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Attorneys for Plaintiff Richard Evans

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

RICHARD EVANS, individually, and on
behalf of other members of the public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorney General Act;

Plaintiff,

v.

MY PAINT STOP, LLC., dba CREATIVE
PAINT, a California Limited Liability
Company; and DOES 1 through 25, inclusive.

Defendants.

Case No.: MSC21-01812

Honorable Edward G. Weil

**DECLARATION OF JONATHAN M.
GENISH IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:
Time:
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1. I am an attorney duly licensed to practice law in all Courts of the State of California. I am the principal attorney in the law firm of Blackstone Law, APC (“Class Counsel”), attorneys of record for Plaintiff Richard Evans (“Plaintiff”). I have personal knowledge of the facts contained herein, and, if called to testify I could and would competently do so.

2. I am fully familiar with the legal and factual issues in this case and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

4. On the vast majority of those cases, I was the only or primary attorney managing the case and thus obtained extensive experience. In that capacity, I conducted wage and hour and wrongful termination labor and employment intakes; was the primary contact for all clients; took and defended hundreds (if not thousands) of depositions; propounded and responded to all discovery; prepared and opposed all motions and pleadings, including dispositive and certification motions; strategized on all cases; attended all hearings; attended all mediations; coordinated with class action administrators; prepared and worked with experts; first and second chaired multiple trials and arbitrations; and engaged in all other intricate facets of litigation. During that time, I represented a wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex and appellate courts. Many of the cases I managed were highly publicized, with articles written about them in the

1 Los Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the plaintiffs labor and employment law firm of Blackstone
4 Law, APC. The firm has grown exponentially over the past three-plus years, now maintaining five
5 highly pedigreed attorneys working on almost exclusively labor and employment class actions, Labor
6 Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters, and other private
7 attorney representative actions, with roughly 15% of the firm focused on other complex general
8 litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of cases, including, most
11 recently:

- 12 • *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a wage
13 and hour class action brought on behalf of a class of hourly-paid employees working the
14 State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
16 Court, Case No. 19STCV29979, a private attorney general action for penalties pursuant
17 to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc. et al.*, Los Angeles Superior
19 Court, Case No. 19STCV30306, a private attorney general action for penalties pursuant
20 to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
22 Court, Case No. 19STCV30445, a private attorney general action for penalties pursuant
23 to Health and Safety Code section 25249.7.

24 7. I was counsel of record on several class action and PAGA actions that have since been
25 resolved, the most recent of which are as follows:

- 26 • *Maria Castillo-Rodriguez v. HR Outsourcing Associates, LLC*, Los Angeles Superior
27 Court, Case No. 20STCV44138, a wage and hour PAGA action.
- 28 • *Cruz v. LK Plumbing & Heating, Inc.*, Los Angeles Superior Court, Case No.

BC686825, a wage and hour PAGA action.

- *Savoy v. Collector's Universe, Inc., et al.*, Central District Court of California, Case No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court, Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

I am currently the managing partner overseeing roughly 100 labor and employment cases, approximately 80% of which include a wage and hour component. More than a dozen of these cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees

Procedural History of the Action

7. On July 7, 2021, Plaintiff provided notice to the LWDA and to Defendant of his intent to seek civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, et seq. ("PAGA"). On August 30, 2021, Plaintiff filed a class and representative action against Defendant in the Contra Costa Superior Court. Plaintiff alleged eight causes of action for: (1) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (4) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (5) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226(a)); (6) Failure to Timely Pay Wages Upon Termination (Cal. Lab. Code §§ 201, 202, 203); (7) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, et seq.); and (8) Violation of PAGA (Cal. Lab. Code §§ 2698, et seq.). Plaintiff seeks to represent a class of all current and former non-exempt and/or hourly-paid employees who worked for Defendant in the State of California at any time during the period from August 20, 2017 to May 11, 2022 and who are residents of the State of California.

8. The parties met and conferred with respect to the potential resolution of this action by means of a private mediation and agreed to exchange informal discovery as part of that process. Pursuant to this agreement to mediate, Defendant produced a random sampling of aggrieved employees' time and pay records amounting to thousands of pages of class data.

9. After a thorough investigation and analysis of these documents and data, on May 11, 2022, the parties attended a formal mediation with the Honorable Paul Ramirez (Ret.), a neutral and

1 respected mediator with extensive experience in complex wage and hour matters. At the mediation,
2 the Parties engaged in intensive settlement discussions during which they debated their respective
3 positions and exchanged views regarding the strengths and weaknesses of the alleged claims. After a
4 full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement
5 to resolve this dispute on a class and representative basis, and shortly thereafter executed a
6 memorandum of understanding memorializing the key settlement terms. Following mediation, the
7 parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement.
8 On June 13, 2022, after additional discussions and revisions to the agreement, the Settlement
9 Agreement was fully executed. A true and correct copy of the Settlement Agreement is attached hereto
10 as **Exhibit A**.

11 10. Now, following substantial investigation and extensive settlement negotiations,
12 Plaintiff seeks preliminary approval of the proposed settlement, which will resolve all class and
13 representative claims alleged in the Complaint.

14 **Notice to the LWDA**

15 11. In accordance with Labor Code sections 2699 et. seq., Plaintiff's counsel provided
16 notice of the proposed settlement to the LWDA on September 9, 2022. A true and correct copy of an
17 e-mail confirming submission of the proposed settlement and the Settlement Agreement to the LWDA
18 on September 9, 2022 is attached hereto as **Exhibit B**.

19 **Summary of the Terms of the Settlement Agreement**

20 12. For purposes of settlement only, the Parties have agreed that the Class shall be defined
21 as "All current and former non-exempt and/or hourly-paid employees who worked for Defendant in
22 the State of California at any time during the Class Period." ("Settlement Class Members" or
23 "Settlement Class"). The Class Period and release of claims begins on August 30, 2017 and ends on
24 May 11, 2022. It is estimated that there are 108 Settlement Class Members.

25 13. The parties have agreed to settle the Class and PAGA claims at issue in the Complaint
26 for a non-reversionary Gross Settlement Payment of Six Hundred Thousand Dollars and Zero Cents
27 (\$600,000.00), exclusive of any employer-side payroll taxes.

28 14. The Gross Settlement Payment is a common fund and therefore includes all requested

1 costs, fees, and other allocations. As stated above, the Gross Settlement Payment includes: (1) Class
2 Counsel's fees in the amount of thirty-three percent (33%) of the Gross Settlement Payment, equaling
3 Two Hundred Thousand Dollars and Zero Cents (\$200,000.00); (2) Class Counsel's actual litigation
4 costs, not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00); (3) Settlement
5 Administration Costs, capped at Seven Thousand Dollars and Zero Cents (\$7,000.00); (4) Class
6 Representative Incentive Payment in the amount of Seven Thousand Five Hundred Dollars and Zero
7 Cents (\$7,500.00) to Plaintiff; and (5) PAGA Penalties of Twenty Five Thousand Dollars and Zero
8 Cents (\$25,000.00). After the above-estimated amounts are deducted from the Gross Settlement
9 Payment, approximately 108 Settlement Class Members will share in a Net Settlement Fund of
10 approximately Three Hundred and Thirty Thousand Five Hundred Dollars and Zero Cents
11 (\$330,500.00)

12 15. The Net Settlement Fund will be distributed and paid to Participating Class Members
13 on a pro-rata basis based on the number of workweeks worked during the Class Period. This will
14 provide Participating Class Members with an average estimated payment of \$3,060.19. The actual
15 payments to Participating Class Members will vary based on the actual weeks worked by Participating
16 Class Members and shall be confirmed by the Settlement Administrator in advance of the final
17 approval hearing. Employees who worked during the PAGA Period shall receive a share of the 25%
18 portion of the PAGA Penalties designated for distribution to PAGA Members. These payments will
19 be distributed on a pro rata basis based on the number of workweeks worked during the PAGA Period.

20 16. Payments to Participating Class Members will be allocated as 20% wages, and 80%
21 interest and penalties. The employee share of any applicable payroll taxes on wages will be deducted
22 from the wage portion of each Participating Class Member's Individual Settlement Payment.
23 Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross
24 Settlement Payment.

25 17. The Settlement Agreement is a non-reversionary and a non-claims made settlement.
26 All money from the Net Settlement Fund will be distributed to Participating Class Members. No
27 money will revert to Defendant. Any Individual Settlement Payment checks remaining uncashed after
28 180 days will be transferred to the California State Controller's Office and held in a trust for such

1 Participating Class Members and PAGA Members. As such, no “unpaid residue” under California
2 Code of Civil Procedure section 384 will result from the Settlement.

3 18. Upon the funding of the Gross Settlement Payment and all applicable employer-side
4 payroll taxes by Defendant, each and every Participating Class Member, including Plaintiff, on behalf
5 of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be
6 deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged
7 any and all of the Released Parties of and from any and all Settled Claims, and shall be permanently
8 barred and enjoined from the institution or prosecution of any and all Settled Claims against the
9 Released Parties, except as to such rights or claims as may be created by the Settlement, subject to the
10 continuing jurisdiction of the Court.

11 **The Settlement was Reached as a Result of Arm’s-Length Dealing**

12 19. The parties’ settlement negotiations were at all times made at arm’s-length and were
13 adversarial. The Settlement was reached following a full day of mediation with a highly respected
14 mediator with substantial experience mediating wage and hour cases. Moreover, Plaintiff engaged in
15 additional negotiations in order to finalize the long-form agreement presently before the Court. At all
16 times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if
17 the parties had been unable to reach a favorable resolution.

18 20. In preparation for mediation, Defendant produced a random sampling of Settlement
19 Class Members’ time and pay records; Defendant’s employee handbooks and relevant wage and hour
20 policies and procedures; information regarding the number of putative class members; the total
21 workweeks and pay periods worked by the Settlement Class Members; and the rates of pay for each
22 Settlement Class Member. This allowed Plaintiff’s counsel to conduct an informed assessment and
23 analysis of the potential class-wide damages. The Parties extensively briefed issues regarding class
24 certification and liability and provided their analyses to the mediator who helped the parties debate the
25 strengths and weakness of their respective positions. Additionally, settlement negotiations were
26 conducted by highly capable and experienced counsel. Class Counsel are respected members of the
27 California State Bar with strong records of vigorous and effective advocacy and are experienced in
28 handling complex wage and hour class action litigation. Accordingly, Class Counsel had sufficient

1 information and experience to act intelligently in negotiating the Settlement.

2 21. The reasonableness of the Settlement is underscored by the fact that Defendant has
3 legal and factual grounds for defending the action. Based upon Class Counsel's experience litigating
4 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
5 certification and the merits of the action absent a settlement.

6 **Class Counsel's Analysis of the Maximum Available Liability and Damages**

7 22. Prior to mediation, Class Counsel analyzed a sampling of time and payroll records
8 provided by Defendant and other relevant documents and discovery. Based on the discovery provided,
9 Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the
10 Class, that Defendant faced a maximum potential liability of \$2,689,753.27. This estimate is based
11 off an estimated maximum liability for the primary claims at issue as follows: \$636,721.47 for meal
12 period violations, \$707,656.96 for rest period violations, \$481,635.00 for unpaid wages, waiting time
13 penalties of \$429,676.80, and wage statement penalties of \$178,450.00. Plaintiff further estimated
14 that Defendant faced an additional exposure of \$283,200.00 in potential (unstacked) PAGA penalties
15 (calculated based on 2,832 aggregate pay periods during the PAGA Period x \$100).

16 23. While Plaintiff believes that Defendant faced significant exposure, substantial barriers
17 to a recovery existed. Defendant contended that Plaintiff's claims are not suitable for class certification
18 because individual issues and affirmative defenses would predominate should this case go to trial.
19 While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there
20 is a significant risk that the Court may deny class certification.

21 24. For example, a large portion of Defendant's overall liability lies in Plaintiff's unpaid
22 wages claim based on unpaid overtime and failure to pay overtime at the correct regular rate of pay.
23 Plaintiff asserted that Defendant's overtime policy was facially unlawful because it states that overtime
24 is only paid for all hours worked over 40 in one week's time. However, Plaintiff's analysis of
25 Defendant's time and payroll records revealed that although liability may have been strong, the total
26 amount of unpaid wages to the 108 Settlement Class Members at issue was not high. First, there
27 appeared to be only \$23,986.00 in unpaid overtime wages. More significantly, there were so few pay
28 periods where a bonus was earned and overtime was worked, that the underpayment due to the

1 improperly calculated regular rate was barely over \$1,000.

2 25. Plaintiff's claim for unpaid wages based on off-the-clock work faced other challenges.
3 Defendant required employees to be ready to work at the start of their shift, but denied employees the
4 ability to clock in more than 5 minutes before the start of their shift. Notwithstanding, employees had
5 to arrive for their shift early enough to put on their apron, affix their name badge to their clothing,
6 locate a headset, make sure it worked, sanitize it and put it on before clocking in for their shift. In
7 addition, Plaintiff asserted that Defendant required employees to respond to phone calls and text
8 messages on substantive topics such as client orders and project status when they were not at work.
9 However, this claim lacked documentation to assess damages and likely would have required
10 testimonial evidence to be obtained and presented from (ostensibly) each individual employee.

11 26. Next, Plaintiff's meal period claims faced challenges. Generally, these claims have
12 been increasingly difficult to certify in recent years and Defendant contended its practices were lawful.
13 (*See Brinker*, 53 Cal.4th at 1034-35.) Plaintiff's theory of liability for meal period violations was
14 based on allegations that Defendant's policy was unlawful because it informed employees only of the
15 right to take a meal break if they worked a shift of "more than six hours." Plaintiff further alleged that
16 Defendant had failed to implement policies and practices that allowed Settlement Class Members to
17 take meal breaks in the manner required under California law. (*See Bradley v. Networkers Int'l, LLC*,
18 211 Cal.App.4th 1129 (2012) [holding that "the lack of a meal/rest break policy and uniform failure
19 to authorize such breaks are matters of common proof."].) Yet, Plaintiff's analysis of the data
20 Defendant produced appeared to reflect a much lower violation rate than anticipated – yielding
21 potential damages of approximately one-third of the estimated maximum damage analysis. Defendant
22 also argued that its practices at all times during the class period were lawful and that the rate of
23 purported meal period violations reflected in the data would still require an individualized inquiry that
24 would prohibit a class from being certified. Class Counsel disagreed with this assessment but had to
25 consider the risk that the Court would find validity in an individualized proof defense to certification
26 of Plaintiff's meal period claim.

27 27. Plaintiff's rest period allegations were based on a similar allegation of a facially
28 unlawful written policy (based on the policy's failure to set forth an accurate timing requirement with

1 respect to rest periods) and Defendant's failure in practice to provide employees with timely, full, and
2 uninterrupted rest periods. As with the meal period allegations, Defendant contended that it provided
3 rest breaks and relieved Settlement Class Members of all duties as required under California law.
4 However, this claim was complicated by the fact that Defendant instructed employees to clock in and
5 out for rest periods. The records curiously reflected a fair amount of unlawful rest periods, but still
6 yielded nowhere near the amount of estimated maximum damages. Further, the uncertainty of the
7 records and rest period violations, raised legitimate concerns over whether Plaintiff would be able to
8 certify this claim or prove substantial damages with requisite certainty.

9 28. Class Counsel also recognized that, even if Plaintiff prevailed at class certification,
10 proving the amount of wages due to Settlement Class Members would be an expensive, time-
11 consuming, and uncertain proposition. In order to prove liability and damages, Class Counsel would
12 need to request and analyze thousands of additional documents, obtain the Settlement Class Members'
13 contact information, contact them and obtain their declarations at great expense. Obtaining the
14 cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution
15 of a lawsuit against a current employer. On the other hand, Defendant would likely be able to obtain
16 the cooperation of its employees. Moreover, even if Plaintiff prevailed at class certification and trial,
17 possible appeals would substantially delay any recovery by the Class.

18 29. Therefore, taking into account the risk of not obtaining class certification, as well as
19 the merits-based risk factors, Plaintiff reduced Defendant's estimated liability by about 70%. This
20 resulted an adjusted estimated liability of \$806,925.90.

21 30. Class Counsel also separately contemplated the risks of proceeding with the PAGA
22 action and potential liability Defendant could face from this claim. First, Class Counsel recognized
23 that the PAGA claims would be subject to the same defenses and risks as Plaintiff's underlying wage
24 claims. Moreover, although California case law clearly states that PAGA actions need not satisfy class
25 action requirements, Class Counsel remained mindful of the fact that some courts have nevertheless
26 held that PAGA claims must meet a threshold "manageability" requirement. Class Counsel also
27 anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties
28 based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive,

1 or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its
2 legal obligations warranting a reduction in penalties. Class Counsel also anticipates Defendant would
3 argue that it made a good faith attempt to comply with its legal obligations, and that the violations per
4 pay period were low, warranting an additional reduction in civil penalties. Finally, Class Counsel was
5 also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature, but is
6 instead intended to facilitate enforcement of California's labor laws by financing state activities and
7 educating and deterring non-compliance.

8 31. Therefore, after considering this multitude of factors, Plaintiff and Class Counsel
9 concluded that it was in the best interest of the State of California and the Aggrieved Employees to
10 enter into the Settlement, and to allocate Twenty-Five Thousand Dollars (\$25,000.00) of the
11 Settlement towards the PAGA claims, which represents approximately 7.4% of the Gross Settlement
12 Payment. This percentage of the settlement is well-within the range of wage and hour settlements
13 regularly approved in both state and federal court for cases that include both a class and PAGA action.
14 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims,
15 and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been
16 approved as reasonable by courts. Moreover, the overall relief obtained by the Settlement is
17 significant, not only from a monetary perspective, but also because it fulfills the public policy
18 objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state,
19 and deter future non-compliance by the employer.

20 32. In light of the parties' respective legal positions and the risks of continued litigation,
21 the Gross Settlement Payment for resolution of the class and PAGA claims, is fair, adequate, and
22 reasonable.

23 **The Requested Incentive Payment is Reasonable**

24 33. Plaintiff initiated this litigation on behalf of his former co-workers who will now be
25 entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into
26 litigation including his own research, reviewing documents, contacting other putative class members
27 to obtain their participation in the action, and extensive discussions with Class Counsel. Further, the
28 requested amount is also reasonable given the average award and the benefit gained by other

1 Settlement Class Members. For these reasons, Plaintiff requests that an incentive payment of
2 \$7,500.00 to Plaintiff be preliminarily approved by the Court.

3 **The Requested Attorneys' Fees and Costs are Reasonable**

4 34. The requested attorneys' fees of \$200,000.00, which is thirty-three percent of the
5 common fund, are disclosed to Settlement Class Members in the proposed Class Notice. The requested
6 fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The
7 Motion for Final Approval will elaborate on the nature of the legal services provided and will also
8 support Class Counsel's request for the reimbursement of litigation costs not to exceed \$30,000.00.
9 All costs and fees that are not ultimately approved by the Court shall instead be included in the Net
10 Settlement Fund and distributed to Participating Class Members.

11 **The Class Notice and the Opt-Out And Objection Process Meet Due Process Requirement**

12 35. The parties have jointly drafted a Class Notice which will be delivered to the Settlement
13 Class Members. The Class Notice will include information regarding the nature of the lawsuit, a
14 summary of the terms of the Settlement, the Class definition, information on how to object and opt-
15 out, and the date of the Final Approval Hearing. It will list each Settlement Class Members' total
16 Workweeks and the estimated Individual Settlement Payment to be paid to the Settlement Class
17 Members. The Class Notice shall be provided to Settlement Class Members in both English and
18 Spanish.

19 36. No later than fourteen (14) calendar days after the Court grants preliminary approval
20 of the Settlement, Defendant will provide the a list to the Settlement Administrator containing the
21 following information for each Class Member: full name, last known home address, last known
22 telephone number, social security number, start and end dates of active employment as a non-exempt
23 employee of Defendant in the State of California, total Workweeks during the Class Period, total
24 workweeks worked during the PAGA Period, and any other information required by the Settlement
25 Administrator in order to effectuate the terms of the Settlement ("Class List"). The Settlement
26 Administrator shall perform any searches necessary to confirm Settlement Class Members' addresses,
27 and within seven (7) calendar days of receiving the Class List from Defendant, the Settlement
28 Administrator shall mail the Class Notice to all Settlement Class Members via first class mail. The

1 parties have agreed to use Simpluris as the Settlement Administrator.

2 37. Class Counsel is not aware of an alternative method of providing notice to the Class
3 which would result in a higher likelihood of actual notice. The original source of the mailing addresses
4 is from Settlement Class Members, who provided the information to Defendant. As a fail-safe,
5 additional searches will be performed on any notice returned as non-deliverable. The Settlement
6 Administrator will report any and all opt outs, objections and disputes.

7 38. Any Settlement Class Members who wish to object to the approval of this Settlement
8 shall provide a signed and dated written statement stating the specific reason for the objection as well
9 as their full name, address, telephone number, and the last 4 digits of their social security number or
10 employee identification number. Objections must be mailed to the Settlement Administrator within
11 sixty (60) calendar days following the initial mailing of the Class Notice. Settlement Class Members
12 may also appear and object at the final approval hearing, regardless of whether they have submitted a
13 written objection.

14 39. Any Settlement Class Members who wish to be excluded from the Settlement must
15 mail the Settlement Administrator a signed and dated written request for exclusion including their
16 name, address, telephone number, and the last 4 digits of their social security number. The request for
17 exclusion must be postmarked no later than 60 days after mailing of the Class Notice.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed on September 9, 2022, at Beverly Hills, California.

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22 Jonathan M. Genish
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EXHIBIT A

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dba Creative Paint

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

RICHARD EVANS, individually, and on behalf
of other members of the public similarly situated,
and on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

MY PAINT STOP LLC dba CREATIVE PAINT,
a California limited liability company; and DOES
1 through 25, inclusive.

Defendants.

Case No. MSC21-01812

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT**

Complaint Filed: August 30, 2021
Trial Date: None Set

This Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) is made and entered into between Plaintiff Richard Evans (“Plaintiff”), on his own behalf, on behalf of the State of California, and on behalf of Settlement Class Members as defined below, and Defendant My Paint Stop LLC., dba Creative Paint (“Defendant”).

I. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1. “Action” means the action entitled *Richard Evans v. My Paint Stop LLC dba Creative Paint*, Contra Costa Superior Court Case No. MSC21-01812.

2. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Payment.

3. “Class Counsel” means Jonathan M. Genish and Joana Fang of Blackstone Law, APC.

4. “Class List” means a complete list of all Settlement Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator no later than fourteen (14) calendar days after the Court grants Preliminary Approval of this Settlement Agreement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Settlement Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. The Class List, and any information provided by Defendant to the Settlement Administrator, shall be treated as confidential and not be subject to disclosure to Class Counsel. However, notwithstanding this provision, the Settlement Administrator shall provide both Defendant’s counsel and Class Counsel a redacted version of the Class List that omits the names, addresses, telephone numbers, and social security numbers of the Settlement Class Members so that Class Counsel can verify the number of Settlement Class Members, the calculations of Workweeks and the calculations of Individual Settlement Shares, as well as any other information necessary to verify and approve the disbursement

1 of the Gross Settlement Amount. The Settlement Administrator shall use commercially reasonable
2 efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized
3 disclosure or use of such data other than as provided for by the Settlement. Defendant's records will
4 be presumed determinative with respect to whether an individual is a Settlement Class Member and
5 the Settlement Class Member's hire and termination dates.

6 5. "Class Notice" means the Notice of Class Action Settlement, substantially in the form
7 attached hereto as "Exhibit 1," which will be mailed to Settlement Class Members and which describes
8 the material terms of the Settlement Agreement and the Settlement Class Members' rights and
9 obligations, the formula for determining each Settlement Class Member's Individual Settlement Share,
10 instructions on how to submit requests to opt out or object to the Settlement Agreement, and the
11 deadlines for doing so. The Class Notice and any other communications to Settlement Class Members
12 shall not include the Settlement Class Members' social security number, except for the last four (4)
13 digits, if necessary.

14 6. "Class Period" means the period commencing on August 30, 2017 and ending on May
15 11, 2022.

16 7. "Class Representative" or "Plaintiff" means Richard Evans.

17 8. "Class Representative Enhancement Award" means payment to the Class
18 Representative for his services and efforts on behalf of the Settlement Class Members in this Action.

19 9. "Court" means the Superior Court for the County of Contra Costa.

20 10. "Effective Date" means the date that the Court enters an order granting Final Approval
21 of the Settlement Agreement if no timely objections to the Settlement Agreement are filed, or if timely
22 objections to the Settlement Agreement are filed but no objector successfully moves to intervene for
23 purposes of appeal. If timely objections to the Settlement Agreement are filed and any objector or
24 objectors successfully intervene for the purposes of appeal, the "Effective Date" shall be the 61st day
25 following the date on which the Court enters an order of final approval of the Settlement Agreement;
26 except that if an appeal is filed from the Court's overruling of objections to the Settlement Agreement
27 and/or from the final approval order (other than an appeal limited solely to a challenge to the denial or
28 reduction in the amount of requested attorneys' fees and expenses and/or service payments to the Class

Representative), the “Effective Date” shall be 30 days after the appeal is withdrawn or after all appellate review thereof is exhausted and an appellate decision exhausting such review and affirming the final approval decision becomes final.

11. “Final Approval” means the date on which the Final Approval Order and Judgment is entered.

12. “Final Approval Hearing” means the hearing following notice to the Settlement Class Members at which the Court will consider whether the terms of this Agreement are fair, adequate, and reasonable to the Settlement Class Members as a whole.

13. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering Judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

14. “Gross Settlement Payment” or “Gross Settlement Amount” means the settlement amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) to be paid by Defendant in full satisfaction of all Settled Claims, which includes Individual Settlement Payments to Participating Class Members, Class Representative Enhancement Award, LWDA Payment to the LWDA, Attorneys’ Fees and Costs to Class Counsel, and Settlement Administration Costs. The Gross Settlement Payment does not include any employer-side taxes and withholdings, which will be calculated by the Settlement Administrator and separately paid for by Defendant. The Gross Settlement Payment is non-reversionary; no portion of the Gross Settlement Payment will return to Defendant. The settlement does not require Participating Class Members to submit claims as a prerequisite to receiving their Individual Settlement Payment.

15. “Individual Settlement Payment” means the net payment of each Participating Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, and any payment a PAGA Member is eligible to receive from the employee portion of the PAGA Penalty Amount.

16. “Individual Settlement Share” means the pro rata share of the Net Settlement Fund that a Settlement Class Member may be eligible to receive, and any pro rata share of the PAGA Penalty Amount that a PAGA Member is eligible to receive from the employee portion of the PAGA Penalty

1 Amount.

2 17. "LWDA" means the California Labor and Workforce Development Agency.

3 18. "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty Amount.

4 19. "Net Settlement Fund" means the sum remaining after the Court-approved deductions
5 from the Gross Settlement Payment for: (1) Class Representative Enhancement Award, (2) PAGA
6 Penalty Amount, (3) Attorneys' Fees and Costs to Class Counsel, and (4) Settlement Administration
7 Costs.

8 20. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California
9 Labor Code sections 2698, et seq.

10 21. "PAGA Members" means all current and former non-exempt and/or hourly-paid
11 employees who worked for Defendant in the State of California at any time during the PAGA Period.

12 22. "PAGA Penalty Amount" means the amount allocated to settle any and all claims for
13 which penalties under PAGA may be sought or are otherwise available for any and all Settled Claims.

14 23. "PAGA Period" means the period commencing on July 7, 2020 and ending on May 11,
15 2022.

16 24. "Participating Class Members" means Settlement Class Members who do not submit
17 timely and valid requests for exclusion from the Settlement Agreement.

18 25. "Parties" means the parties to the Agreement, specifically, Plaintiff, individually and
19 on behalf of all Settlement Class Members, and Defendant.

20 26. "Preliminary Approval" means the date on which the Court enters the Preliminary
21 Approval Order.

22 27. "Preliminary Approval Order" means the order entered and filed by the Court that
23 preliminarily approves the terms and conditions of this Agreement.

24 28. "Released Parties" means Defendant My Paint Stop LLC dba Creative Paint, and its
25 current and former officers, directors, members, managers, employees, agents, representatives,
26 attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries,
27 affiliates, divisions, predecessors, successors, assigns, joint venturers, and any individual or entity who
28 or which could be jointly liable with Defendant My Paint Stop LLC dba Creative Paint and all persons

1 or entities acting by, through, under, or in concert with any of them.

2 29. “Response Deadline” means the deadline by which Settlement Class Members must
3 submit to the Settlement Administrator valid requests to be excluded from the Settlement Agreement,
4 valid objections to the Settlement Agreement, and disputes regarding Workweeks. The Response
5 Deadline will be the date that is sixty (60) calendar days from the initial mailing of the Class Notice
6 by the Settlement Administrator, unless the sixtieth (60th) day falls on a Sunday or a Federal holiday,
7 in which case the Response Deadline will be extended to the next day on which the United States
8 Postal service is open. The Response Deadline will be extended fifteen (15) calendar days for any
9 Settlement Class Member who is re-mailed a Class Notice by the Settlement Administrator in
10 accordance with the notice procedure described in Section IV of this Agreement, unless that fifteenth
11 (15th) day falls on a Sunday or a Federal holiday, in which case the deadline will be extended to the
12 next day on which the United States Postal service is open.

13 30. “Settled Claims” means any and all claims, causes of action, damages, wages, benefits,
14 expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form
15 of relief or remedy in law, equity, or whatever kind of nature, arising from the claims pled in the
16 Action and any claims based on facts alleged in the operative complaint during the Class Period,
17 including all claims for (i) failure to pay overtime wages due; (ii) failure to pay minimum wages; (iii)
18 failure to provide all claims for meal periods; (iv) failure to provide rest periods; (v) failure to provide
19 complete, accurate wage statements; (vi) failure to pay wages timely at time of termination; (vii) unfair
20 business practices that could have been premised on the claims, causes of action or legal theories of
21 relief described above or any of the claims, causes of action or legal theories of relief pleaded in the
22 operative complaint; and (viii) all claims under the California Labor Code Private Attorneys General
23 Act of 2004 or for civil penalties that could have been premised on the claims, causes of action or
24 legal theories described above or any of the claims, causes of action or legal theories of relief pleaded
25 in the operative complaint including but not limited to Labor Code sections 201, 202, 203, 204, 226(a),
26 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198.

27 31. “Settlement” or “Settlement Agreement” means the agreement to settle the claims as
28 set forth and embodied in this Agreement.

32. “Settlement Administration Costs” means the costs payable from the Gross Settlement Payment to the Settlement Administrator for administering this Settlement, including, but not limited to, translating the Class Notice from English to Spanish, printing, distributing, and tracking documents for this Settlement, calculating/confirming the Settlement Class Members’ Workweeks from the information contained in the Class List, calculating each Participating Class Member’s Individual Settlement Payment, tax reporting, distributing the Gross Settlement Payment, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Seven Thousand Dollars and Zero Cents (\$7,000.00).

33. “Settlement Administrator” means Simpluris. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

34. “Settlement Class” or “Settlement Class Members” means all current and former non-exempt and/or hourly-paid employees who worked for Defendant in the State of California at any time during the Class Period.

35. “Settlement Class Member” means an individual member of the Settlement Class.

36. “Workweeks” means the number of weeks each Settlement Class Member was employed by Defendant as an hourly paid or non-exempt employee in California and worked at least one (1) day during the Class Period.

II. RECITALS

37. On July 7, 2021, Plaintiff submitted a written notice to the LWDA, with a copy sent to Defendant via U.S. Certified Mail, pursuant to California Labor Code section 2699.3, in which he provided notice of the specific provisions of the California Labor Code alleged to have been violated by Defendant, including the facts and theories to support the alleged violations. The notice alleged that Defendant violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and Industrial Welfare Commission Wage Order No. 7-2001. Plaintiff’s notice alleged, *inter alia*, that Defendant failed to pay minimum and overtime wages, failed to provide meal and rest periods, failed to timely pay wages during employment, failed to timely pay

wages upon termination, failed to keep accurate payroll records, and failed to furnish accurate itemized wage statements.

38. Plaintiff filed a putative class action and representative PAGA action against Defendant on August 30, 2021 in the Superior Court for Contra Costa County. The Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, et seq., alleged eight causes of action for: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime Wages), (2) Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages), (3) Violation of California Labor Code sections 226.7 and 512(a) (Unpaid Meal Period Premiums); (4) Violation of California Labor Code section 226.7 (Unpaid Rest Period Premiums); (5) Violation of California Labor Code section 226(a) (Failure to Issue Compliant Wage Statements); (6) Violation of California Labor Code sections 201, 202, 203 (Wages Not Timely Paid Upon Termination); (7) Violation of California Business and Professions Code sections 17200, et seq.; and (8) Violation of California Labor Code sections 2698, et seq.

39. Class Counsel diligently investigated the claims of the Settlement Class, including any and all applicable defenses and the applicable law. The discovery and investigation included, among other things: (1) inspection and analysis of employee documents and data, including time and payroll records, employment policies and procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant; (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research of applicable law with respect to claims and potential defenses brought by Defendant. Class Counsel has prosecuted this Class Action, and Defendant has vigorously denied Plaintiff's allegations. The Parties have engaged in sufficient informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties.

40. On May 11, 2022, the Parties mediated with the Honorable Raul Ramirez (Ret.) and reached the Settlement that is memorialized herein. The Parties' settlement discussions were conducted at arms' length, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on Class Counsel's investigation, Class Counsel believes that the Settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate

and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

III. SETTLEMENT FUNDS AND SETTLEMENT PAYMENT ALLOCATION

41. Funding of the Gross Settlement Payment. Within thirty (30) calendar days after the date the Court grants Final Approval of the Settlement, Defendant will deposit one-half of the Gross Settlement Payment (Three Hundred Thousand Dollars and Zero Cents), and all applicable employer-side payroll taxes, into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement Administrator. Within six (6) months after the date the Court grants Final Approval of the Settlement, Defendant shall deposit the second half of the Gross Settlement Payment (Three Hundred Thousand Dollars and Zero Cents), and all applicable employer-side payroll taxes, into the QSF. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than fourteen (14) calendar days after the Effective Date.

42. Escalator Clause. Defendant estimated for purposes of settlement discussions that the Class Members worked a total of 9,000 Workweeks during the Class Period. If it is determined by the Settlement Administrator that the number of Workweeks worked by the Class Members during the Class Period actually exceeds 9,000 by more than 10% (i.e., by more than 900 Workweeks), Defendant shall increase the Gross Settlement Payment on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks increases by 11% to 9,990 Workweeks, the Gross Settlement Amount will increase by 1%.

43. Distribution from the QSF to the Class. Payments from the QSF for Individual Settlement Payments, Class Representative Enhancement Award, Attorneys' Fees and Costs to Class Counsel, LWDA Payment to the LWDA, and Settlement Administration Costs to the Settlement Administrator shall be made by the Settlement Administrator within fourteen (14) calendar days after the date the second half of the Gross Settlement Payment is deposited into the QSF

44. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross Settlement Payment

(i.e., Two Hundred Thousand Dollars and Zero Cents) and actual costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), both of which will be paid from the Gross Settlement Payment. Any portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel shall be reallocated to the Net Settlement Fund and distributed to Participating Class Members as provided in this Agreement. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to Attorneys' Fees and Costs, the validity of the underlying Settlement shall not be affected.

45. Enhancement Award to the Class Representative. Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Richard Evans. The Class Representative Enhancement Award will be paid from the Gross Settlement Payment and will be in addition to the Class Representative's Individual Settlement Payment paid pursuant to the Settlement. Any adjustments made by the Court to the requested Class Representative Enhancement Award shall not be deemed a material modification of this Agreement. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Award, the Settlement Agreement remains in full force and effect and binding, and Plaintiff shall not have the right to revoke the settlement for that reason. Any portion of the requested Class Representative Enhancement Award that is not awarded by the Court to the Class Representative shall be reallocated to the Net Settlement Fund and distributed to Participating Class Members as provided in this Agreement.

46. PAGA Penalty Amount. Subject to approval by the Court, the Parties agree that the amount of Twenty-Five Thousand Dollars (\$25,000.00) shall be allocated from the Gross Settlement Payment for settlement and release of any and all claims for civil penalties under PAGA which may be sought or are otherwise available for any and all Settled Claims (i.e., PAGA Penalty Amount), which the Parties believe in good faith is a fair and reasonable apportionment. Pursuant to California Labor Code § 2699(i), the Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalty Amount, or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment, or Six Thousand Two Hundred Fifty Dollars (\$6,250.00), will be distributed to PAGA Members on a *pro rata* basis based on the total

number of Workweeks worked by each PAGA Member during the PAGA Period.

47. Settlement Administration Costs. All costs and fees of the Settlement Administrator shall be paid from the Gross Settlement Payment. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

48. Individual Settlement Share Calculations. All Settlement Class Members who do not opt out of the Settlement will receive an Individual Settlement Share and are not required to submit a claim form. Individual Settlement Shares will be calculated and apportioned as follows:

A. Calculation of Class Portion of Individual Settlement Payments.

- i. After Preliminary Approval, the Settlement Administrator will determine the Workweeks of each Settlement Class Member, divide the Net Settlement Fund by the Workweeks of all Settlement Class Members to yield the “Estimated Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.
- ii. After Final Approval, the Settlement Administrator will divide the final Net Settlement Fund by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his or her final Individual Settlement Share.

B. Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of workweeks worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member’s individual Workweeks by the total Workweeks of all PAGA Members and multiplying the resulting fraction by the 25% share of the PAGA Penalty Amount designated for distribution to PAGA Members. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they

1 opt out of participating in the Settlement Agreement regarding the Class claims.

2 49. Tax Treatment of Settlement Payments. Each payment of settlement funds to a
3 Participating Class Member from the QSF, other than the Class Representative Enhancement Award
4 and the PAGA Members' individual share of the PAGA Penalty Amount, shall be allocated as follows:
5 twenty percent (20%) wages and eighty percent (80%) penalties and interest. The portion allocated to
6 wages will be reported on an IRS Form W-2 and the portions allocated to penalties and interest,
7 including portions allocated to PAGA penalties, will be reported on an IRS Form-1099 (if applicable)
8 by the Settlement Administrator. The Settlement Administrator will withhold the employee's share
9 of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and
10 issue checks to Participating Class Members and PAGA Members for their Individual Settlement
11 Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The
12 Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members,
13 PAGA Members, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as
14 may be required by law for all amounts paid pursuant to this Agreement. The Settlement
15 Administrator will also be responsible for forwarding all payroll taxes and other legally required
16 withholdings to the appropriate government authorities. Neither Defendant nor its counsel, nor Class
17 Counsel make any representation and have made no representations as to the tax treatment or legal
18 effect of the payments to be made pursuant to this Settlement Agreement, and Plaintiff, Participating
19 Class Members, and PAGA Members are not relying on any statement, representation, or calculation
20 by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Participating
21 Class Members, and PAGA Members understand and agree that Plaintiff, Participating Class
22 Members, and PAGA Members will be solely responsible for the payment of any taxes and penalties
23 assessed on the payments described in this Settlement Agreement. Plaintiff, Participating Class
24 Members, and PAGA Members who receive any payment under this Agreement should consult with
25 their tax advisors concerning the tax consequences of the Individual Settlement Payments they receive
26 under the Settlement. Defendant shall have no involvement in or responsibility for the determination
27 or payment of Employee Taxes and shall have no liability for errors made with respect to such
28 Employee Taxes. With respect to the QSF: (1) Defendant shall be the "transferor" within the meaning

1 of Treasury Regulation Section 1.468B-1(d)(1) to the QSF; (2) the Settlement Administrator shall be
2 the “administrator” of the QSF within the meaning of Treasury Regulation Section 1.468B-2(k)(3);
3 and (3) Defendant and the Settlement Administrator shall cooperate in providing any statements or
4 making any elections or filings necessary for satisfying the requirements for qualification as a
5 “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-1, et seq.,
6 including as to the making of any relation-back election under Treasury Regulation Section 1.468B-
7 1(j).

8 50. Individual Settlement Payment checks shall be mailed by First Class U.S. Mail to the
9 last known address of all Participating Class Members and PAGA Members, as reflected in the
10 Settlement Administrator’s records, and subject to the provisions of Paragraph 42. If any Individual
11 Settlement Payment check is returned as undeliverable within one hundred (100) calendar days after
12 checks are initially mailed, the Settlement Administrator shall engage in reasonable skip-tracing
13 efforts. If another address is identified, the Settlement Administrator shall mail the check to the newly
14 identified address. If an Individual Settlement Payment is returned to the Settlement Administrator as
15 undeliverable a second time, the Settlement Administrator shall not attempt any further re-mailing of
16 that check.

17 51. Check-Cashing Deadline and Uncashed Individual Settlement Payment Checks. Any
18 checks issued by the Settlement Administrator to Participating Class Members and PAGA Members
19 will be valid and negotiable for one hundred eighty (180) calendar days. If a Participating Class
20 Member and/or PAGA Member does not cash his or her settlement check within 180 days, the
21 uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of
22 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.*
23 for the benefit of those Participating Class Members and/or PAGA Members who did not cash their
24 checks until such time that they claim their property. In such event, the Participating Class Member(s)
25 shall nevertheless remain bound by the Settlement. The Parties agree that this disposition results in
26 no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Fund
27 will be paid out to Participating Class Members, whether or not they all cash their settlement checks.
28 Therefore, Defendant will not be required to pay any interest on such amounts. The Individual

Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the settlement check will expire in one hundred eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The parties agree no unclaimed funds will result from the settlement process detailed in this Agreement.

52. Disputes Regarding Dates of Employment, Workweeks, and/or Estimated Individual Settlement Share. The Class Notice shall be individualized and shall include a statement of the dates worked by the Settlement Class Member receiving the notice, number of Workweeks, and estimated Individual Settlement Share, based on available records provided by Defendant. Settlement Class Members will have an opportunity to dispute the information provided in the Class Notice. To the extent a Settlement Class Member disputes the information as set forth in his or her Class Notice, that Settlement Class Member shall submit a written, signed challenge ("Dispute") along with any supporting documents to the Settlement Administrator at the address or fax number provided on the Class Notice, postmarked or fax-stamped no later than the Response Deadline. The Dispute must contain: (a) the case name and number of the Action, (b) the Settlement Class Member's signature, (c) the full name, address, telephone number, and the last four digits of the Social Security Number and/or Employee ID number of the disputing Settlement Class Member, (d) a statement that the Settlement Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, and (e) information and/or documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Settlement Class Member produces evidence to the contrary, the Settlement Administrator will, within five (5) calendar days from the date the Settlement Administrator receives notice of any such challenge, send to Class Counsel and Defendant's counsel a copy of the documentation submitted in connection with that Dispute. Within five (5) calendar days from the date counsel receive that documentation, Class Counsel and Defendant's counsel shall meet and confer and make one or more recommendations to the Settlement Administrator, and the

1 Settlement Administrator shall thereafter make a final and binding determination, without hearing or
2 right to appeal, and shall communicate that determination to the Settlement Class Member, Class
3 Counsel, and Defendant's counsel. In no case will a Dispute result in a payment by Defendant in
4 excess of the Gross Settlement Payment. If a Settlement Class Member does not challenge the
5 information set forth in the Class Notice, the Settlement Class Member need not do anything further
6 and payment shall be made to that Settlement Class Member based on the records provided by
7 Defendant and the terms of this Agreement.

8 **IV. PRELIMINARY APPROVAL AND SETTLEMENT ADMINISTRATION**

9 53. Preliminary Approval of Settlement and Request for Preliminary Approval Order.
10 Plaintiff will obtain a hearing date from the Court to request Preliminary Approval of the Settlement
11 Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the
12 Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement
13 Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary
14 Approval Order will provide for the Class Notice to be sent to all Settlement Class Members as
15 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
16 Agreement, which sets forth the terms of the Settlement, and will include the proposed Class Notice
17 attached as Exhibit 1. Defendant shall file a notice of non-opposition that states it either joins in
18 Plaintiff's Motion for Preliminary Approval or that it will not file any response to Plaintiff's
19 unopposed Motion for Preliminary Approval.

20 54. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),
21 Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary
22 approval of the Settlement.

23 55. Responsibilities of Settlement Administrator. The Parties agree to cooperate in the
24 administration of the Settlement and to make all reasonable efforts to control and minimize the costs
25 and expenses incurred in administration of the Settlement. The Parties agree that the following
26 procedures for providing the Class Notice provide the best practicable notice to Settlement Class
27 Members and are consistent with the requirements of due process and California Rule of Court 3.766.
28 The Settlement Administrator will provide the following services:

- a. The Settlement Administrator shall be responsible for translating the Class Notice from English to Spanish, and for formatting, printing, and mailing to all Settlement Class Members an individualized version of the Class Notice, in substantially the form approved by the Court, and such other materials as may be required to be distributed, all as approved and directed by the Court.
- b. Within fourteen (14) calendar days of an Order from the Court granting Preliminary Approval of the Settlement Agreement, Defendant will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Agreement.
- c. Based on the information in the Class List and the terms of this Settlement, the Settlement Administrator shall promptly calculate the number of Workweeks and estimated Individual Settlement Share for every Settlement Class Member, to be included in the Class Notice to be sent to that Settlement Class Member, and shall prepare and email a spreadsheet setting forth those calculations to Class Counsel and Defendant's counsel no fewer than two (2) business days before mailing the Class Notice to Settlement Class Members.
- d. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice to all Settlement Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. The Parties may not vary from the form of the Class Notice approved by the Court. If the Settlement Administrator asks for the Parties' approval prior to mailing the court approved Class Notice, the Parties shall provide their approval within three (3) business days. If either Party has an objection to the court approved form of the Class Notice, it must seek *ex parte* relief from the Court about its objection.
- e. All Settlement Class Members will be mailed a Class Notice. Each Class Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of

1 Workweeks each respective Settlement Class Member worked for Defendant during
2 the Class Period; (e) each Settlement Class Member's estimated Individual Settlement
3 Payment and the formula for calculating Individual Settlement Payments; (f) the dates
4 which comprise the Class Period and PAGA Period; (g) the deadlines by which the
5 Settlement Class Member must postmark Requests for Exclusion, Objections to the
6 Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and
7 (i) the date for the final approval hearing.

8 f. Prior to mailing, the Settlement Administrator will perform a search based on the
9 National Change of Address Database for information to update and correct for any
10 known or identifiable address changes. Any Class Notice returned to the Settlement
11 Administrator as non-deliverable on or before the Response Deadline will be sent
12 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto
13 and the Settlement Administrator will indicate the date of such re-mailing on the Class
14 Notice. If no forwarding address is provided, the Settlement Administrator will
15 promptly attempt to determine the correct address using a skip-trace, or other search
16 using the name, address and/or Social Security number of the Settlement Class Member
17 involved and will then perform a single re-mailing. If any Class Notice sent to a Class
18 Member by the Settlement Administrator is returned as undeliverable to a current
19 employee, then Defendant shall make all reasonable efforts to obtain the current
20 address from the Settlement Class Member and provide the same within seven (7)
21 calendar days of notice from the Settlement Administrator. Those Settlement Class
22 Members who receive a re-mailed Class Notice, whether by skip-trace or by request,
23 will have between the later of (a) an additional fifteen (15) calendar days or (b) the
24 Response Deadline to postmark a Request for Exclusion, or an Objection to the
25 Settlement. It will be conclusively presumed that, if an envelope so mailed has not been
26 returned within twenty (20) days of the mailing, the Settlement Class Member received
27 the notice packet.

28 g. For any Class Notice that is returned by the post office as undeliverable without a

1 forwarding address or addressee unknown, the Settlement Administrator shall perform
2 a skip-trace search that shall use such public and proprietary electronic resources as are
3 available to the Settlement Administrator that lawfully collect address data from
4 various sources such as utility records, property tax records, motor vehicle registration
5 records, and credit bureaus. If the Settlement Administrator is successful in locating
6 an alternate subsequent address or addresses, the Settlement Administrator shall
7 perform a single re-mailing of the Class Notice to the updated address(es) within five
8 (5) calendar days of receipt of the undeliverable Class Notice. Settlement Class
9 Members who receive a re-mailed Class Notice will have an extended fifteen (15)
10 calendar days from the original Response Deadline to opt out of the Settlement, object
11 to the Settlement, or submit a Dispute. If a Settlement Class Member's Notice Packet
12 is returned to the Settlement Administrator more than once as undeliverable, then an
13 additional Notice Packet shall not be re-mailed. Nothing further shall be required of,
14 or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the
15 proposed settlement.

- 16 h. Compliance with the procedures described in this section herein above, shall constitute
17 due and sufficient notice to Settlement Class Members of this Settlement and shall
18 satisfy the requirements of due process. In the event the procedures set forth herein are
19 followed and an intended recipient of a Notice Packet still does not receive the Notice
20 Packet, the intended recipient will be a Participating Class Member and will be bound
21 by all terms of the Settlement and Final Judgment entered by the Court. Nothing else
22 shall be required of or done by the Parties, Class Counsel, and Defense Counsel to
23 provide notice of the proposed Settlement.

24 56. Objections to Settlement. To object to the Settlement, a Participating Class Member
25 must postmark a valid Objection to the Settlement Administrator on or before the Response Deadline.
26 The Objection must be signed by the Participating Class Member and contain all information required
27 by this Settlement Agreement, including the Participating Class Member's full name, address,
28 telephone number, the last four digits of their social security number and/or Employee ID number,

the specific reason including any legal grounds for the Participating Class Member's objection, and whether the Settlement Class Member intends to appear at the Final Approval Hearing. The postmark date will be deemed the exclusive means for determining that the Objection is timely. Any dispute regarding the validity of an Objection falls solely within the discretion of the Settlement Administrator unless both Parties stipulate otherwise. Participating Class Members who fail to object in the manner specified above will be foreclosed from making a written objection but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will not represent any Participating Class Members with respect to any objections to this Settlement. By executing this Settlement, Plaintiff hereby stipulates he will not object or seek to exclude himself from the Settlement in any manner.

57. Opting-Out of the Settlement. Any Settlement Class Member wishing to opt-out from the Action must sign and postmark a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The Request for Exclusion must include (a) the Settlement Class Member's name, address, telephone number, and the last four digits of the Settlement Class Member's Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the Settlement. No Requests for Exclusion may be made by a Settlement Class Member on behalf of another Settlement Class Member or group of Settlement Class Members. The date of the postmark on the return mailing envelope receipt confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage, cause, directly or indirectly, members of the Settlement Class to submit Requests for Exclusion from the Settlement. Settlement Class Members who submit a valid Request for Exclusion may not also submit a Notice of Objection. Regardless of whether a Settlement Class

1 Member submits a timely Request for Exclusion, if the Settlement Class Member worked during the
2 PAGA period, the Settlement Class Member shall still be entitled to an Individual Settlement Payment
3 from the PAGA allocation as a Similarly Aggrieved Employee and will be bound by the settlement of
4 the PAGA claim. All Settlement Class Members who do not request a timely exclusion from the Action
5 will be bound by all terms of the Settlement Agreement if the Settlement is granted final approval by
6 the Court.

7 58. Defendant's Right to Rescind. If more than ten percent (10%) of the Settlement Class
8 Members (rounded to the next whole number) elect not to participate in the Settlement, Defendant
9 may, at its election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
10 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising this
11 right and must make clear its intent to rescind the Agreement within ten (10) calendar days of the
12 Settlement Administrator notifying the Parties of these opt-outs, which the Settlement Administrator
13 will do within seven (7) calendar days after the Response Deadline. If Defendant decides to void the
14 Settlement, then the Settlement and conditional class certification shall be considered void, and neither
15 the Settlement, nor any of the related negotiations or proceedings, shall be of any force or effect, and
16 the Parties shall still stand in the same position, without prejudice, as if this Settlement had neither
17 been entered into nor filed with the Court. If Defendant exercises its right to rescind the Agreement,
18 Defendant shall be responsible for all Settlement Administration Costs incurred to the date of
19 rescission.

20 59. Interim Reports by the Settlement Administrator. The Settlement Administrator shall
21 provide weekly reports to counsel for the Parties providing (1) the status of the mailing of the Class
22 Notice to Settlement Class Members, including but not limited to the names of Settlement Class
23 Members for whom the Class Notice was returned as undeliverable; (2) the names of Settlement Class
24 Members who submit requests for exclusion or objections to the Settlement; and (3) the names of
25 Settlement Class Members who submitted Disputes, including the resolution of any such Disputes.
26 No later than five (5) business days prior to the deadline for filing a motion for final approval of the
27 Settlement, the Settlement Administrator shall provide counsel for the Parties with a declaration
28 regarding the settlement notice administration process, including the total number and names of

1 Settlement Class Members who timely opted out of the Settlement, the total number and names of
2 Participating Class Members who submitted objections to the Settlement, and any other information
3 that may be required by the Court.

4 **V. FINAL APPROVAL**

5 60. Final Approval Hearing. Upon completion of the Class Notice process, including the
6 expiration of the deadlines to postmark Requests for Exclusion or Objections to the Settlement
7 Agreement, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final
8 Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual
9 Settlement Payments; (b) the PAGA Penalty Amount; (c) Class Counsel's Attorneys' Fees and Costs;
10 (d) the Class Representative Enhancement Award; and (e) the Settlement Administration Costs. The
11 Parties and their Counsel shall cooperate and make all reasonable efforts to revise the Settlement as
12 necessary to obtain Final Approval. Any failure by the Court to fully and completely approve the
13 Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard
14 to any of the Action which has the effect of modifying material terms of this Agreement or preventing
15 the full and complete approval of the Settlement Agreement as written and agreed to by the Parties,
16 will result in this Agreement and all obligations under this Agreement being null and void. In such a
17 case, the Parties and any funds to be awarded under the settlement shall be returned to their respective
18 statuses as of the date and time immediately prior to the execution of the Settlement and the Parties
19 shall proceed in all respects as if this Settlement had not been executed, except that any costs and fees
20 already incurred by the Settlement Administrator shall be paid jointly by the Parties. In the event an
21 appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration
22 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, and
23 any other payments required hereunder by Defendant will not be paid pending completion and final
24 resolution of the appeal, and any payment thereafter will: (1) only occur if the Final Judgment is
25 upheld after all appeals; and (2) be in a manner that is provided for in the Settlement and in the Final
26 Judgment. Defendant agrees it shall not oppose the granting of the Motion for Final Approval,
27 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

28 61. Final Approval Order and Judgment. The proposed Final Approval Order and

Judgment to be submitted to the Court shall be in a form mutually agreed upon by the Parties. The Parties shall not object to any final Judgment that is substantially in the form submitted to the Court by the Parties. If the Court grants final approval of the Settlement, the Settlement Administrator shall post the Final Approval Order and Judgment on its website within seven (7) calendar days of entry of the Final Approval Order and Judgment.

62. Continued Jurisdiction. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. The Court shall award attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement and/or in any action taken to enforce the terms of this Settlement.

VI. RELEASED CLAIMS

63. Release of Claims by Plaintiff and All Participating Class Members. Upon the funding of the Gross Settlement Payment and all applicable employer-side payroll taxes by Defendant, each and every Participating Class Member, including Plaintiff, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Settled Claims, and shall be permanently barred and enjoined from the institution or prosecution of any and all Settled Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement, subject to the continuing jurisdiction of the Court.

VII. MISCELLANEOUS

64. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

66. Amendment or Modification. This Settlement Agreement may be amended or modified

only by a written instrument signed by counsel for all Parties or their successors-in-interest.

67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

69. California Law Governs. All terms of this Settlement Agreement hereto will be governed by and interpreted according to the laws of the State of California.

70. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

72. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class

1 certification for purposes of this Settlement only; except, however, that either party may appeal any
2 court order that materially alters the Settlement Agreement's terms.

3 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
4 to class action certification of the Settlement Class only for purposes of the Settlement. If, for any
5 reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further
6 agree that certification for purposes of the Settlement is not an admission that class action certification
7 is proper under the standards applied to contested certification motions and that this Agreement will
8 not be admissible in this or any other proceeding as evidence that either: (a) a class action should be
9 certified or (b) Defendant is liable to Plaintiff or any Settlement Class Member, other than according
10 to the Settlement's terms.

11 75. Neutral Employment Reference. Defendant agrees that it will adopt a neutral reporting
12 policy regarding any future employment references related to Plaintiff. In the event that any potential
13 or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff,
14 Defendant shall only provide Plaintiff's dates of employment and job titles during employment.
15 Defendant shall not refer to the Action or this Settlement.

16 76. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
17 dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation.
18 In entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any
19 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
20 or any other applicable laws, regulations or legal requirements; breached any contract; violated or
21 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
22 conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor
23 any of the negotiations connected with it, shall be construed as an admission or concession by
24 Defendant of any such violations or failures to comply with any applicable law. Except as necessary
25 in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
26 shall not be offered or received as evidence in any action or proceeding to establish any liability or
27 admission on the part of Defendant or to establish the existence of any condition constituting a
28 violation of, or a non-compliance with, federal, state, local or other applicable law.

1 77. Captions. The captions and section numbers in this Agreement are inserted for the
2 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
3 provisions of this Agreement.

4 78. Waiver. No waiver of any condition or covenant contained in this Settlement
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
6 imply or constitute a further waiver by such party of the same or any other condition, covenant, right
7 or remedy.

8 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
9 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against
10 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one
11 of the Parties, it being recognized that, because of the arms-length negotiations between the Parties,
12 all Parties have contributed to the preparation of this Settlement Agreement.

13 80. Representation By Counsel. The Parties acknowledge that they have been represented
14 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
15 Agreement has been executed with the consent and advice of counsel and reviewed in full. Further,
16 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

17 81. All Terms Subject to Final Court Approval. All amounts and procedures described in
18 this Settlement Agreement herein will be subject to final Court approval.

19 82. Voluntary Agreement. The Parties acknowledge that they have entered into this
20 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
21 or undue influence of any Party, and not in reliance on any promises, representations, or statements
22 made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties
23 hereto expressly waives any right he/it might ever have to claim that this Settlement Agreement was
24 in any way induced by fraud.

25 83. Execution by Settlement Class Members. It is agreed that it is impossible or impractical to
26 have each Settlement Class Member execute this Settlement. This Notice of Settlement will advise all
27 Settlement Class Members of the binding nature of this release, and such shall have the same force and effect
28 as if each Settlement Class Member executed this Settlement.

84. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

IT IS SO STIPULATED.

Dated: 6/13/2022 | 1:47:05 PM PDT

By: 
Richard Evans

Dated: Jun 13, 2022

By: 
Ly Tran
As Managing Member of
My Paint Stop, LLC., dba Creative Paint

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: June 13, 2022

By: 
Jonathan M. Genish, Esq.
Attorney for Plaintiff Richard Evans
and Proposed Class Counsel

JON WEBSTER LAW GROUP, APC

Dated: June 14, 2022

By: 
Dustin Burton
Attorney for Defendants
My Paint Stop, LLC., dba Creative Paint

EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT

Evans v. My Paint Stop, LLC dba Creative Paint

Superior Court of the State of California for the County of Contra Costa, Case No. MSC21-01812

To: All current and former non-exempt and/or hourly-paid employees employed by My Paint Stop, LLC dba Creative Paint in the State of California at any time during the period from August 30, 2017 to May 11, 2022 (“Settlement Class Members”).

You are not being sued. This is a Court-approved notice that affects your rights. Please read it carefully.

The purpose of this Notice is to let you know of a proposed settlement (the “Settlement”) that has been reached in a class and representative action that is pending in the Superior Court for the County of Contra Costa. The lawsuit was filed by a former employee, Richard Evans (“Plaintiff”) against My Paint Stop, LLC dba Creative Paint (“My Paint Stop”) (collectively, Plaintiff and My Paint Stop are referred to as the “Parties”), entitled *Evans v. My Paint Stop, LLC dba Creative Paint*, Contra Costa Superior Court Case No. MSC21-01812 (the “Lawsuit”).

The Court granted preliminary approval of the Parties’ settlement on [Date] and has scheduled a hearing on [Date] at [Time] (the “Final Approval Hearing”) to determine whether or not to grant final approval of the Settlement. **Your legal rights may be affected, and you have a choice to make now.**

1. WHAT ARE MY OPTIONS?

DO NOTHING	Receive an Individual Settlement Payment. By doing nothing, you will receive an Individual Settlement Payment. However, you will release the right to assert all of the Released Claims (see Section 7 below) against My Paint Stop and the other Released Parties.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Exclude Yourself from the Settlement and Receive No Payment. You may opt-out of the Settlement by submitting a signed Request for Exclusion (see Section 8(B) below) that must be postmarked no later than [Response Deadline]. If you submit a valid and timely Request for Exclusion, you will not receive any payment from the Settlement and you will not be bound by the Settlement and the release of claims provided under the Settlement.
OBJECT TO THE SETTLEMENT	Object to the Settlement. If you choose to participate in the Settlement, you may submit an objection to the Settlement. To object, you can submit a written Objection (see Section 8(C) below) to the Settlement Administrator no later than [Response Deadline], or you can appear at the Final Approval Hearing and state any objections to the Settlement. If the Court overrules your objection, you will receive an Individual Settlement Payment, and you will release the right to assert all of the Released Claims (see Section 7 below) against My Paint Stop and the other Released Parties.

2. WHY DID I GET THIS NOTICE?

My Paint Stop’s records show that you were employed by My Paint Stop in California at some point during the period from August 30, 2017 to May 11, 2022 (the “Class Period”). The Court has authorized this notice because you have the right to know about the Settlement and your options before the Court decides whether to approve it. This notice explains what the Lawsuit is about, the terms of the Settlement, and your rights.

3. WHAT IS THIS LAWSUIT ABOUT?

On August 30, 2021, Plaintiff filed a Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. (the “Complaint”) in the Superior Court for the County of Contra Costa. Plaintiff alleged that Defendant failed to pay all wages due, including overtime wages, minimum wages, meal period premiums, and rest period premiums; failed to issue compliant wage statements; failed to timely pay wages upon termination; engaged in unfair business practices; and owed penalties pursuant to the California Labor Code Private Attorneys’ General Act of 2004, codified at California Labor Code §§ 2698, et seq. (“PAGA”). In his Complaint, Plaintiff sought to represent a class of all current and former non-exempt and/or hourly-paid employees who worked for My Paint Stop in the State of California at any time during the period from August 30, 2017 to final judgment and who are residents of the State of California.

My Paint Stop denies all of the material allegations in the Complaint and asserted numerous affirmative defenses.

The Parties participated in a mediation with mediator Hon. Raul Ramirez (Ret.) and reached this Settlement.

4. WHY IS THERE A SETTLEMENT?

The Court has not made any decision about the merits of Plaintiff’s Lawsuit. There has been no trial. However, to avoid additional expense and the risks of continued litigation, Plaintiff and My Paint Stop have concluded that it is in their respective best interests and the interest of the Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice.

The Settlement was reached after an exchange of extensive information about the facts and legal arguments in support of, and against, all of the claims raised in the Lawsuit. Plaintiff, Class Counsel, and My Paint Stop all support this Settlement due to, among other things, My Paint Stop’s potential defenses to liability, the inherent risk associated with a trial on the merits, the delays and uncertainties associated with litigation, and the benefits provided to Settlement Class Members under the Settlement.

5. SUMMARY OF THE SETTLEMENT

My Paint Stop has agreed to pay a settlement amount of Six Hundred Thousand Dollars (\$600,000.00) (the “Gross Settlement Payment”). The portion of the Gross Settlement Payment that is available for payment to the Settlement Class Members is referred to as the “Net Settlement Fund.” The Net Settlement Fund will be the Gross Settlement Payment less the following payments which are subject to approval by the Court: (1) Class Representative Enhancement Award in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00), (2) PAGA Penalty Amount in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00), (3) Attorneys’ Fees in an amount not to exceed thirty-three percent (33%) of the Gross Settlement Payment (i.e., \$200,000.00), (4) Attorneys’ Costs in an amount not to exceed Thirty Thousand Dollars (\$30,000.00), and (5) Settlement Administration Costs in an amount not to exceed Seven Thousand Dollars (\$7,000.00).

Twenty-Five Thousand Dollars (\$25,000.00) of the Gross Settlement Payment has been allocated towards penalties under the PAGA (the “PAGA Penalty Amount”), of which the California Workforce and Development Agency (“LWDA”) will be allocated 75%, and the remaining 25% will be allocated to those individuals who were employed by Defendant in the State of California at any time during the period from July 7, 2020 to May 11, 2022 (the “PAGA Members.”)

Settlement Class Members are eligible to receive payment of their pro rata share of the Net Settlement Fund (“Individual Settlement Share”) based on the number of weeks that each Settlement Class Member was credited to have worked for My Paint Stop as an hourly-paid or non-exempt employee in the State of California at any

time during the Class Period, and worked at least one day, rounded up to the nearest hundredth of a workweek (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Fund by the Workweeks of all Settlement Class Members to yield the “Estimated Workweek Value” and multiplied each Settlement Class Members’ individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator shall divide the final Net Settlement Fund by the Workweeks of all Settlement Class Members who did not submit a valid and timely Request for Exclusion (“Participating Class Members”) to yield his or her Individual Settlement Payment, which shall be paid from the Net Settlement Fund, less applicable employee-side tax withholdings.

Each Individual Settlement Share will be allocated twenty percent (20%) to wages, which will be reported on an IRS Form W2, and eighty percent (80%) to penalties and interest, which will be reported on an IRS Form 1099 (if applicable). The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The employer’s share of taxes on the wage portion of Individual Settlement Shares will be paid by My Paint Stop separately and in addition to the Gross Settlement Payment.

6. WHAT IS MY ESTIMATED INDIVIDUAL SETTLEMENT SHARE?

According to My Paint Stop’ records, during the period **from August 30, 2017 to May 11, 2022 you worked for My Paint Stop as an hourly-paid or non-exempt employee in California for approximately [REDACTED] Workweeks.**

If you wish to dispute the Workweeks credited to you in this Notice, you must submit a written, signed challenge (“Dispute”) to the Settlement Administrator. The Dispute must contain: (a) the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) your signature, (c) your full name, address, telephone number, and the last four digits of your Social Security Number and/or Employee ID number, (d) a statement that you dispute the number of Workweeks credited to you and what you contend is the correct number to be credited to you, and (e) information and/or documentation demonstrating that the number of Workweeks that you contend should be to you are correct.

Under the terms of the Settlement, **your Individual Settlement Share is estimated to be \$[REDACTED]**. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Your Individual Settlement Share reflected in this Notice is only an estimate. Your actual Individual Settlement Share may be higher or lower.

7. WHAT RIGHTS AM I RELEASING IF I PARTICIPATE IN THE SETTLEMENT?

If the Court approves the Settlement, the Court will enter a judgment and the Settlement Agreement will bind all Settlement Class Members who have not submitted a timely and valid Request for Exclusion. This will bar all such Settlement Class Members from bringing certain claims against My Paint Stop.

As more fully explained in the Settlement Agreement, upon the Effective Date, each and every Settlement Class Member who does not timely opt out of the Settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all claims that were alleged in this Lawsuit, or that could have been raised that arise out of or are related to the

allegations, claims, and theories alleged in the Lawsuit or any of the PAGA notices filed with the LWDA during the pendency of this Lawsuit by Class Counsel on behalf of any Settlement Class Member, and that occurred at any time between August 30, 2017 to May 11, 2022, including, all claims for unpaid overtime wages, unpaid minimum wages, meal period violations, rest period violations, failure to provide accurate wage statements, final wages not timely paid, and unlawful business practices under the California Labor Code and/or the California Business and Professions Code, including all claims for restitution or equitable relief, liquidated damages, penalties, attorneys' fees and costs. "Released Parties" means Defendant My Paint Stop, and their current and former officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers, and any individual or entity who or which could be jointly liable with Defendant My Paint Stop and all persons or entities acting by, through, under, or in concert with any of them. Settlement Class Members shall be permanently barred and enjoined from the institution or prosecution of any and all Settled Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement, subject to the continuing jurisdiction of the Court.

The information provided in this Notice is only a summary. The terms of the Settlement Agreement are the binding terms of this settlement, and all of these terms, including the releases that will bind you as a class member if you do not submit a Request for Exclusion, are set forth fully in the Settlement Agreement that is on file with the Court, and which can also be found at www. [REDACTED]. If the Court does not approve the Settlement, or the Settlement does not become final for some other reason, the litigation against My Paint Stop will continue.

8. WHAT ARE MY RIGHTS AND OPTIONS AS A SETTLEMENT CLASS MEMBER?

A. PARTICIPATE IN THE SETTLEMENT

If you wish to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Settlement and will be issued your Individual Settlement Payment. If you participate in the Settlement, you will be bound by its terms and any judgment that may be entered by the Court based thereon, and you will release all of the claims described in Section 7 above. As a Settlement Class Member, you will not be separately responsible for the payment of attorneys' fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and expenses.

B. EXCLUDE YOURSELF FROM THE SETTLEMENT

If you wish to exclude yourself from the Settlement because you wish to pursue a separate lawsuit against My Paint Stop for the claims asserted in this Action, or if you do not wish to participate in the Settlement for other reasons, you must submit a signed Request for Exclusion to the Settlement Administrator asking to exclude yourself from the Settlement. The Request for Exclusion must: (a) contain the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) include your signature, (c) include your name, address, telephone number, and the last four digits of your Social Security number and/or the Employee ID number, (d) include a clear statement requesting to be excluded from the Settlement, (and (e) be submitted to the Settlement Administrator by mail or facsimile, postmarked or fax-stamped no later than [Response Deadline] to the following mailing address or fax number:

Simpluris, Inc.
[Mailing Address]
[Facsimile Number]

No Requests for Exclusion that are postmarked after [Response Deadline] will be valid. Requests for Exclusion that do not include all of the required information will be deemed null, void, and ineffective.

If the Court grants final approval of the Settlement, any Settlement Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of claims described in Section 7 above), and will not have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Members who do not submit a valid and timely request for exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section 7 above, as well as any judgment that may be entered by the Court based thereon.

Settlement Class Members will receive their share of the PAGA payment, regardless of whether they opt out of being a Class Member.

C. OBJECT TO THE SETTLEMENT

If you do not think the Settlement is fair, you can object to the Settlement and tell the Court you do not agree with the Settlement or some part of it as long as you have not submitted a Request for Exclusion from the Settlement. The Court will consider your views. To object, you must submit a written objection to the Settlement Administrator or appear at the final settlement hearing to explain your objection. To be valid, a written objection must: (a) contain the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) include your signature, (c) include your name, address, telephone number, and the last four digits of your Social Security number and/or your Employee ID number, (d) the specific reason including any legal grounds for your objection, (e) state whether you intend to appear at the Final Approval Hearing, and (f) be submitted to the Settlement Administrator by mail or facsimile, postmarked or fax-stamped no later than [Insert Response Deadline] to the Settlement Administrator listed in Section 8B above.

9. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold a Final Approval Hearing on [Date] at [Time] in Department 39 of the Wakefield Taylor Courthouse, located at 725 Court Street, Martinez, California 94553 to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve and award Attorneys' Fees and Costs to Class Counsel and the Class Representative Enhancement Award. The hearing may be postponed without further notice to Settlement Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

10. WHAT IF I HAVE QUESTIONS?

A complete copy of the Settlement Agreement and this Notice are available at [www.\[redacted\]](http://www.[redacted]). This website will be updated periodically to update the Settlement Class Members on any developments in the case.

For further information about this case, you may contact Class Counsel, or the Settlement Administrator, Simpluris, Inc.

Jonathan Genish
Joana Fang
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California, 90211
Tel: 310-622-4278

Simpluris, Inc.
[Address/Contact Information]

DO NOT CONTACT THE COURT, MY PAINT STOP, OR MY PAINT STOP'S ATTORNEYS ABOUT THIS NOTICE.

EXHIBIT B