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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

JOSE ERNESTO LUCAS, individually, and on behalf of all others similarly situated, Plaintiff, vs. SW INGREDIENTS HOLDINGS, LLC, a Delaware limited liability company; SPICE WORLD INC., a Florida corporation; SPICE WORLD, LLC, a Florida limited liability company; and DOES 1 through 10, inclusive, Defendants	Lead Case No. 21CECG01943 (Consolidated with cases 21CECG03840, 22CECG00586) [Assigned to Hon. Jonathan Skiles, Dept. 403] **CONSOLIDATED CLASS AND REPRESENTATIVE ACTION** **DECLARATION OF ISAM C. KHOURY IN SUPPORT OF MOTION FOR AN ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: May 11, 2023 Time: 3:30 p.m. Dept. 403 Judge: Jonathan Skiles

JOSE MAGALLAN, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

SW INGREDIENTS HOLDINGS, LLC d/b/a SPICE WORLD, INC., a Delaware Limited Liability Company; and DOES 1 Through 10, inclusive,

Defendants.

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I, Isam C. Khoury, declare as follows:

1. I am a Founding Partner in the law firm Cohelan Khoury & Singer, co-counsel of record for Plaintiff Jose Magallan in this consolidated action. The following facts are within my personal knowledge and I could and would competently testify to them.

2. I am a 1973 Hastings School of Law graduate and was admitted to the California State Bar in 1974 and am admitted to practice in all state courts in California and in the all federal courts in California, as well as the First Circuit Court of the State of Hawaii and the United States Court of Appeals for Sixth Circuit.

3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of Professional Law Corporations, and within a few years began to focus on class actions. Cohelan & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in class and representative action litigation, including wage and hour, labor and employment, antitrust, consumer protection, construction defect and other public interest class and representative actions.

4. I, along with Partner Diana M. Khoury, have been selected by our peers based on ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer, Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California Labor and Employment Attorneys and selected to the Southern California Super Lawyers in 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys in our firm.

5. Cohelan Khoury & Singer has been certified by the State Bar of California to provide the Mandatory Continuing Legal Education activity entitled “Litigating California Class Actions” and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D. Cohelan, is the author of <u>Cohelan on California Class Actions</u> (1997-2022, updated annually), part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing author on the CEB publication <u>California Wage and Hour Law: Compliance and</u>

Litigation (2010-2022 updated annually), in which he wrote the opening chapter overview on California Wage and Hour laws, including the public policy underpinnings for those laws, and the Private Attorneys General Act ("PAGA") Claim chapter. He is also a contributing author to the CEB Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and hour and class action issues through the years to numerous California publications.

6. Prior to COVID-19, Mr. Singer typically lectured several times per year for continuing education courses on wage and hour and class action issues at events in San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage and hour amicus co-chair and liaison for the California Employment Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and employment law since 2000, handling well over 300 wage and hour class and PAGA actions and several individual labor cases. He has litigated several types of employment actions, including complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and hour class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc*. Mr. Singer successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers. Mr. Singer has participated in over 50 appellate cases and argued writs and appeals before several California District Courts of Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v. Superior Court* before the Fourth District Court of Appeal, as well as federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in employment class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal in May 2008 on transfer from the California Supreme Court, and co-authored the successful

Petition for Review. My firm has successfully tried class cases, obtained appellate reversals of class certification denials *(Hicks v. Kaufman and Broad,* (2001) 89 Cal.App.4th 908), certified multiple wage and hour class.

7. As a part of our overall firm philosophy lawyers perform community service and pro bono work. Firm volunteer work includes service through Legal Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and American Association for Justice serving and chairing various committees through the years for these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association providing access to justice to the underserved and impoverished in the San Diego County region. Our firm's recent pro bono victories include a settlement which prohibits the City of San Diego from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number of available shelter beds in San Diego.

8. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.,* San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of

Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS* L.A.S.C. Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court, Southern District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363;

Stevenson Aibangbee v. Victoria Apartments, et al., Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, Unites States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 1OCV0634; and *Weigele v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US*,

LLC, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior

Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; *Popal v. Wells Fargo Bank National Association*, San Diego County Superior Court Case No. 37-2020-00038101; Hon. Gregory W. Pollock; among many others.

10. This motion seeks preliminary approval of a pre-certification consolidated wage and hour class and PAGA[1] representative action settlement of $425,000 by Plaintiffs Jose Ernesto Lucas and Jose Magallan ("Plaintiffs"), individually and on behalf of a putative Class of California non-exempt employees against Defendants SW INGREDIENTS HOLDINGS, LLC, SPICE WORLD, INC., and SPICE WORLD, LLC (collectively, "Defendants") employed any time during the Class Period (July 20, 2017 through the date the Court preliminarily approves of the Settlement or the on the day on which the number of workweeks reaches 24,461 at Defendants' option). The proposed Settlement is memorialized in the Class Action and PAGA Representative Action Settlement Agreement ("Settlement Agreement" or "SA"), attached as **Exhibit 1** hereto.

11. Plaintiffs allege Defendants maintained a practice of failing to: pay for time spent undergoing security and temperature checks and working off the clock; pay overtime wages at the correct rate incorporating all applicable pay; provide timely, compliant, off-duty meal and rest breaks or pay premiums for non-compliant breaks; provide one day's rest in seven; reimbursement reasonable and necessary work-related expenses. Derivatively, Defendants failed to provide accurate wage statements and timely final wages.

12. Defendants manufacture, package, and sell a variety of prepared ingredients, such as pre-minced garlic and seasoning blends.

13. Plaintiff Lucas worked for Defendants as a non-exempt forklift operator from approximately June 2020 to May 2021 and was classified as non-exempt during the entirety of

[1] Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*

his employment.

14. Plaintiff Magallan worked for Defendants as a non-exempt employee from approximately April 2020 to April 21, 2021. From April 2020 to August 2020, Mr. Magallan worked as a Sanitation Cleaner, from August 2020 to February 2021 as a Quality Assurance employee, and from February 2021 to April 21, 2021 as a Maintenance Clerk.

15. The Class is defined as all current and former non-exempt employees of Defendants employed in California during the Class Period.

16. Approximately 296 individuals who worked 21,270 workweeks during the Class Period fall within this Class definition, including Plaintiffs Lucas and Magallan.

17. Aggrieved Employees, a subset of the Class consisting of 268 individuals, worked an estimated 7,128 pay periods during the PAGA Period (July 2, 2020, to the date the Court preliminarily approves of the Settlement).

18. Plaintiff Lucas filed a class action complaint on July 2, 2021 alleging that Defendants systematically: (1) failed to pay minimum and straight time wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to reimburse necessary business expenses, (6) failed to timely pay wages at termination, (7) failed to provide accurate itemized wage statements and (8) engaged in unfair business practices.

19. On September 23, 2021, Lucas amended his complaint to add a ninth (9) cause of action under PAGA, after giving requisite notice to the LWDA and Defendants with no response.

20. On June 28, 2021, Defendants responded to Plaintiff Magallan's record request and produced Plaintiff Magallan's personnel file containing, in pertinent part, employment policies and procedures, new employee documents, time cards, and wage statements.

21. On August 30, 2021, Plaintiff Magallan filed a PAGA action relating to the same employees sought to be represented by Plaintiff Lucas, after giving requisite notice to the LWDA and Defendants with no response.

22. On September 13, 2021, Plaintiff Magallan filed a class action largely

overlapping with the Lucas action, with many of the same claims and an entirely overlapping Class definition.

23. On February 25, 2022, Plaintiff Magallan served Defendants with employment and form interrogatories, special interrogatories, requests for admission, and requests for production of documents in the PAGA action. That same day, Plaintiff Magallan also noticed the deposition of Defendants for March 29, 2022.

24. Plaintiffs Magallan and Lucas agreed to consolidate their actions, and an Order consolidating the actions was entered on March 25, 2022.

25. A consolidated complaint was filed on March 28, 2022, which Defendants answered on April 11, 2022.

26. In early March 2022, the Parties agreed to stay formal discovery and to attend mediation. Plaintiffs requested, and Defendants produced[2] sufficient data and documents to allow Plaintiffs to assess liability and to calculate Class-wide damages for purposes of mediation.

27. Plaintiffs' Counsel retained a damages consultant to review the data to assess actual short, late, or missed meal periods where no premium was paid and underpaid overtime wages due to regular rate miscalculations. Using reasonable assumptions provided by Plaintiffs, the consultant also assessed unreimbursed business expenses, wages not paid for off-the-clock time, unpaid rest period premiums, wage statement penalties, and waiting time penalties. PAGA Penalties were also calculated.

28. With Class-wide damages and PAGA penalties models prepared, on October 12, 2022, the Parties attended mediation with Tripper Ortman, Esq., an experienced wage and hour

[2] That information included: (a) excel spreadsheets with timekeeping records and corresponding spreadsheets with payroll records for all purported Class Members (with identities redacted); (b) the estimated Class size: 296 (c) the estimated number of former employees in the three-year statute of limitations for waiting time penalties: 161; (d) the estimated number employees during the one-year statute of limitations for PAGA Penalties: 268 (e) the estimated number of Class Period workweeks: 21,270 workweeks during the Class Period, from July 20, 2017 to October 12, 2022 (f) the estimated number of PAGA Period pay periods: 7,128 PAGA Pay Periods Worked from July 2, 2020 to October 12, 2022 (PAGA Period); and (g) Defendants' employee handbook provided to the Class, containing all pertinent policies including those relating to compensation, timekeeping, work expenses, and meal and rest periods.

class action mediator facilitating the day-long arms'-length negotiations. By the end of the day, the Parties were able to reach a settlement in principle.

29. The Parties agreed to settle the Action for the Gross Settlement Amount ("GSA") of $425,000 which includes, subject to Court approval: (a) attorneys' fees of $141,666.67[3] (not to exceed one-third of the GSA); (b) litigation costs of up to $30,000; (c) Service Payment of $7,500 to each named Plaintiff for their efforts in initiating and prosecuting the Action, work performed, risks undertaken for costs, substantial benefits conferred on absent Class Members, and a general release; (d) PAGA Payment of $5,000 for civil penalties, of which $3,750 (75%) will be paid to the LWDA and $1,250 (25%) will be distributed to Aggrieved Employees; and (e) administration expenses to ILYM Group, Inc., up to $10,000; costs are currently estimated at $8,600.

30. In addition to the GSA, Defendants will pay the employer's share of payroll taxes on Class Members' payment allocated as wages.

31. The remaining Net Settlement Amount estimated at $224,733.33[4] will be distributed to Participating Class Members based on the number of weeks each worked during the Class Period. No claim form will be necessary.

32. With an estimated 21,270 weeks worked during the Class Period, a Participating Class Member will receive an estimated $10.57 for each week worked during the Class Period, or an average payment of $759.23 ($224,733.33 / 296 Class Members).

33. Aggrieved Employees will receive a proportionate share of the $1,250 PAGA Payment based on the number of pay periods worked during the PAGA Period. With 7,128 pay periods during the PAGA Period, each Aggrieved Employee will receive an estimated $0.18 for each pay period.

34. After 180 days of issuance of the Settlement Payments, uncashed checks will be

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[3] Plaintiffs consented in writing to the equal distribution of attorneys' fees recovered in this case, i.e., 50% to Moon & Yang, and 50% to Cohelan Khoury and Singer (to be divided with co-counsel Davtyan Law Firm, Inc. subject to separate agreement).

[4] $425,000 GSA- $141,666.67 attorneys' fees- $30,000 litigation costs - $15,000 for two service payments - $5,000 PAGA Payment - $8,600 administration costs = $224,733.33.

voided and funds sent to the State of California Controller, Unclaimed Property Division for further handling on behalf of the Class Member whose check was voided.

35. No part of the GSA will revert to Defendants.

36. The information needed to distribute the funds is available from Defendants' records and the Administrator can apply the formula fairly.

37. The administrator will search the National Change of Address database to update Class Member mailing addresses produced by Defendants before mailing the Court-approved Notice of Proposed Class Action Settlement ("Class Notice").

38. If a Class Notice is returned undeliverable, the Administrator will skip-trace using the Class Member's social security number and re-mail if a better address is found.

39. Class Members with re-mailed Class Notices will have an additional 14 days beyond the Response Deadline to act.

40. The proposed Class Notice advises the Class of: (1) the right to participate in the Settlement/that a claim form is not needed; (2) the manner and timing to submit objections or request exclusion; (3) how to challenge the payment calculation information; (4) the released claims; and (5) the date, place, and time to appear for the Final Approval hearing.

41. Class Members who remain in the Class will release only those claims alleged in the Action, i.e.:

> all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 *et seq*.

42. If a Class Member requests exclusion, and is an eligible Aggrieved Employee, they will receive a proportionate share of the $1,250 PAGA Payment and release only those claims brought under the PAGA.

43. The Settlement was reached through arm's-length negotiations facilitated by an experienced wage and hour class action mediator. Though cordial and professional, the negotiations were at all times, adversarial and non-collusive in nature.

44. Plaintiffs' Counsel investigated claims and Defendants' potential defenses before serving the PAGA letters and filing the complaints. For mediation, Defendants produced time and payroll data and pertinent policies for all putative Class Members which Plaintiffs used to analyze their claims and potential damages and penalties.

45. This gave the Parties an understanding of the strengths and weaknesses of their positions before negotiations.

46. Counsel for Plaintiffs and the Class have significant experience in litigating employment wage and hour class actions.

47. Defense counsel Ronald H. Barsamian, Patrick S. Moody, and Catherine Houlihan of Barsamian & Moody are also skilled and experienced wage and hour litigators who defended their clients vigorously to settle this action.

48. Class Counsel believes the Settlement is fair, reasonable, and in the Class' best interest in light of the recovery and risks of continued litigation.

49. Plaintiffs and their counsel concluded the proposed Settlement is reasonable. Plaintiffs' counsel recognized and considered the inherent risks and uncertainty of litigation, including: (i) denial of certification; (ii) if certified, that decertification may be granted; (iii) a grant of summary judgment or summary adjudication; (iv) the possibility of an unfavorable, or less favorable, result at trial; (v) the possibility post-trial motions may result in an unfavorable, or less favorable, result than trial; and, (vi) the possibility of an unfavorable, or less favorable, result on appeal, and the certainty that process would be lengthy. While Plaintiffs believe in the strength of their claims, Defendants' defenses create a significant possibility Class claims would not be certified or would fail on the merits, conferring no Class benefit. By contrast, the proposed Settlement will yield a prompt, certain, and substantial Class recovery, without additional time or judicial resources.

50. The $425,000 non-reversionary settlement stands to benefit 296 Class Members

with an average payment of $759.23.

51. As in *Munoz*, Class Counsel relied on time and pay records and policy documents for the Class during the Class Period. On these bases, Class counsel's damages consultant calculated Class-wide damages and penalties through the date of mediation.

52. Plaintiffs contend Defendants failed to pay for off-the-clock time Class Members spent subject to its control. Specifically, Plaintiffs contend each morning Class Members had to go through a security screening, that next, they would have to wait in line to clock in, and that finally, once the pandemic began, Defendants initiated a COVID screening prior to clocking in. Unpaid minimum wages for off-the-clock work was estimated at $96,119 (3 minutes, or 0.05 hours x average hourly rate of $17.72 per hour x 108,487 shifts in Class Period). Given that courts often deny certification of off-the-clock claims due to the need for individual inquiries as in *Kilbourne v. Coca-Cola Co.* (S.D. Cal. July 29, 2015) 2015 U.S. Dist. LEXIS 118756, at *46, and that Defendants contested that these screenings were performed off the clock, Plaintiffs reduced Defendants' exposure by 50% to **$48,060**.

53. Plaintiffs contend Defendants failed to pay all overtime wages owed for hours worked over eight per day or forty per week, instead paying overtime according to the time table in Labor Code section 860 for agricultural workers or to an alternative workweek schedule. Plaintiffs contend Class Members were not employed in an agricultural occupation and that a search of the state's database returns zero reported alternative workweek election results. Based on time and pay records, Plaintiffs' consultant estimated that Defendants' overtime pay practice resulted in $22,940 in unpaid overtime wages. Given a dearth of case law explaining when Labor Code section 860 should apply, and given the risk that this claim would not be certified or prevail on the merits, Plaintiffs reduced this value by 50% to **$11,470**.

54. Plaintiffs contend Defendants failed to factor into the regular rate of pay all non-discretionary bonuses when calculating overtime wages. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 554. Plaintiffs' consultant determined based on pay records that 66.8% of the Class worked overtime and received additional compensation, labeled "Bonus_amt (Annual)" in the same pay period, while 70.2% of pay periods included overtime

and this additional remuneration. Plaintiffs calculated unpaid overtime wages at $14,406.00. Given the risk that the Bonus_amt (Annual). would not be deemed non-discretionary, and that this claim could fail at certification, Plaintiffs reduced Defendants' exposure by 50%, to **$7,203**.

55. Plaintiffs contend Defendants' time records showed meal period violation in 26.1% of all shifts, and this number is reduced by roughly half if Plaintiffs assume that all Class Members signed valid meal period waivers for shifts between five and six hours in length. More specifically, time records analyzed by Plaintiffs' consultant show: (1) no meal breaks on 0.8% of shifts longer than 6 hours ($14,333.00 in premiums owed)**;** (2) late first meal breaks on 13.4% of shifts over 5 hours ($244,863.00 in premiums owed); (3) short first meal breaks on 0.1% of shifts over 5 hours ($2,365.00 in premiums owed); and (4) no second meal break on 98.8% of shifts over 10 hours ($319,838.00 in premiums owed), yielding exposure of $591,390.00. Recognizing only one meal period premium may be owed per shift, that a second meal period may be waived if the first meal period is taken, and that Defendants produced signed meal period waiver forms for Plaintiffs, a more accurate figure of **$271,552** was calculated, subtracting premiums calculated for failure to provide a second meal period. This figure was further reduced in light of the risk that the claim would not be certified due to individualized issues regarding why breaks were non-compliant, and that Plaintiffs would not ultimately prevail, by 50%, to **$135,776.**

56. California employers must authorize a first 10-minute rest period after 3.5 hours and a second after 6 hours. *Brinker Restaurant Corp.*, 53 Cal. 4th at 1029. Otherwise, the employer owes one hour of pay at the employee's regular rate of pay. Labor Code § 226.7. Class Members' heavy workloads resulted in non-compliant late, short, or missed rest periods. Given rest periods were not recorded, and based on Plaintiffs' experiences, Plaintiffs conservatively assumed a 20% violation rate, requiring $380,505 in rest period premiums (107,366 shifts over 3.5 hours x 0.2 violation rate x $17.72). Given that rest period claims are inherently difficult to certify, that Class Members likely could not remember which, if any, shifts had non-compliant rest periods, and the lack of rest period records, Defendants' potential

exposure was reduced by 75% to **$95,126**.

57. An employer must indemnify its employees for all their necessary expenditures or losses incurred in the discharge of their duties. Labor Code § 2802. A reasonable percentage of an employee's cell phone charges, which vary in each case, must be reimbursed. *Cochran v. Schwan's Home Services, Inc*. (2014) 228 Cal. App. 4th 1137, 1145 (2014). Plaintiffs alleged Defendants failed to reimburse them: for the use of personal cell phones to communicate with coworkers and managers during their shifts when issues arose; for gloves, masks, boots, and earplugs; and for mileage when Plaintiff Magallan was required to use his personal vehicle to drive during work hours when machines broke down and he was required to buy parts to repair them. Maximum exposure was estimated at $55,550.00 ($10 a month x 5,555 cumulative months during Class Period). Defendants contend that Plaintiffs' job positions did not require the use of a personal cell phone or vehicle. Defendants also provided a log showing it purchased hundreds of orders of masks, gloves, and other protective equipment for Class Members over the Class Period. Plaintiffs further considered that individualized issues might prevent certification and issues of proof might prevent victory at trial. Defendants' exposure was thus reduced by 90% to **$5,555.**

58. For the 268 Class Members in the one-year liability period comprising 7,128 pay periods, Defendants' potential exposure was calculated at $699,400.00 (268 pay periods x $50 for initial violation + 6,860 pay periods x $100 for subsequent pay periods). Applying only the $50 initial violation rate to all pay periods per *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209, this figure is reduced to $356,400 ($50 x 7,128 pay periods). Plaintiffs estimated probability of certification at 50% and victory at trial at 50%, resulting in a 75% discount to realistic exposure of **$89,100**.

59. If Plaintiffs prove the underlying claims for failure to pay all wages due then derivative claims arise under Labor Code section 203 for failure to pay all wages due on separation of employment. An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminating. Labor Code § 203. If failure to pay final wages is willful, daily wages are owed at the same

rate for up to 30 days. For the 161 former employees (in the period three years from filing), penalties of $684,701 (8 hours per day x $17.72 per hour x 30 days x 161 EEs) were calculated.

60. At the time of settlement, the only claim which clearly supported waiting time penalties was for unpaid wages. *Naranjo*, 40 Cal. App. at p. 474 (holding rest and meal period premiums do not). To recover waiting time penalties, Plaintiffs must prove wages owed were willfully not paid. Plaintiffs' counsel believed there was only a 25% probability of prevailing at certification and on the merits, given that "a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." *Hill v. Walmart Inc*. (N.D. Cal. January 14, 2021) 2021 U.S. Dist. LEXIS 20950, *17. Realistic exposure was thus estimated at 25% of the maximum, or **$171,175**.

61. PAGA civil penalties were calculated using the initial violation rate for all 7,128 PAGA pay periods. *See Vieyara-Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS 98081, *13 ("[C]ourts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code."). Maximum penalties were calculated at over $4 million based on the underlying violations: (a) Section 226(a) - wage statements ($250 for 7,128 pay periods): $1,782,000; (b) Section 510 - overtime/regular rate ($100 for 7,128 pay periods): $712,800; (c) Section 1194-wages ($100 for 7,128 pay periods): $712,800; (d) Sections 512 and 226.7 - meal periods ($100 for 3,531 violative pay periods)—$353,100; (e) Section 226.7 - rest periods ($100 for 7,119 potentially violative pay periods): $711,900; and (f) Section 203 - final wages for 161 formers ($100): $16,100.

62. Maximum exposure was greatly discounted given the risk of not proving underlying violations and the Court's authority to reduce penalties, as long as not to "zero." *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. Further, Plaintiffs anticipated the court might deem a PAGA trial unmanageable given the need to interview Class Members as to rest and meal period violations, cell phone and personal vehicle usage, and safety equipment purchases. Based on this, Plaintiffs believed reasonable exposure was no more than two percent of the maximum exposure, or roughly $80,000. Plaintiffs

believed this was reasonable given the extent to which courts have reduced PAGA awards from potential maximum exposure. *See, e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 517 (2018) (4th DCA). (Plaintiff requested "nearly $70 million in penalties," trial court's $150,000 (or 0.2% of the maximum) award upheld on appeal).

63. Further, the $5,000 amount allocated to PAGA, representing 1.1% of the settlement value, is in line with other approved settlements. *See, e.g., In Re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion approving settlement attributing $0 to PAGA.); *Alcala v. Meyer Logistics, Inc*., 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties 1.25% of settlement, "falls within the zero to two percent range for PAGA claims approved by courts."); *In re M.L. Stern Overtime Litig*., 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009) (PAGA settlement of 2%).

64. Plaintiffs and their Counsel seriously considered all facts and arguments and concluded the non-reversionary Settlement is fair and reasonable. After reasonable reductions to maximum exposure calculations, Defendants' reasonable exposure was calculated at $563,465[5] in damages and $80,000 in PAGA penalties, for a total value of $643,465. The GSA of $425,000 represents over 75 % of the realistic value of Class claims, and over 66 % of the maximum exposure including PAGA penalties after reasonable reductions. A settlement is not judged solely against what might have been recovered at trial nor must it provide 100% of the damages sought to be fair and reasonable. *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Adequacy must be judged as "a yielding of absolutes... Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation ..." *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 624 (citation omitted). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair." *Id*. at p. 628.

[5] $48,060 (off-the-clock unpaid wages) + $11,470 (unpaid overtime wages) + $7,203 (underpaid overtime wages due to regular rate miscalculations) + $135,776 (meal period premiums) + $95,126 (rest period premiums) + $5,555 (expense reimbursements) + $89,100 (wage statement penalties) + $171,175 (waiting time penalties) = $563,465.

The proposed Settlement reflects a good recovery for the Class and should be granted preliminary approval.

65. Plaintiffs' attorneys are qualified to conduct the litigation and Plaintiffs' interests are not antagonistic to the interest of the Class.

66. I am not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

67. On the same date this motion and its supporting documents and exhibits are filed with the Court, they will be served upon Defendants and provided to the LWDA via the LWDA's website, using the appropriate intake form. Attached as **Exhibit 2** is a true and correct copy of the LWDA confirmation of Receipt.

I declare under the penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration is executed April 19, 2023, in San Diego, California.

____

Isam C. Khoury

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JOSE ERNESTO LUCAS, individually, and on behalf of all others similarly situated, Plaintiff, vs. SW INGREDIENTS HOLDINGS, LLC, a Delaware limited liability company; SPICE WORLD, INC., a Florida corporation; SPICE WORLD, LLC, a Florida limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No.: 21CECG01943 <u>CLASS ACTION</u> [Hon. Kimberly Gaab, Dept. 503] **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE**

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CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiffs Jose Ernesto Lucas and Jose Magallan ("Plaintiffs") and defendants SW Ingredients Holdings, LLC, Spice World, Inc., and Spice World, LLC, ("DEFENDANTS"). The Agreement refers to Plaintiffs and DEFENDANTS collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiffs' consolidated lawsuit alleging wage and hour violations against DEFENDANTS captioned *Jose Ernesto Lucas, et al. v. SW Ingredients Holdings, LLC, et al.,* initiated on July 2, 2021, and consolidated March 28, 2022 with the matters *Magallan v. SW Ingredients Holdings, LLC d/b/a Spice World, Inc.*, Fresno County Superior Court Case No. 21CECG03840 and *Magallan v. SW Ingredients Holdings, LLC d/b/a Spice World, Inc.*, Fresno County Superior Court Case No. 22CECG00586. The consolidated Action is now pending in Superior Court of the State of California, County of Fresno under Case Number 21CECG01943.

1.2. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. "Aggrieved Employee" means any person employed by DEFENDANTS in California and classified as a non-exempt employee who worked for DEFENDANTS during the PAGA Period.

1.5. "Class" means all persons employed by DEFENDANTS in California and classified as non-exempt who worked for DEFENDANTS during the Class Period.

1.6. "Class Counsel" means Kane Moon, Allen Feghali, Brett Gunther, and Julie Oh of Moon & Yang, APC; and Isam C. Khoury and Rosemary Khoury of COHELAN KHOURY &

SINGER.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in DEFENDANTS' possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the "Notice of Proposed Class Action Settlement", to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from July 20, 2017 to the date the Court preliminarily approves of the Settlement.

1.13. "Class Representative" means Jose Ernesto Lucas and Jose Magallan, the named Plaintiffs in the March 28, 2022 consolidated Class and Representative Action Complaint seeking Court approval to serve as Class Representatives.

1.14. "Class Representative Service Payment" means the up to $7,500 payment to each of the named Class Representatives for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Fresno.

1.16. "DEFENDANTS" means named Defendants SW Ingredients Holdings, LLC, Spice World, Inc., and Spice World, LLC.

1.17. "Defense Counsel" means Ronald H. Barsamian, Patrick S. Moody, Catherine M. Houlihan of BARSAMIAN & MOODY.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

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

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means Four Hundred Twenty-Five Thousand Dollars and Zero Cents ($425,000) which is the total amount DEFENDANTS agree to pay under this Settlement. In no event shall DEFENDANTS be obligated to pay more than the Gross Settlement Amount except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay (i) Individual Class Payments, (ii) Individual PAGA Payments, (iii) the LWDA PAGA Payment, (iv) Class Counsel Fees, (v) the Class Counsel Litigation Expenses, (vi) Class Representative Service Payments, (vii) and the Administration Expense Payment.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the

PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (i) Individual PAGA Payments, (ii) the LWDA PAGA Payment, (iii) Class Representative Service Payments, (iv) Class Counsel Fees Payment, (v) Class Counsel Litigation Expenses Payment, and (vi) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for DEFENDANTS for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from July 2, 2020, to the date the Court preliminarily approves of the Settlement.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq*.).

1.33. "PAGA Notice" means Plaintiffs' July 2, 2021 letter to DEFENDANTS and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($1,250) and the 75% to LWDA ($3,750) in settlement of PAGA claims.

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

1.36. "Plaintiffs" means Jose Ernesto Lucas and Jose Magallan, the named plaintiffs in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.41. "Released Parties" means: DEFENDANTS and each of their former and present subsidiaries, parents, affiliated and related companies, divisions, subsidiaries, successors, predecessors, and assigns, and their respective past and present directors, officers, shareholders, owners, partners, employees, agents, representatives, members, attorneys, advisors, accountants, insurers, trustees, heirs, executors, and administrators.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" means any week during which a Class Member worked for DEFENDANTS for at least one day, during the Class Period.

2. RECITALS.

2.1. On July 2, 2021, Plaintiff Lucas commenced this Action by filing a Complaint alleging causes of action against DEFENDANTS for 1) failure to pay minimum wages; 2) failure to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize and permit rest breaks; 5) failure to indemnify necessary business expenses; 6) failure to timely pay final wages at termination; 7) failure to provide accurate itemized wage statements; and 8) unfair business practices. On September 23, 2021, Plaintiff Lucas filed a First Amended Complaint adding a Ninth Cause of Action against Defendants for PAGA civil penalties under California Labor Code § 2699 *et seq*.

2.2. On August 30, 2021, Plaintiff Magallan initiated a related representative action in San Bernardino Superior Court against DEFENDANTS. The case was subsequently transferred to the Fresno Superior Court under Case No. 21CECG03840 and alleges DEFENDANTS (1) failed to pay all minimum, regular, and overtime wages owed; (2) failed to pay paid time off wages; (3) failed to provide compliant meal periods; (4) failed to provide compliant rest periods; (5) failed to provide accurate itemized wage statements; (6) failed to maintain accurate payroll records; (7) failed to provide one day's rest in seven; (8) failed to timely pay wages owed each pay period and upon cessation of employment; and (9) failed to reimburse business expenses, violations for which civil penalties under the PAGA were sought.

2.3. On September 13, 2021, Plaintiff Magallan initiated a related class action in San Bernardino Superior Court against DEFENDANTS. The case was subsequently transferred to the Fresno Superior Court under Case No. 22CECG00586 and alleged that DEFENDANTS (1) failed to pay all minimum, regular, and overtime wages owed; (2) failed to pay paid time off wages; (3) failed to provide compliant meal periods; (4) failed to provide compliant rest periods; (5) failed to provide accurate itemized wage statements; (6) failed to timely pay wages owed upon cessation of employment; (7) failed to reimburse business expenses; and (8) violated California's Unfair Competition Law by and through the aforementioned acts.

2.4. On March 28, 2022, pursuant to the stipulation of the Parties, Plaintiffs filed a Consolidated Class and Representative Action Complaint in the Action (the "Operative

Complaint.") DEFENDANTS deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability for the causes of action alleged.

2.5. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notice to DEFENDANT and the LWDA by sending the PAGA Notice, including by way of the July 2, 2021 PAGA Notice.

2.6. On October 12, 2022, the Parties participated in an all-day mediation presided over by experienced employment mediator Tripper Ortman, Esq. which led to this Agreement to settle the Action.

2.7. Prior to mediation, Plaintiff obtained, through informal discovery, information sufficient to meaningfully evaluate the claims at issue, including applicable policy documents and a sample of time and pay records for the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.8. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, DEFENDANTS promise to pay the total amount of Four Hundred and Twenty-Five Thousand Dollars and Zero Cents ($425,000.00). DEFENDANTS have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to

DEFENDANTS.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order and Judgement:

3.2.1. To Plaintiff: Class Representative Service Payment to each of the named Class Representatives of not more than Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). DEFENDANTS will not oppose Plaintiffs' request for a Class Representative Service Payment for each Plaintiff that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three and one third percent (33 1/3%) of the Gross Settlement Amount (i.e., One Hundred Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($141,666.67) and a Class Counsel Litigation Expenses Payment of not more than Thirty Thousand Dollars and Zero Cents ($30,000.00). DEFENDANTS will not oppose requests for these payments provided that the payments do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees

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

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. Thirty-Three and One-Third percent (33.33%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining Sixty-Six and Two-Thirds (66.66%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties with Thirty-Three and One-Third percent (33.33%) being allocated to interest and Thirty-Three and One-Third percent (33.33%) being allocated to penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Five Thousand Dollars and Zero Cents ($5,000.00) to be paid from the Gross Settlement Amount, with 75% (i.e., Three Thousand Seven Hundred Fifty Dollars and Zero Cents ($3,750.00)) allocated to the LWDA PAGA Payment and 25% (i.e., One Thousand Two Hundred Fifty Dollars and Zero Cents ($1,250.00)) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., $1,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, DEFENDANTS estimate there are approximately 296 Class Members who collectively worked a total of 21,270 Workweeks, and 268 Aggrieved Employees who worked a total of 7,128 PAGA Pay Periods.

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, DEFENDANTS will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Nothing in this confidentiality provision shall be construed or work to preclude Class Counsel from performing their fiduciary duties to the Class. DEFENDANTS have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which DEFENDANTS must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. DEFENDANTS shall fully fund the Gross Settlement Amount, no later than thirty (30) days after the Effective Date. DEFENDANTS will be responsible for the employer's share of payroll taxes, separate and apart from the Class Fund.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after DEFENDANTS fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service

Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the

Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate DEFENDANTS to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when DEFENDANTS fully fund the entire Gross Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiffs' Release.

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

5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 *et seq.* Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the Plaintiffs' PAGA Notice. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; and/or failure to keep adequate records.

6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

6.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) signed declarations from Plaintiffs confirming willingness and competency to serve as Class Representatives; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the

LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(*l*)(1)), this Agreement (Labor Code § 2699(*l*)(2)); (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their Declarations, Plaintiffs and Class Counsels' Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and Individual PAGA Payment (if applicable) payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, DEFENDANTS or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith. in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response

Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement will still receive an Individual PAGA Payment, notwithstanding their Request for Exclusion from the Class portion of the Settlement.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class

Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator in writing via fax, email or mail. The Administrator must request that the challenging Class Member submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members (i.e., Class Members who do not submit valid and timely Requests for Exclusion) may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Aggrieved Employees have no right to object to the PAGA portion of the Settlement.

7.7.2. For any Participating Class Member to object, the Class Member must send written objections to the Administrator, signed by the Class Member, by fax, email or mail, no later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed). The Settlement Administrator shall send all objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Participating Class Members may also appear in Court (or hire an attorney to appear in Court on their behalf) to present verbal objections at the Final Approval Hearing. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

7.7.3. Non-Participating Class Members (i.e., Class Members who submit valid and timely Requests for Exclusion) have no right to object to any of the class action components of the Settlement.

7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the Settlement and shall be bound by the Release of claims identified in Paragraph 5.3 of this Agreement.

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

7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.3. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.4. Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.5. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements, by employee identification number only, of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records at the time of mediation, DEFENDANTS estimated that there were approximately 21,270 Total Workweeks from the start of the Class Period through October 12, 2022. In in the event the actual count of Workweeks during the Class Period increases by more than 15% from original estimate of 21,270 Workweeks, the Gross Settlement Amount may be increased by the percentage that the actual number of Workweeks in the Class Period exceeds 24,461. In the alternative, DEFENDANTS may elect to end the Class Period on the day on which the number of Workweeks reaches 24,461.

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, DEFENDANTS may, but are not obligated, to elect to withdraw from the Settlement. The Parties agree that, if DEFENDANTS withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, DEFENDANTS will remain responsible for paying all Settlement Administration Expenses incurred to that point. DEFENDANTS must notify Class Counsel and the Court of its election to withdraw not later than (30) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(*l*), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

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

12. ADDITIONAL PROVISIONS.

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

Settlement and this Agreement).

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

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and DEFENDANTS, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither Plaintiffs, Class Counsel, DEFENDANTS nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

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

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by DEFENDANTS in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from DEFENDANTS unless, prior to the Court's discharge of the Administrator's obligation, DEFENDANTS makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiffs:

Kane Moon, Esq.
Allen Feghali, Esq.
Brett Gunther, Esq.
Julie Oh, Esq.
MOON & YANG, APC
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Isam C. Khoury
Rosemary C. Khoury
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San Diego, California 92101

To DEFENDANTS:

Ronald H. Barsamian
Patrick S. Moody,
Catherine M. Houlihan
BARSAMIAN & MOODY
1141 W. Shaw Avenue, #104
Fresno, CA 93711

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

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Plaintiffs & Class Representatives:

Dated: January ___, 2023

By: ______________________________
Jose Ernesto Lucas

Dated: January 4__, 2023

By: ______________________________
Jose Magallan

Plaintiffs' Counsel:

Dated: January ___, 2023

MOON & YANG, APC

By: ______________________________
Kane Moon
Allen Feghali
Brett Gunther

Attorneys for Plaintiff

Defendant:

Dated: January ___, 2023

SW INGREDIENTS HOLDINGS, LLC

By: ______________________________
Print Name

____
Signature

____
Title

Dated: January ___, 2023

SPICE WORLD, INC.

By: ______________________________
Print Name

____
Signature

____
Title

Plaintiffs & Class Representatives:

Dated: January 05, 2023 By: DocuSigned by: Jose E Lucas 0B371E1AA6C0400
Jose Ernesto Lucas

Dated: December ___, 2022 By: ____________________
Jose Magallan

Plaintiffs' Counsel:

Dated: January 06, 2023 MOON & YANG, APC

By: ____________________
Kane Moon
Allen Feghali
Brett Gunther

Attorneys for Plaintiff

Defendant:

Dated: December ___, 2022 SW INGREDIENTS HOLDINGS, LLC

By: ____________________
Print Name

____
Signature

____
Title

Dated: December ___, 2022 SPICE WORLD, INC.

By: ____________________
Print Name

____
Signature

____
Title

Plaintiffs & Class Representatives:

Dated: January ___, 2023 By: ______________________
Jose Ernesto Lucas

Dated: January ___, 2023 By: ______________________
Jose Magallan

Plaintiffs' Counsel:

Dated: January ___, 2023 MOON & YANG, APC

By: ______________________
Kane Moon
Allen Feghali
Brett Gunther

Attorneys for Plaintiff

Defendant:

Dated: January 8, 2023 SW INGREDIENTS HOLDINGS, LLC

By: CHRIS L. KISER
Print Name

Signature

CEO
Title

Dated: January 8, 2023 SPICE WORLD, INC.

By: CHRIS L. KISER
Print Name

Signature

CEO
Title

Dated: January 8, 2023

SPICE WORLD, LLC

By: CHRIS L. KISER
Print Name

Signature

CEO, Spice World Holdings, LLC
Title

Defendants' Counsel:

Dated: January 10, 2023

BARSAMIAN & MOODY

By:

Ronald H. Barsamian
Patrick S. Moody,
Catherine M. Houlihan

Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Jose Ernesto Lucas v. SW Ingredients Holdings, LLC, et al.
Fresno County Superior Court Case No. 21CECG01943

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU WORKED AS A NON-EXEMPT EMPLOYEE OF SW INGREDIENTS HOLDINGS, LLC, SPICE WORLD, INC., AND/OR SPICE WORLD, LLC ("DEFENDANTS") IN CALIFORNIA AT ANY TIME BETWEEN JULY 20, 2017 AND [[DATE OF PRELIMINARY APPROVAL]], THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Jose Ernesto Lucas v. SW Ingredients Holdings, LLC, et al.*, Fresno County Superior Court Case No. 21CECG01943 (the "Action"). The Action is the lead case in the consolidated matters of *Magallan v. SW Ingredients Holdings, LLC d/b/a Spice World, Inc.*, Fresno County Superior Court Case No. 21CECG03840 and *Magallan v. SW Ingredients Holdings, LLC d/b/a Spice World, Inc.*, Fresno County Superior Court Case No. 22CECG00586. The purpose of this Notice of Proposed Class Action Settlement ("Notice") is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

The proposed Settlement will resolve all claims in the Action. A hearing concerning final approval of the proposed Settlement will be held before the Hon. Jonathan Skiles on <<**FA Date and Time**>> in Department 403 of the Fresno County Superior Court, Civil Courthouse, located at 1130 O Street, Fresno CA 93724, to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS **DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE>>**	You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement. Except that, even if you request exclusion, you will receive payment for eligible PAGA Penalties, and you will release PAGA claims as discussed below.
OBJECT TO THE SETTLEMENT **DEADLINE TO SUBMIT *WRITTEN* OBJECTIONS: << RESPONSE DATE>>**	To object to the Settlement, you may mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. You may arrange to appear at the hearing remotely via CourtCall by dialing 1-888-882-6878 or by visiting the CourtCall website at www.courtcall.com to schedule a remote appearance.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the "Class"):

All persons who worked for Defendants SW Ingredients Holdings, LLC, Spice World, Inc., and/or Spice World, LLC. in California as an hourly, non-exempt employee at any time between July 20, 2017 and [[the date of preliminary approval]].

According to Defendants' records, you are a member of the Class ("Class Member").

What is this case about?

In the Action, Plaintiff Jose Ernesto Lucas and Jose Magallan ("Plaintiffs") allege on behalf of themselves and the Class allege that Defendants: (1) Failed to Pay Minimum Wages; (2) Failed to Pay Overtime Compensation; (3) Failed to Provide Meal Periods; (4) Failed to Authorize and Permit Rest Breaks; (5) Failed to Indemnify Necessary Business Expenses; (6) Failed to Timely Pay Final Wages at Termination; (7) Failed to Provide Accurate Itemized Wage Statements; (8) committed Unfair Business Practices; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiffs seek unpaid wages, reimbursement for necessary business expenses, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiffs' claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiffs and Defendants (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiffs also believe this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiffs' claims or Defendants' defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

MOON & YANG, APC
Kane Moon, Esq.
E-mail: kane.moon@moonyanglaw.com
Allen Feghali, Esq.
E-mail: allen.feghali@moonyanglaw.com
Brett M. Gunther, Esq.
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Facsimile: (213) 232-3125

DAVTYAN LAW FIRM, INC.
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605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 595-3001
Facsimile: (619) 595-3000

<u>Defendant's Counsel</u>
BARSAMIAN & MOODY
Ronald H. Barsamian, Esq.
Patrick S. Moody, Esq.
E-mail: pmoody@theemployerslawfirm.com
Catherine M. Houlihan, Esq.
E-mail: choulihan@theemployerslawfirm.com
1141 W Shaw Ave # 104
Fresno, California 93711
Telephone: (559) 248-2360
Facsimile: (559) 248-2370

What are the Settlement terms?

Subject to final Court approval, Defendants will pay $425,000 (the "Gross Settlement Amount") for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payments to Plaintiffs ($7,500 each); (c) the Court-approved attorneys' fees and costs to Class Counsel ($141,666.67 in fees and up to $30,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties ($3,750 of a total of $5,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of $10,000).

<u>Individual Settlement Payments.</u> After deduction from the Gross Settlement Amount for attorneys' fees and costs, the Class Representative Service Payments to Plaintiffs, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendants will make an individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement ("Settlement Class Members").

Upon final approval of the Settlement by the Court, Defendants will make a one-time payment of $425,000 into a qualified settlement account established by the Settlement Administrator. A pro-rated portion of your Individual Settlement Payment will be mailed to you within 14 days after the settlement payment is made.

The Net Settlement Amount shall be divided among all Settlement Class Members on a pro rata basis based upon the total number of workweeks worked by each respective Settlement Class Member as a non-exempt hourly employee in the State of California during the Class Period. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<**Estimated Payment**>> (less applicable withholdings) and your covered Work Weeks worked during the relevant period between July 20, 2017 and <<**Date of Preliminary Approval**>> are <<**Work Weeks**>>. Your estimated Individual PAGA Payment is <<**Estimated Payment**>> based on Defendants records showing that had <<**Pay Periods**>> during the relevant period between July 2, 2020 and <<**Date of Preliminary Approval**>> (if no amount is stated for your Individual PAGA Payment, then according to Defendant's records you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period. To the extent you dispute the number of Work Weeks or Pay Periods, you must make your dispute ("Work Week Dispute") in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<**+45 days from date of mailing**>> (the "Response Deadline") to:

ILYM Group, Inc., <<Mailing Address & Fax Number>>

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendants' records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its' decisions will be reviewable by the Court during the Final Approval Hearing. **REMINDER**: If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Class Period only) are wrong, the deadline to dispute the workweeks reported for you is **<<RESPONSE DATE**>>.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 33.33% as wages, 33.33% as penalties, and 33.33% as interest, excluding the PAGA Settlement Payments, which will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. Defendants will be responsible for the employer's share of payroll taxes, separate and apart from the Class Fund.

All checks for individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a participating Class Member within that time. Any individual Settlement Payment that is not cashed by a Settlement Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment check prior to the void date. The Settlement Administrator shall void any tax documents issued to Settlement Class Members who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Awards, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to $141,666.67 (one-third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed $30,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of up to $7,500 each to Plaintiffs Lucas and Magallan for their efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed $10,000.00. A payment in the amount of $3,750.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the $5,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

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

(a) **Identity of Released Parties**. The released parties are Defendants, and each of their former and present subsidiaries, parents, affiliated and related companies, divisions, subsidiaries, successors, predecessors, and assigns, and their respective past and present directors, officers, shareholders, owners, partners, employees, agents, representatives, members, attorneys, advisors, accountants, insurers, trustees, heirs, executors, and administrators (collectively "Releasees").

(b) **Date Release Becomes Active**. The Released Claims will be released upon the Settlement's Effective Date and payment by Defendants of all funds due under the settlement. Class Members will not release the Released Claims or Released PAGA Claims until the Effective Date and payment by Defendants of all funds due under the settlement.

(c) **Claims Released by Settlement Class Members**. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 et seq. Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the Plaintiffs' PAGA Notice. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period; and

2) in addition, *all* Class Members who are Aggrieved Employees are deemed to release, whether requesting exclusion from the Settlement or not, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; and/or failure to keep adequate records.

What are my options in this matter?

You have three options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an individual Settlement Payment; (B) if you choose option (A), you may also object to the Settlement, as explained below; or (C) exclude yourself from the Settlement.

If you remain in the Class, you will receive a settlement payment and you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action**. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendants, unless otherwise required by law.

OPTION B. Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection ("written objection") to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<**Response Deadline**>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION C. Request to Be Excluded from the Settlement and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<**Response Deadline**>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement – except that you will still receive payment for and release claims for Civil Penalties under PAGA. You will not be able to complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness, and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payments to Plaintiffs, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department 403 of the Fresno County Superior Court Civil Courthouse, located at 1130 O Street, Fresno CA 93724. If you wish to attend the Final Approval Hearing telephonically, you may arrange to appear at the hearing remotely via CourtCall by dialing 1-888-882-6878 or by visiting the CourtCall website at www.courtcall.com to schedule a remote appearance prior to the date of the Final Approval Hearing. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Class Action and PAGA Settlement Agreement attached to the Declaration of Isam C. Khoury in Support of Plaintiff's Motion for Preliminary Approval. The Class Action and PAGA Settlement Agreement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Fresno County Superior Court. You may also request a copy of the Settlement Agreement from Class Counsel and/or Defendants' Counsel referenced above.

PLEASE DO NOT OTHERWISE CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT 2