsel will expeditiously meet and confer in good faith to resolve
 16 any disagreements concerning the motion. Plaintiff's motion for Final Approval shall be
 17 accompanied by a declaration from the Settlement Administrator, as referenced above, describing
 18 the process and results of the administration of the Settlement to date. Plaintiff will prepare and
 19 include with the Final Approval motion, a request seeking approval of Plaintiff's request for
 20 reimbursement of Class Counsel's attorneys' fees and costs incurred in this matter and Plaintiff's
 21 request for a Class Representative Service Award.

22 35. **Contents of Proposed Final Order and Judgment.** The proposed Final Order
 23 and Judgment will include, among other things:

- 24 a. Final Approval of the Settlement, adjudging the terms thereof to be fair,
- 25 reasonable and adequate, and directing consummation of its terms and provisions;
- 26 b. Approval of Class Counsel's application for an award of attorneys' fees
- 27 and costs;
- 28 c. Approval of the Class Representative Service Award payment to Plaintiff;

- d. Approval of the Settlement Administration Costs;
- e. Approval of the PAGA settlement;
- f. The setting of a date when the Parties shall submit the Final Report regarding the distribution of the Maximum Settlement Amount pursuant to California Code of Civil Procedure section 384, and, if necessary, a date for a final accounting hearing following its receipt of the Final Report;
- g. The entering of a judgment in the Action that is intended to preclude any Class Members from pursuing any individual, class or representative claims against any of the Released Parties that have been released herein pursuant to the Settlement Agreement, upon satisfaction of all payments and obligations hereunder, excluding the Class claims of those persons who submitted valid and timely Requests for Exclusion.

36. **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement, the Parties will expeditiously work together in good faith to address the Court's concerns, including, if necessary, by revising the Agreement to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Award of fees and costs, and/or Settlement Administration Costs shall not constitute a material modification of the Agreement within the meaning of this Paragraph.

37. **Jurisdiction of the Court Following Judgment.** Following entry of the Final Order and Judgment, the Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith; and addressing any other settlement administration and compliance matters that may require its attention. If any party brings an action to enforce the terms of this Agreement, the prevailing party shall be entitled to its/her reasonable attorneys' fees and costs.

SETTLEMENT FUNDING AND PAYMENTS

38. **Information from Settlement Administrator Regarding Funding.** Not later

1 than ten (10) calendar days after the Effective Date, the Settlement Administrator will provide
2 Defense Counsel with an accounting of all anticipated payments from the QSF as specified in this
3 Agreement and approved by the Court, including all necessary routing and payment instructions
4 to the QSF, and including the amount due for the employer's share of payroll taxes on the wage
5 payments to be made outside the Maximum Settlement Amount. The Settlement Administrator
6 also will provide counsel for the Parties with at least fourteen (14) calendar days, whether before
7 or after the funding date but before the date of the scheduled distribution date, in which to review
8 and approve the Administrator's proposed payment calculations.

9 **39. Funding of Settlement.** Defendant shall pay the Maximum Settlement Amount,
10 together with the amount the Settlement Administrator has determined or estimated to be
11 Defendant's share of employer taxes due on the wages being paid under the Settlement, in one
12 lump sum payment within thirty (30) calendar days after the Effective Date. Defendant shall
13 provide the Maximum Settlement Amount to the Settlement Administrator in any feasible
14 manner, including, but not limited to, a wire transfer or a check.

15 **40. Timing of Settlement Disbursements.** Within twenty (20) calendar days after the
16 Defendant has provided the Settlement Administrator with the Maximum Settlement Amount,
17 and after the Settlement Administrator has provided the Parties with an opportunity to review and
18 approve the Settlement Administrator's proposed payment calculations, the Settlement
19 Administrator will distribute the payments to Plaintiff for her Class Representative Service
20 Award, to Class Counsel for their awarded attorneys' fees and costs, to the LWDA for its portion
21 of the PAGA Payment, to the Participating Class Members for their Individual Class Payments
22 Awards, to all PAGA-Agrieved Employees for their Individual PAGA Payments, and to itself
23 for the Settlement Administration Costs.

24 **41. Method of Individual Payments.** The Settlement Administrator shall mail the
25 Individual Settlement Awards and Individual PAGA Payments by regular First Class U.S. Mail to
26 each person's last known mailing address. Prior to mailing the payments, the Settlement
27 Administrator shall perform a search based on the National Change of Address Database
28 maintained by the United States Postal Service to update and correct any known or identifiable

1 address changes.

2 42. **Non-Reversionary Settlement; No Claim Necessary.** Participating Class
3 Members shall not be required to submit a claim in order to receive a share of the Net Settlement
4 Amount, and no portion of the Maximum Settlement Amount shall revert to Defendant. To the
5 extent the Court does not approve the full requested attorneys' fees, litigation costs, Class
6 Representative Service Award or Settlement Administration Costs, the Net Settlement Amount
7 will increase accordingly, by the difference between the requested amounts and the amounts
8 awarded by the Court. If this Settlement is not finally approved by the Court in full, or is
9 terminated, rescinded, canceled or fails to become effective for any reason, or if the Effective
10 Date does not occur, then no portion of the Maximum Settlement Amount shall be paid.

11 43. **Disposition of Uncashed Checks.** Any Individual Settlement Payment check
12 and/or Individual PAGA Payment check issued by the Settlement Administrator must be cashed
13 within 180 days after issuance. After the expiration of the 180-day period, the Settlement
14 Administrator will void any uncashed checks, and the total amount of any uncashed settlement
15 checks will be paid as a *cy pres* to Legal Aid at Work, a non-profit organization that supports
16 projects which will benefit Class Members, pursuant to California Code of Civil Procedure
17 section 384, subject to the approval of the Court. The Parties and their Counsel certify that they
18 have no connection to or relationship with this *cy pres* recipient.

19 44. **Settlement Binding Even If Checks Not Cashied.** In the event a Participating
20 Class Member or Participating PAGA Member fails to cash/deposit his or her Individual Class
21 Payment check and/or Individual PAGA Payment check, for whatever reason, that person shall
22 nevertheless remain bound by the Settlement and/or the PAGA Release.

23 ADDITIONAL PROVISIONS

24 45. **Nullification of Settlement.** In the event: (i) the Court does not enter the
25 Preliminary Approval Order; (ii) the Court does not grant Final Approval of the Settlement;
26 (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not
27 become final for any other reason, this Agreement shall be rendered null and void, and any order
28 or judgment entered by the Court in furtherance of this Agreement shall be treated as void from

1 the beginning. In such a case, this Agreement and any documents related to it shall not be used
2 by any Class Member or Class Counsel to support any claim or request for class certification in
3 the Action, and shall not be used in any other civil or administrative action against Defendant or
4 any of the other Released Parties.

5 46. **Plaintiff's Waiver of Right to Be Excluded.** Plaintiff agrees that by signing this
6 Agreement, she will be bound by the terms herein. Plaintiff further agrees that, upon signing this
7 Agreement, she will not request to be excluded from this Settlement and that any such request for
8 exclusion by Plaintiff will be void and of no force or effect.

9 47. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
10 and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class
11 Members who did not object to the Settlement as provided in this Agreement waive all rights to
12 appeal from the Judgment. If an objector appeals the Judgment, the Parties' obligations to
13 perform under this Agreement will be suspended until the appeal is finally resolved and the
14 Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement
15 Amount. However, nothing in this Agreement shall preclude Plaintiff from appealing from a
16 court order denying or failing to grant in full her requests for attorneys' fees, costs, or service
17 award. Any order reducing the Class Counsel Award or the Class Representative Service Award
18 will not be grounds on Plaintiff's part to nullify or void this Settlement.

19 48. **No Credit Towards Defendant's Benefit Plans.** Neither the terms of this
20 Settlement nor any of the amounts paid to Plaintiff or any Class Member shall have any effect on
21 the eligibility or calculation of any employee benefits under Defendant's benefit plans. Any
22 Individual Class Payment or PAGA Payment amounts paid to Class Members under the
23 Settlement do not represent any modification of any Class Member's previously-credited hours of
24 service or other eligibility criteria, and will not be utilized to calculate any additional benefits,
25 vesting or credit under any bonus or compensation plan, collective bargaining agreement,
26 employee pension benefit plan, employee welfare benefit plan or program or policy sponsored by
27 Demmon or any of its affiliates. It is the intent of the Parties that the Individual Settlement
28 Awards and Individual PAGA Payments provided for in this Agreement are the sole payments to

1 be made by Defendant to Class Members and others in connection with this Settlement, and that
2 the Class Members are not entitled to any new or additional compensation or benefits as a result
3 of having received the Individual Settlement Awards and/or and Individual PAGA Payments.

4 **49. No Admission of Liability, Class Certification or Representative Manageability**
5 **for Other Purposes.** Defendant denies all claims alleged in the Action and denies all wrongdoing
6 whatsoever by Defendant. Defendant further denies that any of its employees has been
7 “aggrieved” by a violation of the Labor Code. Neither this Agreement, nor any of its terms and
8 conditions, nor any of the negotiations connected with it, is a concession or admission, and none
9 shall be used against Defendant as an admission or indication with respect to any claim of any
10 fault, concession, or omission by Defendant or that class certification is proper under the standard
11 applied to contested certification motions. The Parties agree that certification of the proposed
12 class and representative treatment under PAGA is for purposes of this Settlement only. This
13 Agreement will not be admissible in this or any other proceeding as evidence that either a class
14 action should be certified, that Plaintiff’s PAGA claims are manageable for trial, or that
15 Defendant is liable to Plaintiff or any Class Member, other than according to the terms of this
16 Agreement.

17 **50. Tax Liability.** The Parties and their counsel make no representations as to the tax
18 treatment or legal effect of the payments specified herein, and Class Members are not relying on
19 any statement or representation by the Parties, Class Counsel or Defense Counsel in this regard.
20 Participating Class Members, PAGA-Aggrieved Employees, Class Counsel, and Plaintiff shall be
21 solely and legally responsible for the payment of all applicable taxes and penalties assessed on the
22 payments specified herein.

23 **51. Circular 230 Disclaimer.** The Parties acknowledge and agree that (i) no
24 provision of this Agreement, and no written communication or disclosure between or among the
25 Parties, Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall
26 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
27 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
28 amended); (ii) the acknowledging party (a) has relied exclusively upon his, her, or its own,

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

10 **52. Authorization to Enter into Agreement.** Class Counsel and Defense Counsel
11 warrant and represent they are expressly authorized by the Parties whom they represent to
12 negotiate this Agreement and to take all appropriate actions required or permitted to be taken by
13 the Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents
14 required to effectuate its terms. The person signing this Stipulation of Settlement on behalf of
15 Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of
16 Defendant. Plaintiff represents and warrants that she is authorized to sign this Agreement on
17 behalf of herself and the Class, and as proxy for the State of California, and that she has not
18 assigned any claim or part of a claim covered by this Agreement to a third party.

19 **53. Cooperation to Effectuate Settlement.** The Parties, Class Counsel and Defense
20 Counsel shall cooperate with each other and use their best efforts to effect the implementation of
21 this Settlement. In the event the Parties are unable to reach agreement on the form or content of
22 any document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
24 the Court to resolve such disagreement.

25 **54. Notice to LWDA.** Class Counsel shall submit any required notices of this
26 Agreement to the LWDA as may be required by Labor Code sections 2699(1)(2) and (3) or other
27 provisions of PAGA.

28 **55. Invalidity of Any Provision.** In the event the Court declares any material

1 provision of this Agreement invalid, the Agreement will be void and its terms will be of no force
2 and effect, except as otherwise agreed to by the Parties in writing, subject to the Court's approval.
3 Before the Court concludes that any term or provision of this Agreement is invalid, the Parties
4 will request that the Court first attempt to construe the terms or provisions valid to the fullest
5 extent possible consistent with applicable precedents so as to define all provisions of this
6 Agreement as valid and enforceable. The Parties further agree to meet and confer in an attempt to
7 resolve any issues or concerns the Court may have as to the validity of any provision in an effort
8 to effectuate the essential terms of this Settlement, and to discuss any possible amendments to this
9 Agreement or its Exhibit 1 needed to obtain the Court's approval of the Settlement.

10 **56. Binding Nature of Notice of Class Action Settlement.** It is agreed that, because
11 the Class Members are so numerous, it is impossible or impractical to have each Class Member
12 execute the Agreement. The Class Notice shall advise all Class Members of the binding nature of
13 the Settlement, and the release of the Class Members' Released Claims as described above in
14 Paragraph 20 shall have the same force and effect as if this Agreement were executed by each
15 Participating Class Member.

16 **57. Entire Agreement.** This Agreement and its attached Exhibit 1 constitute the
17 entire agreement between the Parties, and no oral or written representations, warranties, or
18 inducements have been made to Plaintiff or Defendant concerning this Agreement or Exhibit 1
19 other than the representations, warranties, and covenants contained and memorialized in this
20 Agreement and Exhibit 1. No other prior or contemporaneous written or oral agreements may be
21 deemed binding on the Parties.

22 **58. Cooperation in Drafting.** The Parties have cooperated in the drafting and
23 preparation of this Agreement. This Agreement will not be construed against any Party on the
24 basis that the Party was the drafter or participated in the drafting.

25 **59. Amendment or Modification.** This Agreement may be amended or modified
26 only by a written instrument signed by counsel for all Parties or their successors-in-interest, and
27 approved by the Court.

28 **60. Governing Law.** All terms of this Agreement and its exhibit shall be governed by

1 and interpreted according to the laws of the State of California, without regard to conflict of law
2 principles.

3 61. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and
4 inure to the benefit of, the successors and assigns of the Parties.

5 62. **Headings.** The descriptive heading of any section or paragraph of this Agreement is
6 inserted for convenience of reference only and does not constitute a part of this Agreement.

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

13 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
14 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and
15 Defendant as of the date(s) set forth below:

16
17 Dated: 12/1/2023

PLAINTIFF NICOLE McGARITY

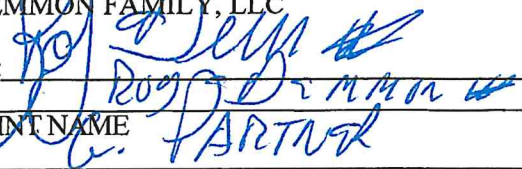
DocuSigned by:



Plaintiff Nicole McGarity

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19
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21 Dated: 12/8/2023

THE DEMMON FAMILY PARTNERSHIP, THE
DEMMON FAMILY PARTNERSHIP II, and
DEMMON FAMILY, LLC

By: 

PRINT NAME

TITLE

22
23
24
25 APPROVED AS TO FORM:

POLARIS LAW GROUP

26
27 Dated: December 4, 2023


William L. Marder

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Attorneys for Plaintiff Nicole McGarity

HYUN LEGAL, APC

Dated: December 4, 2023


Dennis S. Hyun
Attorneys for Plaintiff Nicole McGarity

DATED: 12/8/2023

WILD, CARTER & TIPTON, A Professional
Corporation

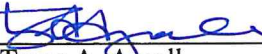
By: 
Tracy A. Agrall
Attorneys for Defendants THE DEMMON
FAMILY PARTNERSHIP, THE DEMMON
FAMILY PARTNERSHIP II, and DEMMON
FAMILY, LLC

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

NICOLE MCGARITY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE DEMMON FAMILY PARTNERSHIP, a
California limited partnership; The Demmon Family
Partnership II, a California limited partnership; and
Demmon Family LLC, a California limited liability
company; and DOES 1 through 50, inclusive,
Defendants.

Case No. 34-2021-00308214

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

Judge: Hon. Jill H. Talley
Dept: 27

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT ARISING FROM YOUR
EMPLOYMENT BY THE DEMMON FAMILY PARTNERSHIP AND RELATED COMPANIES**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement of a lawsuit will pay money to certain non-exempt employees who have been employed by The Demmon Family Partnership, The Demmon Family Partnership II, and Demmon Family LLC (“Demmon,” or “Defendant”) from September 10, 2017, through December 18, 2023.
- The Settlement resolves a class action lawsuit alleging various wage and hour claims brought against Demmon on behalf Demmon’s non-exempt employees who were employed during this time period and who received certain sick pay and/or overtime wages.
- The Settlement also resolves claims for penalties that have been brought on behalf of the State of California under California’s Private Attorneys General Act (“PAGA”).
- The Settlement avoids the costs and risks of continuing the lawsuit, pays money to employees, and releases Demmon from liability.
- Demmon expressly denies all of the claims in the lawsuit and denies any wrongdoing or liability. The two sides disagree on how much money – if any – could have been awarded if employees won at trial.
- **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS NOTICE CAREFULLY.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You need not take any action if you wish to receive your settlement payment. If the Settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator, ILYM Group, Inc. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no class settlement payment. Send a letter to the Settlement Administrator, as explained below, making clear you wish to exclude yourself from the Settlement. This is the only option that allows you to be part of any other lawsuit against Demmon asserting the legal claims that were settled in this case. You will, however, be bound by the Private Attorneys General Act (the “PAGA”) release and you will receive a payment for the PAGA release even if you exclude yourself.
Object	Write to the Court, as explained below, about why you believe the Settlement is unfair.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action and PAGA lawsuit and informs you of your legal rights under that proposed settlement (“the Settlement”). You are receiving this notice because you may be a member of the class action and PAGA lawsuit.

WHAT IS THIS LAWSUIT ABOUT?

On September 10, 2021, Plaintiff Nicole McGarity (“Plaintiff,” or “McGarity”) filed this lawsuit in Sacramento County Superior Court. Plaintiff’s lawsuit alleges violations of the California Labor Code (including the Private Attorneys General Act) and the California Business and Professions Code. Her complaint alleges that members of the Settlement Class employed by Demmon during the Class Period were not properly paid their sick pay and overtime wages based on the higher, regular rate of pay; that Demmon’s wage statements were not always accurate, particularly as to paid sick leave and overtime wages; and that former employees in the Settlement Class did not receive all wages due to them at time of termination. Plaintiff seeks to recover unpaid wages, premiums, statutory and civil penalties, attorneys’ fees and costs. Demmon denies all of the material allegations in the lawsuit and denies that it did anything wrong.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court has not made any ruling in favor of Plaintiff or Demmon. It also has not determined whether this lawsuit may proceed as a class action. Plaintiff believes she would have prevailed on her claims at a trial. Demmon does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they each avoid the costs, risks, and uncertainties of a trial, and the employees allegedly affected will receive compensation.

B. Who is in the Settlement Class?

The Settlement Classes consist of the following individuals:

- i. All current and former non-exempt employees who have worked for Defendant in California at

any time from September 10, 2017, through the earlier of 60 days from today, or the date of preliminary approval (“Class Period End Date”), and was paid overtime and earned non-discretionary pay covering the same pay period (the “Regular Rate Class”); and

- ii. All current and former non-exempt California employees who were paid sick pay in the same workweek in which they earned any non-discretionary incentive wages from Defendant at any time from September 10, 2017, through the Class Period End Date (the “Sick Pay Class”)

Demmon’s settlement of the PAGA penalty claim in this case will cover the following PAGA-Aggravated Employees:

- i. All current and former non-exempt employees who have worked for Defendant in California at any time during the PAGA Period and was paid overtime and earned non-discretionary pay covering the same pay period.
- ii. All current and former non-exempt California employees who were paid sick pay in the same workweek in which they earned any non-discretionary incentive wages from Defendant at any time during the PAGA Period.

The PAGA Period means the period from July 8, 2020, through the Class Period End Date

C. What has Demmon agreed to do?

Demmon will pay \$87,500 (the “Maximum Settlement Amount”) to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) Class Counsel’s attorneys’ fees in an amount set by the Court not to exceed 33 1/3% of the Maximum Settlement Amount (\$29,166.67), plus Class Counsel’s documented litigation costs in an amount set by the Court not to exceed \$25,000; (2) a service payment to Plaintiff in an amount set by the Court, not to exceed \$10,000 for her service in the lawsuit; and (3) a reasonable amount set by the Court to the Settlement Administrator for administering the settlement, currently estimated at \$3,650. Demmon has also agreed to pay \$8,750 to resolve the claims for civil penalties under PAGA. Of this amount, 75% (\$6,562.50) will be paid to the State of California and the remaining 25% (\$2,187.50) will be paid to all persons who are eligible members of the Settlement Class who have been employed during the PAGA Period, whether or not they exclude themselves from the Class Settlement.

The portion of the Maximum Settlement Amount remaining after these payments is the Net Settlement Amount, which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below. Demmon also will pay the employer share of applicable payroll taxes due on the portion of the individual settlement payments designated as “wages,” which will be paid outside the Maximum Settlement Amount.

D. What are you giving up to get a payment and stay in the Class?

Subject to the Court’s approval of the Settlement, all members of the Settlement Class who do not opt out of the Settlement will release Demmon, and any of its former and present parents, corporate members, subsidiaries, divisions, and affiliated companies, and their respective officers, directors, employees, partners, shareholders, agents, insurers, successors, assigns, and legal representatives (“Released Parties”), as follows:

Upon the Effective Date and Defendant’s funding of the Maximum Settlement Amount and its share of employer-side payroll taxes, Plaintiff and each member of the Settlement Class other than those who submit a timely request to opt out of the Settlement will release and discharge the Released Parties, from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, arising from September 10, 2017, through the Class Period End Date, including statutory, contractual, or common law claims for damages, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and Professions Code §§ 17200 et seq., the applicable wage orders at California Code of Regulations, Title 8, Section 11000 et seq., or otherwise – that arise out of or are reasonably related to the factual allegations that were alleged or could have

been alleged in Plaintiff's Complaint herein, i.e.,: (a) any and all claims for failure to pay sick leave at the correct regular rate of pay; (b) any and all claims for unpaid overtime wages at the correct regular rate of pay; (c) any and all derivative claims for failure to furnish accurate itemized wage statements in accordance with Labor Code section 226 based on alleged failures to pay sick pay and overtime wages at the correct regular rate of pay; (d) any and all derivative claims for failure to provide wages when due upon separation of employment under Labor Code §§ 201-203 based on alleged failures to pay sick pay and overtime wages at the correct regular rate of pay; (e) any and all derivative claims for "late payment" penalties under Labor Code §§ 204 and 210 based on alleged failures to pay sick pay and overtime wages at the correct regular rate of pay; and (f) any and all claims for attorneys' fees and costs arising from alleged failures to pay sick pay and overtime wages at the correct regular rate of pay.

Additionally, Upon the Effective Date and Defendant's funding of the Maximum Settlement Amount and its share of employer-side payroll taxes, Plaintiff, the State of California and all PAGA-Aggravated Employees shall release the Released Parties from any and all claims for PAGA civil penalties arising during the PAGA Period, that were alleged or reasonably could have been alleged based on the facts contained in Plaintiff's operative Complaint, as enumerated in Paragraph 17 above, and/or in Plaintiff's LWDA Notice. It is understood and agreed that PAGA-Aggravated Employees will not have the opportunity to opt out of this PAGA Release.

Finally, the named Plaintiff McGarity will generally release all known and unknown claims she may have against Demmon, of any nature whatsoever, not limited to the wage and hour claims alleged in this lawsuit.

The Released Claims do not include a release of all the other rights you have as an employee or former employee of the Released Parties. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each participating Settlement Class Member will receive an Individual Payment Amount, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by first deducting from the Maximum Settlement Amount the court-approved (1) attorneys' fees and costs to Class Counsel; (2) settlement administration costs; (3) service payment to the Plaintiff; and (4) PAGA payments to the State of California and the PAGA-eligible members of the Settlement Class.

Based on Demmon's records, the Settlement Administrator will determine the number of Compensable Workweeks worked by each Class Member and/or PAGA-Aggravated Employee. "Compensable Workweeks" means any workweek during the Class Period, including the PAGA Period, in which a Class Member was paid overtime earned non-discretionary pay covering the same pay period and/or sick pay wages in the same workweek in which they earned any non-discretionary incentive wages at any time during the Class Period.

Those who do not opt out of the Settlement will receive an individual settlement award that amounts to a pro rata share of their allocated Net Settlement Amount, based on the number of Compensable Workweeks they worked during the Class Period in proportion to the total number of Compensable Workweeks worked by all of the eligible Settlement Class Members in the Settlement Class.

According to Demmon's records, you were employed in the Settlement Class for [REDACTED] Compensable Workweeks between September 20, 2017 and [INSERT CLASS PERIOD END DATE].

Also, according to Demmon's records, you have [REDACTED] Compensable Workweeks during the PAGA Period (between July 8, 2020, and December 18, 2023).

Based on this number, your Individual Payment Amount is estimated to be \$[REDACTED]. The actual amount that you receive could be more or less than this amount, depending on the final settlement terms approved by the Court.

Please be advised that the number of Compensable Workweeks listed above is presumed to be correct unless you submit documents proving otherwise. If you disagree with the number of Compensable Workweeks listed above, please submit an explanation and evidence of your proposed Compensable Workweeks to the Settlement Administrator no later than [45 days after mailing]. In the event of a dispute about the correct number of Compensable Workweeks you worked during the Class Period, the Settlement Administrator will resolve the challenge with input from Demmon and Class Counsel, subject to final resolution by the Court if necessary.

F. Will any taxes be taken out of the settlement payments?

Twenty percent (20%) of your Individual Payment Amount will be treated as back wages and reported on an IRS Form W-2 with all appropriate taxes withheld. The remaining eighty percent (80%) of your payment will be treated as interest and penalties and reported as non-wage income on an IRS Form 1099. W-2 and 1099 Forms will be issued to all Settlement Class Members who cash their checks, as required by law. The PAGA payments will be treated solely as penalties and reported on an IRS Form 1099, without tax withholding.

Aside from the employer portion of payroll taxes, Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes owed on the Individual Payment Amounts they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this Settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Approval Hearing”) on [redacted], 2023, at [redacted] m., in Department 27 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95826. The Court will then determine: (i) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iii) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s attorneys; (iv) the amount that should be awarded to Plaintiff as a service payment; (v) the amount that should be approved for civil penalties under PAGA; and (vi) the amount that should be approved for settlement administration costs. At the Final Approval Hearing, the Court will hear all objections as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU WILL NEVER BE REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move your residence, you must update your address with the Settlement Administrator. If you disagree with the number of workweeks worked as indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to support your position. The Settlement Administrator’s address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member but you object to the proposed Settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney

at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator, _____ at [address]. Objections must be postmarked no later than [45 days after mailing]. However, you still may appear at the Final Approval Hearing and raise an objection to the Settlement even if you did not submit written objections within this 45-day deadline.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from (“opt out” of) the Settlement, but if you choose to do so, you will not receive any payment from the proposed Class Settlement. You will not be bound by a judgment in this case as to the Class claims, and you will have the right to file your own lawsuit against Demmon and pursue your own claims in a separate suit if you wish. You can opt out of the Class by mailing a written statement to the Settlement Administrator, ILYM Group, at the above-stated address, so that it is postmarked no later than [45 days after mailing of the notice]. The written statement should contain your name, address, signature; your telephone number, or email address; and the name of this case, *McGarity v. Demmon Family Partnership*. It also must clearly state that you do not wish to be included in the Settlement, or words to that effect. It must be faxed, emailed or postmarked on or before the response deadline. If you do not exclude yourself from the Settlement in accordance with this procedure, you will be bound by the terms of the Settlement and the related judgment entered by the Court. Even if you exclude yourself as described above, you will still be bound by the PAGA release and you will receive a payment for the PAGA release.

NOTE REGARDING RESPONSE DEADLINES:

The 45-day deadline for you to opt out of the Settlement, object to the Settlement, or submit a challenge to the number of Compensable Workweeks being credited to you may be extended if your Notice was initially returned to the Settlement Administrator as undeliverable and, as a result, the Settlement Administrator re-mailed this Notice to you later. In such a case, you will have up to 7 calendar days from the date of the re-mailing to submit your response, even if that falls beyond the regular 45-day deadline

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed Settlement Agreement, which is on file with the clerk of the Sacramento County Superior Court, 720 9th Street, Room 102, Sacramento, California 95826, and may also be reviewed online at <https://www.saccourt.ca.gov/indexes/new-portal-info.aspx> [please note that you will need to create an account, but access is free], [or the Settlement Administrator’s website] [insert website information].

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR OR COUNSEL FOR THE CLASS. CLASS COUNSEL ARE:

Dennis S. Hyun, Esq.
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555

William L. Marder, Esq.
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.

**BY ORDER OF THE SACRAMENTO COUNTY
SUPERIOR COURT**