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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 RENEWED MOTION
FOR AN ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 14, 2024

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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Attorneys for Plaintiff Jose Magallan

1 I, Isam C. Khoury, declare as follows:

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

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

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

15 4. I, along with Partner Diana M. Khoury, have been selected by our peers based on
16 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
17 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
18 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
19 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
20 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
21 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
22 in our firm.

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

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

8 6. Prior to COVID-19, Mr. Singer typically lectured several times per year for
9 continuing education courses on wage and hour and class action issues at events in San Diego,
10 Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage
11 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
12 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
13 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
14 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
15 and several individual labor cases. He has litigated several types of employment actions,
16 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
17 actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and hour
18 class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v*
19 *Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts*
20 finding state laws preempted by the FAAAA for truck drivers. Mr. Singer has participated in
21 over 50 appellate cases and argued writs and appeals before several California District Courts
22 of Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v. Superior Court*
23 before the Fourth District Court of Appeal, as well as federal appeals in the Second, Third, and
24 Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted numerous appellate briefs
25 as the appellant, respondent, or amicus curiae in employment class and individual actions. As
26 co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly reported at
27 (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal in
28 May 2008 on transfer from the California Supreme Court, and co-authored the successful

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

4 7. As a part of our overall firm philosophy lawyers perform community service and
5 pro bono work. Firm volunteer work includes service through Legal Aid at Work, San Diego
6 Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of
7 San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr.
8 Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served
9 as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits
10 on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro
11 Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M.
12 Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of
13 San Diego, Consumer Attorneys of California, and American Association for Justice serving
14 and chairing various committees through the years for these organizations. For six years from
15 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of
16 San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego
17 County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association
18 providing access to justice to the underserved and impoverished in the San Diego County
19 region. Our firm's recent pro bono victories include a settlement which prohibits the City of
20 San Diego from targeting homeless people for illegal lodging tickets under Penal Code Section
21 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer*
22 settlement had the effect of increasing the number of available shelter beds in San Diego.

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

1 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
2 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al.*
3 *v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
4 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
5 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
6 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
7 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
8 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
9 30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
10 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San Mateo Superior*
11 *Case No. CIV530955; Wilcox v Albertsons*, San Diego County Superior Court Case No.
12 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
13 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
14 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
15 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
16 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
17 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
18 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY*
19 *MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234;
20 *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District
21 Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification);
22 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
23 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County
24 Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*,
25 San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior*
26 *Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California*
27 *Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; *STEROID*
28 *HORMONE PRODUCT CASES*, Los Angeles County Superior Court Case No. JCCP 4363;

1 *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case
2 No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588;
3 *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No.
4 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court,
5 Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los
6 Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*,
7 United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v.*
8 *Raytheon Company*, United States District Court, Southern District of California Case No.
9 1OCV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United States District Court,
10 Southern District of California Case No. 06CV1330, among others, as well as being appointed
11 Class Counsel in connection with well over 200 class action settlements.

12 9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
13 actively commenced, prosecuted and concluded numerous state and federal class and
14 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
15 resolution of over 200 such cases, including the following, which have received court approval:

16 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
17 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
18 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
19 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California,
20 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States
21 District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e)
22 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891,
23 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
24 Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
25 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
26 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
27 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
28 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US*,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 22. On September 13, 2021, Plaintiff Magallan filed a class action largely
28 overlapping with the Lucas action, with many of the same claims and an entirely overlapping

1 Class definition.

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

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

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

10 26. In early March 2022, the Parties agreed to stay formal discovery and to attend
11 mediation. Plaintiffs requested, and Defendants produced sufficient data and documents to
12 allow Plaintiffs to assess liability and to calculate Class-wide damages for purposes of
13 mediation. That information included: (a) excel spreadsheets with timekeeping records and
14 corresponding spreadsheets with payroll records for all purported Class Members (with
15 identities redacted); (b) the estimated Class size: 296 (c) the estimated number of former
16 employees in the three-year statute of limitations for waiting time penalties: 161; (d) the
17 estimated number employees during the one-year statute of limitations for PAGA Penalties:
18 268 (e) the estimated number of Class Period workweeks: 21,270 workweeks during the Class
19 Period, from July 20, 2017 to July 1, 2022 (f) the estimated number of PAGA Period pay
20 periods: 7,128 PAGA Pay Periods Worked from July 2, 2020 to July 1, 2022 (PAGA Period);
21 and (g) Defendants' employee handbook provided to the Class, containing all pertinent policies
22 including those relating to compensation, timekeeping, work expenses, and meal and rest
23 periods. Plaintiffs' consultant, Bennett S. Berger ("Berger" or "Plaintiffs' consultant"),
24 reviewed and analyzed the data and documents to devise class damages and PAGA penalties
25 calculations which Plaintiffs relied on at mediation. Attached hereto as **Exhibit 2** is an
26 exemplar Timecard Detail; attached as **Exhibit 3** are exemplar Payroll Records.

27 27. Plaintiffs provided Berger with the data and documents Defendants produced for
28 mediation, including the excel timekeeping and payroll records, which Berger used to assess

1 actual short, late, or missed meal periods where no premium was paid and underpaid overtime
2 wages due to regular rate miscalculations. Using reasonable assumptions provided by
3 Plaintiffs, Berger also assessed unreimbursed business expenses, wages not paid for off-the-
4 clock time, unpaid rest period premiums, wage statement penalties, waiting time penalties, and
5 PAGA Penalties.

6 28. With Class-wide damages and PAGA penalties models prepared, on October 12,
7 2022, the Parties attended mediation with Tripper Ortman, Esq., an experienced wage and hour
8 class action mediator facilitating the day-long arms'-length negotiations. By the end of the day,
9 the Parties were able to reach a settlement in principle.

10 29. The Parties agreed to settle the Action for the Gross Settlement Amount ("GSA")
11 of \$425,000 which includes, subject to Court approval: (a) attorneys' fees of \$141,666.67 (not
12 to exceed one-third of the GSA); (b) litigation costs of up to \$30,000; (c) Service Payment of
13 \$7,500 to each named Plaintiff for their efforts in initiating and prosecuting the Action, work
14 performed, risks undertaken for costs, substantial benefits conferred on absent Class Members,
15 and a general release; (d) PAGA Payment of \$5,000 for civil penalties, of which \$3,750 (75%)
16 will be paid to the LWDA and \$1,250 (25%) will be distributed to Aggrieved Employees; and
17 (e) administration expenses to ILYM Group, Inc. ("ILYM"), up to \$10,000; costs are currently
18 estimated at \$8,600, and Plaintiffs seek only this amount. Plaintiffs consented in writing to the
19 equal distribution of attorneys' fees recovered in this case, i.e., 50% to Moon Law Group, PC,
20 and 50% to Cohelan Khoury and Singer (to be divided with co-counsel D. Law, Inc. subject to
21 separate agreement). Per the Court's May 5, 2023 Order, at final approval, Plaintiffs will
22 provide their counsel's billing rates and hours expended, the aforementioned fee splitting
23 agreements, and more detailed declarations describing Plaintiffs' time spent and services
24 provided in support of the class claims.

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

27 31. The remaining Net Settlement Amount estimated at \$224,733.33 will be
28 distributed to Participating Class Members based on the number of weeks each worked during

1 the Class Period. No claim form will be necessary.

2 32. With an estimated 21,270 weeks worked during the Class Period, a Participating
3 Class Member will receive an estimated \$10.57 for each week worked during the Class Period,
4 or an average payment of \$756.68 (\$224,733.33/297 Class Members).

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

9 34. After 180 days of issuance of the Settlement Payments, uncashed checks will be
10 voided and funds sent to the State of California Controller, Unclaimed Property Division for
11 further handling on behalf of the Class Member whose check was voided.

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

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

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

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

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

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

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28 ///

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

3 all claims that were alleged, or reasonably could have been alleged, based on
4 the Class Period facts stated in the Operative Complaint, including, e.g., any
5 and all claims arising under California Labor Code sections 201, 202, 203, 204,
6 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802
7 and the applicable Industrial Welfare Commission Wage Orders based on any
8 alleged failure to pay minimum wage; failure to pay overtime compensation;
9 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.*

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

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

16 44. Plaintiffs' Counsel investigated claims and Defendants' potential defenses
17 before serving the PAGA letters and filing the complaints. For mediation, Defendants produced
18 time and payroll data and pertinent policies for all putative Class Members which Plaintiffs
19 used to analyze their claims and assess potential damages and penalties with the assistance of
20 a well-qualified and experienced data consultant.

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

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

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

28 ///

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

3 49. Class Counsel relied on time and pay records and policy documents for the Class
4 during the Class Period. On these bases, Class counsel's damages consultant calculated Class-
5 wide damages and penalties through the date of mediation.

6 50. Plaintiffs contend Defendants failed to pay for off-the-clock time Class Members
7 spent subject to its control. Specifically, Plaintiffs contend each morning Class Members had
8 to go through a security screening, that next, they would have to wait in line to clock in, and
9 that finally, once the pandemic began, Defendants initiated a COVID screening prior to
10 clocking in. Plaintiffs asked their consultant to calculate exposure assuming 3 minutes per shift
11 of unpaid OTC work at the average hourly rate of \$17.72. Applying 3 minutes per shift (0.05
12 hours) multiplied by the 108,487 shifts worked during the Class Period multiplied by the
13 average hourly rate of \$17.72 results in a total unpaid amount of \$96,119. Plaintiffs discounted
14 this maximum value based on the following considerations. First, according to Defendants, the
15 COVID screening portion of this OTC time was only in effect from July 30, 2020 through
16 November 30, 2020. Second, courts often deny certification of off-the-clock claims due to the
17 need for individual inquiries as in *Kilbourne v. Coca-Cola Co.* (S.D. Cal. July 29, 2015) 2015
18 U.S. Dist. LEXIS 118756, at *46; here, Plaintiffs would need to prove as to each Class Member
19 that screenings were performed before clocking in, rather than after. Plaintiffs thus reduced
20 Defendants' exposure by 50% to **\$48,060**.

21 51. Plaintiffs contend Defendants failed to pay all overtime wages owed for hours
22 worked over eight per day or forty per week, instead paying overtime according to the time
23 table in Labor Code section 860 for agricultural workers or to an alternative workweek
24 schedule. Plaintiffs contend Class Members were not employed in an agricultural occupation
25 and that a search of the state's database returns zero reported alternative workweek election
26 results. Plaintiffs requested their consultant compare the time punch records with the pay
27 records to determine the amount of unpaid overtime that resulted by Defendants not paying
28 overtime in excess of 8 hours/day or 40 hours/week. The consultant successfully compared

1 time record hours with pay record hours within a close margin for 90.1% of the pay periods.
2 Out of these pay periods with hours matching, the consultant found 3.1% had underpaid
3 overtime for not paying hours in excess of 8 per day or 40 per week resulting in an extrapolated
4 2,589.1 underpaid overtime premium hours. Applying the average rate of pay in each year
5 results in \$22,940 in underpaid overtime premiums (0.5x portion). Plaintiffs reduced this
6 maximum value in consideration of the following. First, there is a dearth of case law explaining
7 when Labor Code section 860 should apply—that is, what employees are employed in an
8 “agricultural occupation;” thus, Defendants might successfully argue section 860 should apply
9 because their business was manufacturing and packaging agricultural products. Second, there
10 was a substantial risk this claim would not be certified given that only 3.1% of the Class was
11 underpaid overtime. Plaintiffs thus reduced this value by 50% to **\$11,470**.

12 52. Plaintiffs contend Defendants failed to factor into the regular rate of pay all non-
13 discretionary bonuses when calculating overtime wages. *Alvarado v. Dart Container Corp. of*
14 *California* (2018) 4 Cal. 5th 542, 554. Specifically, payroll records show an apparently yearly
15 bonus labeled “Bonus” which was not factored into Class Members’ regular rate of pay in pay
16 periods in which they earned overtime wages.

17 53. Plaintiffs requested their consultant analyze the payroll records to determine the
18 amount of underpaid overtime which occurred by not including the bonus payments into the
19 regular rate of pay for purposes of paying overtime. The analysis assumes the bonuses were
20 earned over the entire year and therefore the consultant calculated the underpaid overtime by
21 applying these bonus payments to the entire year in which they were earned. The consultant
22 calculated the regular rate of pay on a pay period by pay period basis and compared the
23 overtime paid amounts with what Defendants should have been paying assuming the bonuses
24 needed to be included in the regular rate of pay. 66.8% of employees analyzed resulted in an
25 underpayment across 70.2% of pay periods totaling \$14,406 in underpaid overtime. Plaintiffs
26 each received at least one such “Bonus” while working for Defendants in the same pay period
27 in which they earned overtime wages; despite this, their overtime wages were paid at exactly
28 one and one-half times their based hourly rate, indicating the Bonus was not included in their

regular rate of pay. Attached hereto as **Exhibit 4** are Plaintiffs Lucas and Magallan's Pay Records Showing Bonus and Overtime.

54. Given the risk that the "Bonus" identified in the records 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 asked their consultant to assess the meal break exposure for shifts worked over 5 hours with one of the following occurrences: a meal break starting after the end of the 5th hour of work (late), a shift without a recorded meal break (missed 1st), a meal break lasting for less than 30 minutes (short), a shift lasting between 10 – 12 hours without a recorded 2nd meal break (missed 2nd), or a shift lasting longer than 12 hours without a recorded 2nd meal break (missed 2nd). The extrapolated results from the meal break analysis are as follows: a) 13,818 instances had a late meal break out of the 103,392 extrapolated meal breaks, representing 13.4% of all shifts with a recorded meal break. b) 809 shifts had a missing 1st meal break representing 0.8% of the 104,201 extrapolated shifts over 5 hours. c) 133 instances of a short meal break representing 0.1% of the 103,392 extrapolated 1 st meal breaks. d) 17,321 shifts had a missing 2nd meal break for shifts between 10-12 hours. e) 729 shifts had a missing 2nd meal break for shifts over 12 hours. f) In total, there were 28,264 instances of one or more of the above meal break violations representing a 26.1% meal break violation rate of all shifts extrapolated assuming no meal break waivers. g) In total, there were 14,396 instances of one or more of the above meal break violations representing a 13.3% meal break violation rate of all shifts extrapolated assuming meal break waivers. h) Applying a one-hour penalty of \$17.72 per each of the 14,396 extrapolated meal break violations assuming meal break waivers results in an exposure of \$255,104. Plaintiffs contend that for valuation purposes, an assumption that meal period waivers were signed is rational given that Plaintiffs Lucas and Magallan signed meal period waivers. Attached hereto as **Exhibit 5** are true and correct copies of Plaintiffs Lucas and Magallan's Signed Meal Break Waivers.

56. Plaintiffs were among those who suffered meal period violations. For instance, Plaintiff Lucas experienced late or missed meal or rest periods, especially when he had to

1 unload trucks and could not go on break until the truck was fully unloaded. He believes this
2 occurred at least one to two times per week. Plaintiff Magallan was also not provided all meal
3 and rest periods to which he was entitled. Plaintiffs' timekeeping records reveal examples of
4 late meal periods suffered by them. Attached hereto as **Exhibit 6** are examples of Plaintiffs
5 Lucas and Magallan Late First Meal Periods. An exemplar wage statement is included before
6 the late first meal period examples solely to show each Plaintiffs' Employee ID number.

7 57. Plaintiffs reduced this maximum value in consideration of the following. First,
8 Defendant SW produced a facially compliant meal period policy which applied to all Class
9 Members, which it could use to rebut the presumption of liability by arguing that Class
10 Members chose to miss meal breaks or take them late. Second, given that Class Members
11 worked in various positions with various duties (with even the two Plaintiffs working in a
12 combined four separate non-exempt positions), Plaintiffs might have difficulty certifying the
13 Class given that Defendants' individualized defenses to liability. *See, e.g. Galvan v. First*
14 *Student Mgmt., LLC* (N.D.Cal. Aug. 23, 2022, No. 18-cv-07378-JST) 2022 U.S.Dist.LEXIS
15 242869, at *19 (finding no commonality where Plaintiffs could not show a consistent unofficial
16 policy to deny meal breaks existed as to each Class Member, despite the *Donohue* presumption
17 being invoked by the plaintiff who showed a percentage of meal breaks were facially non-
18 compliant)("Because individualized issues predominate, the Court denies certification of a
19 meal period class."); see also *Shiferaw v. Sunrise Senior Living Mgmt.*, No. 13-cv-02171-JAK,
20 (C.D. Cal. June 11, 2014) 2014 U.S. Dist. LEXIS 195245, 2014 WL 12585796 at *14
21 (denying class certification where evidence showed "wide variation in meal breaks taken
22 depending on job classifications, departments, and . . . locations"). Given this, Plaintiffs
23 reduced this figure by 50%, to **\$127,552**.

24 58. Class Members' heavy workloads resulted in non-compliant late, short, or
25 missed rest periods. Plaintiffs were among those who did not receive all rest periods to which
26 they were entitled. Plaintiffs' consultant was asked to assume a rest break violation rate of
27 20%. Assigning a 20% violation rate to the 107,366 shifts greater than or equal to 3.5 hours
28 equates to 21,473 rest break violations. Applying a one-hour penalty of \$17.72 per each of the

1 21,473 extrapolated rest break violations results in an exposure of \$380,501. Given that
2 Defendant SW produced a facially compliant rest period policy, that rest period claims are
3 inherently difficult to certify where no timekeeping records of them exist, and that Class
4 Members likely could not remember which, if any, shifts had non-compliant rest periods,
5 Defendants' potential exposure was reduced by 75% to **\$95,126**.

6 59. Plaintiffs alleged Defendants failed to reimburse them: for the use of personal
7 cell phones to communicate with coworkers and managers during their shifts when issues arose;
8 for gloves, masks, boots, and earplugs; and for mileage when Plaintiff Magallan was required
9 to use his personal vehicle to drive during work hours when machines broke down and he was
10 required to buy parts to repair them. Defendant SW contends it maintained bulk quantities of
11 supplies of gloves, masks, and earplugs, evidence of which was provided to Plaintiffs in
12 advance of mediation. Furthermore, Defendant SW contends non-exempt employees were
13 covered by Defendant SW's reimbursement policies, including its Shoes for Crews for boots,
14 cell phone reimbursement policy, and travel and expense reimbursement policies. Given these
15 defenses, Plaintiffs' consultant was asked to conservatively assume \$10 per month in
16 unreimbursed business expenses. Assigning a \$10 per month multiplied by the estimated 5,555
17 months over the class period results in an exposure of \$55,550. Plaintiffs further considered
18 that individualized issues might prevent certification and issues of proof might prevent victory
19 at trial. *See, e.g. Pyara v. Sysco Corp.* (E.D.Cal. Mar. 8, 2017, No. 2:15-cv-01208-JAM-KJN)
20 2017 U.S.Dist.LEXIS 34164, at *4 (denying certification of cell phone reimbursement claim
21 where written policy existed) ("The 'necessity' of utilizing one's own phone for work purposes
22 will vary by individual."). Defendants' exposure was thus reduced by 90% to **\$5,555**.

23 60. Wage Statement Penalties, calculated by Plaintiffs' consultant, assume each of
24 the 268 employees and 7,128 pay periods in the 1-year statute of limitations have a violation
25 and therefore are entitled to penalties. Wage Statement Penalties are calculated at \$50 for the
26 initial penalty and \$100 for each subsequent penalty with a maximum of \$4,000 per employee.
27 268 employees multiplied by \$50 = \$13,400 for initial penalties. The subsequent penalties are
28 6,860 (7,128 – 268) and multiplied by \$100 per pay period = \$686,000. The sum of the initial

1 plus subsequent penalties equals to \$699,400. Applying only the \$50 initial violation rate to all
2 pay periods per *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209, this figure
3 is reduced to \$356,400 (\$50 x 7,128 pay periods).

4 61. Plaintiffs estimated probability of certification at 50% and victory at trial at
5 50%--based on the probability that the underlying claims would be certified and would prevail
6 as discussed above--resulting in a 75% discount to realistic exposure of **\$89,100**.

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

15 63. PAGA civil penalties were calculated using the initial violation rate for all 7,128
16 PAGA pay periods. See *Vieyara-Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS
17 98081, *13 ("[C]ourts have held that employers are not subject to heightened penalties
18 for subsequent violations unless and until a court or commissioner notifies the employer that it
19 is in violation of the Labor Code.").

20 64. Maximum exposure was greatly discounted given the risk of not proving
21 underlying violations and the Court's authority to reduce penalties, as long as not to "zero."
22 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. Further,
23 Plaintiffs anticipated the court might deem a PAGA trial unmanageable given the need to
24 interview Class Members as to rest and meal period violations, cell phone and personal vehicle
25 usage, and safety equipment purchases. Based on this, Plaintiffs believed reasonable exposure
26 was no more than two percent of the maximum exposure, or roughly \$80,000. Plaintiffs
27 believed this was reasonable given the extent to which courts have reduced PAGA awards from
28 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).

65. 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%).

66. 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 7** is a true and correct copy of the LWDA confirmation of Receipt

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

1 preliminary approval.

2 68. The 297-member class has been ascertained from Defendants' records and
3 joinder is impracticable, satisfying numerosity.

4 69. Many of the allegations raised in Plaintiffs' Consolidated Complaint were
5 addressed by Defendant's policies including those contained in its employee handbook. For
6 example, non-exempt employees are covered by Defendants' Non-Exempt employee
7 classification, Paydays, Overtime, Time Records, Meal Periods, Break Periods, Travel
8 Expenses, Cell Phone Use, and Final Paycheck policies. Further, Defendant SW attests that the
9 Class was subject to the same realities and policies regarding expense reimbursement, meal
10 breaks, and pre-shift screenings. Further, Plaintiffs' consultant identified by examining
11 Defendant SW's records that 66.8% of the Class was undercompensated due to a regular rate
12 overtime issue and that the Class suffered substantial presumptive meal period violations
13 (14,396 recorded violations for a Class of 297). Given these realities, common questions
14 predominate for the Class.

15 70. As to the overtime-regular rate claim, payroll records reveal both Plaintiffs
16 received a "Bonus" but that this bonus was not factored into the regular rate when paying
17 overtime wages.

18 71. As to the meal period claim, timekeeping records reveal each Plaintiff suffered
19 presumptive late first meal periods.

20 72. As to the derivative claims, if Plaintiffs succeed on the underlying claims, then
21 their waiting time and wage statement penalty claims will be typical of the Class.

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

24 74. The large number of Class Members (297) and the relatively small amount of
25 each Class Member's individual claims makes individual suits impractical. The class action
26 mechanism is thus superior.

27 ///

28 ///

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

3 I declare under the penalty of perjury under the laws of the State of California the
4 foregoing is true and correct and this declaration is executed October 17, 2023, in San Diego,
5 California.

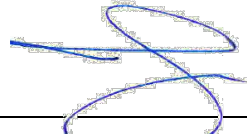
6 
7 _____
8 Isam C. Khoury

EXHIBIT 1

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7 *Additional counsel listed on following page*
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF FRESNO

11 JOSE ERNESTO LUCAS, individually, and on
behalf of all others similarly situated,

12 Plaintiff,
13

14 vs.

15 SW INGREDIENTS HOLDINGS, LLC, a
16 Delaware limited liability company; SPICE
WORLD, INC., a Florida corporation;
17 SPICE WORLD, LLC, a Florida limited
18 liability company; and DOES 1 through 10,
inclusive,

19 Defendants.
20

Case No.: 21CECG01943

CLASS ACTION

[Hon. Kimberly Gaab, Dept. 503]

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

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21 Attorneys for Plaintiffs Jose Ernesto Lucas and Jose Magellan

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE**

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

6
7 **1. DEFINITIONS.**

- 8 1.1. "Action" means the Plaintiffs' consolidated lawsuit alleging wage and hour violations
9 against DEFENDANTS captioned *Jose Ernesto Lucas, et al. v. SW Ingredients Holdings,*
10 *LLC, et al.*, initiated on July 2, 2021, and consolidated March 28, 2022 with the matters
11 *Magallan v. SW Ingredients Holdings, LLC d/b/a Spice World, Inc.*, Fresno County
12 Superior Court Case No. 21CECG03840 and *Magallan v. SW Ingredients Holdings, LLC*
13 *d/b/a Spice World, Inc.*, Fresno County Superior Court Case No. 22CECG00586. The
14 consolidated Action is now pending in Superior Court of the State of California, County of
15 Fresno under Case Number 21CECG01943.
- 16 1.2. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to
17 appoint to administer the Settlement.
- 18 1.3. "Administration Expenses Payment" means the amount the Administrator will be paid
19 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
20 accordance with the Administrator's "not to exceed" bid submitted to the Court in
21 connection with Preliminary Approval of the Settlement.
- 22 1.4. "Aggrieved Employee" means any person employed by DEFENDANTS in California and
23 classified as a non-exempt employee who worked for DEFENDANTS during the PAGA
24 Period.
- 25 1.5. "Class" means all persons employed by DEFENDANTS in California and classified as
26 non-exempt who worked for DEFENDANTS during the Class Period.
- 27 1.6. "Class Counsel" means Kane Moon, Allen Feghali, Brett Gunther, and Julie Oh of Moon
28 & Yang, APC; and Isam C. Khoury and Rosemary Khoury of COHELAN KHOURY &

1 SINGER.

2 1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean
3 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees
4 and expenses, respectively, incurred to prosecute the Action.

5 1.8. "Class Data" means Class Member identifying information in DEFENDANTS' possession
6 including the Class Member's name, last-known mailing address, Social Security number,
7 and number of Class Period Workweeks and PAGA Pay Periods.

8 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a
9 Participating Class Member or Non-Participating Class Member (including a Non-
10 Participating Class Member who qualifies as an Aggrieved Employee).

11 1.10. "Class Member Address Search" means the Administrator's investigation and search for
12 current Class Member mailing addresses using all reasonably available sources, methods
13 and means including, but not limited to, the National Change of Address database, skip
14 traces, and direct contact by the Administrator with Class Members.

15 1.11. "Class Notice" means the "Notice of Proposed Class Action Settlement", to be mailed to
16 Class Members in English with a Spanish translation in the form, without material
17 variation, attached as Exhibit A and incorporated by reference into this Agreement.

18 1.12. "Class Period" means the period from July 20, 2017 to the date the Court preliminarily
19 approves of the Settlement.

20 1.13. "Class Representative" means Jose Ernesto Lucas and Jose Magallan, the named Plaintiffs
21 in the March 28, 2022 consolidated Class and Representative Action Complaint seeking
22 Court approval to serve as Class Representatives.

23 1.14. "Class Representative Service Payment" means the up to \$7,500 payment to each of the
24 named Class Representatives for initiating the Action and providing services in support of
25 the Action.

26 1.15. "Court" means the Superior Court of California, County of Fresno.

27 1.16. "DEFENDANTS" means named Defendants SW Ingredients Holdings, LLC, Spice
28 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

1 DEFENDANTS.

2 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
3 following payments from the Gross Settlement Amount, in the amounts specified by the
4 Court in the Final Approval Order and Judgement:

5 3.2.1. To Plaintiff: Class Representative Service Payment to each of the named Class
6 Representatives of not more than Seven Thousand Five Hundred Dollars and Zero
7 Cents (\$7,500.00) (in addition to any Individual Class Payment and any Individual
8 PAGA Payment the Class Representative is entitled to receive as a Participating
9 Class Member and Aggrieved Employee). DEFENDANTS will not oppose
10 Plaintiffs' request for a Class Representative Service Payment for each Plaintiff
11 that does not exceed this amount. As part of the motion for Class Counsel Fees
12 Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court
13 approval for any Class Representative Service Payments no later than 16 court
14 days prior to the Final Approval Hearing. If the Court approves Class
15 Representative Service Payments less than the amount requested, the Administrator
16 will retain the remainder in the Net Settlement Amount. The Administrator will
17 pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs
18 assume full responsibility and liability for employee taxes owed on the Class
19 Representative Service Payment.

20 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three
21 and one third percent (33 1/3%) of the Gross Settlement Amount (i.e., One
22 Hundred Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven
23 Cents (\$141,666.67) and a Class Counsel Litigation Expenses Payment of not more
24 than Thirty Thousand Dollars and Zero Cents (\$30,000.00). DEFENDANTS will
25 not oppose requests for these payments provided that the payments do not exceed
26 these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel
27 Fees Payment and Class Litigation Expenses Payment no later than 16 court days
28 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees

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

12 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Ten
13 Thousand Dollars and Zero Cents (\$10,000.00) except for a showing of good
14 cause and as approved by the Court. To the extent the Administration Expenses
15 are less or the Court approves payment less than \$10,000.00, the Administrator will
16 retain the remainder in the Net Settlement Amount.

17 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
18 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
19 by all Participating Class Members during the Class Period and (b) multiplying the
20 result by each Participating Class Member's Workweeks.

21 3.2.4.1. Tax Allocation of Individual Class Payments. Thirty-Three and One-Third
22 percent (33.33%) of each Participating Class Member's Individual Class
23 Payment will be allocated to settlement of wage claims (the "Wage
24 Portion"). The Wage Portions are subject to tax withholding and will be
25 reported on an IRS W-2 Form. The remaining Sixty-Six and Two-Thirds
26 (66.66%) of each Participating Class Member's Individual Class Payment
27 will be allocated to settlement of claims for interest and penalties with
28 Thirty-Three and One-Third percent (33.33%) being allocated to interest

1 and Thirty-Three and One-Third percent (33.33%) being allocated to
2 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not
3 subject to wage withholdings and will be reported on IRS 1099 Forms.
4 Participating Class Members assume full responsibility and liability for any
5 employee taxes owed on their Individual Class Payment.

6 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
7 Class Payments. Non-Participating Class Members will not receive any
8 Individual Class Payments. The Administrator will retain amounts equal to
9 their Individual Class Payments in the Net Settlement Amount for
10 distribution to Participating Class Members on a pro rata basis.

11 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Five
12 Thousand Dollars and Zero Cents (\$5,000.00) to be paid from the Gross Settlement
13 Amount, with 75% (i.e., Three Thousand Seven Hundred Fifty Dollars and Zero
14 Cents (\$3,750.00)) allocated to the LWDA PAGA Payment and 25% (i.e., One
15 Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00)) allocated to the
16 Individual PAGA Payments.

17 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
18 dividing the amount of the Aggrieved Employees' 25% share of PAGA
19 Penalties (i.e., \$1,250) by the total number of PAGA Period Pay Periods
20 worked by all Aggrieved Employees during the PAGA Period and (b)
21 multiplying the result by each Aggrieved Employee's PAGA Period Pay
22 Periods. Aggrieved Employees assume full responsibility and liability for
23 any taxes owed on their Individual PAGA Payment.

24 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
25 the Administrator will allocate the remainder to the Net Settlement
26 Amount. The Administrator will report the Individual PAGA Payments on
27 IRS 1099 Forms.
28

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
3 to date, DEFENDANTS estimate there are approximately 296 Class Members who
4 collectively worked a total of 21,270 Workweeks, and 268 Aggrieved Employees who
5 worked a total of 7,128 PAGA Pay Periods.

6 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of
7 the Settlement, DEFENDANTS will simultaneously deliver the Class Data to the
8 Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members'
9 privacy rights, the Administrator must maintain the Class Data in confidence, use the Class
10 Data only for purposes of this Settlement and for no other purpose, and restrict access to
11 the Class Data to Administrator employees who need access to the Class Data to effect and
12 perform under this Agreement. Nothing in this confidentiality provision shall be construed
13 or work to preclude Class Counsel from performing their fiduciary duties to the Class.
14 DEFENDANTS have a continuing duty to immediately notify Class Counsel if it discovers
15 that the Class Data omitted class member identifying information and to provide corrected
16 or updated Class Data as soon as reasonably feasible. Without any extension of the
17 deadline by which DEFENDANTS must send the Class Data to the Administrator, the
18 Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or
19 otherwise resolve any issues related to missing or omitted Class Data.

20 4.3. Funding of Gross Settlement Amount. DEFENDANTS shall fully fund the Gross
21 Settlement Amount, no later than thirty (30) days after the Effective Date. DEFENDANTS
22 will be responsible for the employer's share of payroll taxes, separate and apart from the
23 Class Fund.

24 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
25 DEFENDANTS fund the Gross Settlement Amount, the Administrator will mail checks
26 for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
27 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
28 Class Counsel Litigation Expenses Payment, and the Class Representative Service

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

4 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
5 Individual PAGA Payments and send them to the Class Members via First Class
6 U.S. Mail, postage prepaid. The face of each check shall prominently state the
7 date (not less than 180 days after the date of mailing) when the check will be
8 voided. The Administrator will cancel all checks not cashed by the void date. The
9 Administrator will send checks for Individual Settlement Payments to all
10 Participating Class Members (including those for whom Class Notice was returned
11 undelivered). The Administrator will send checks for Individual PAGA Payments
12 to all Aggrieved Employees including Non-Participating Class Members who
13 qualify as Aggrieved Employees (including those for whom Class Notice was
14 returned undelivered). The Administrator may send Participating Class Members a
15 single check combining the Individual Class Payment and the Individual PAGA
16 Payment. Before mailing any checks, the Settlement Administrator must update
17 the recipients' mailing addresses using the National Change of Address Database.

18 4.4.2. The Administrator must conduct a Class Member Address Search for all other
19 Class Members whose checks are returned undelivered without USPS forwarding
20 address. Within seven (7) days of receiving a returned check the Administrator
21 must re-mail checks to the USPS forwarding address provided or to an address
22 ascertained through the Class Member Address Search. The Administrator need
23 not take further steps to deliver checks to Class Members whose re-mailed checks
24 are returned as undelivered. The Administrator shall promptly send a replacement
25 check to any Class Member whose original check was lost or misplaced, requested
26 by the Class Member prior to the void date.

27 4.4.3. For any Class Member whose Individual Class Payment check or Individual
28 PAGA Payment check is uncashed and cancelled after the void date, the

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

5 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
6 not obligate DEFENDANTS to confer any additional benefits or make any
7 additional payments to Class Members (such as 401(k) contributions or bonuses)
8 beyond those specified in this Agreement.
9

10 **5. RELEASES OF CLAIMS.**

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

13 5.1. Plaintiffs' Release.

14 5.1.1. Scope of Plaintiffs' Release. Plaintiffs and his respective former and present
15 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
16 assigns generally, release and discharge Released Parties from all claims,
17 transactions, or occurrences that occurred during the Class Period, including, but
18 not limited to: (a) all claims that were, or reasonably could have been, alleged,
19 based on the facts contained, in the Operative Complaint and (b) all PAGA claims
20 that were, or reasonably could have been, alleged based on facts contained in the
21 Operative Complaint, Plaintiffs' PAGA Notice ("Plaintiffs' Release.") Plaintiffs'
22 Release does not extend to any claims or actions to enforce this Agreement, or to
23 any claims for vested benefits, unemployment benefits, disability benefits, social
24 security benefits, workers' compensation benefits that arose at any time, or based
25 on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may
26 discover facts or law different from, or in addition to, the facts or law that Plaintiffs
27 now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release
28 shall be and remain effective in all respects, notwithstanding such different or

1 additional facts or Plaintiff's discovery of them.

2 5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of
3 Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
4 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

10 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
11 themselves and their respective former and present spouses, family members,
12 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
13 Released Parties from (i) all claims that were alleged, or reasonably could have been
14 alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g.,
15 any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5,
16 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable
17 Industrial Welfare Commission Wage Orders based on any alleged failure to pay
18 minimum wage; failure to pay overtime compensation; failure to pay paid time off
19 wages; failure to provide meal periods; failure to authorize and permit rest periods;
20 failure to indemnify necessary business expenses; failure to timely pay final wages;
21 failure to timely pay wages during employment; failure to provide accurate wage
22 statements; failure to keep adequate records; and unfair business practices arising under
23 California Business and Professions Code section 17200 *et seq.* Excluded from this
24 portion of the release are claims for PAGA penalties that were alleged, or reasonably could
25 have been alleged, based on the PAGA Period facts stated in the Operative Complaint and
26 the Plaintiffs' PAGA Notice. Except as set forth in Section 5.3 of this Agreement,
27 Participating Class Members do not release any other claims, including claims for vested
28 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or claims
based on facts occurring outside the Class Period.

1 5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
2 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
3 former and present spouses, family members, representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns, the Released Parties from all claims for PAGA
5 penalties that were alleged, or reasonably could have been alleged, based on the PAGA
6 Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice,
7 including any claim for PAGA penalties based on alleged violations of California Labor
8 Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194,
9 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders
10 based on any alleged failure to pay minimum wage; failure to pay overtime
11 compensation; failure to pay paid time off wages; failure to provide meal periods;
12 failure to authorize and permit rest periods; failure to indemnify necessary business
13 expenses; failure to timely pay final wages; failure to timely pay wages during
14 employment; failure to provide accurate wage statements; and/or failure to keep
15 adequate records.

16
17 **6. MOTION FOR PRELIMINARY APPROVAL.**

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

20 6.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
21 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
22 notice, and memorandum in support of the Motion for Preliminary Approval that includes
23 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
24 Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting
25 Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class
26 Notice; (iv) signed declarations from Plaintiffs confirming willingness and competency to
27 serve as Class Representatives; (v) a signed declaration from each Class Counsel firm
28 attesting to its competency to represent the Class Members; its timely transmission to the

1 LWDA of all necessary PAGA documents (initial notice of violations (Labor Code §
2 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code
3 § 2699(l)(2)); (vi) all facts relevant to any actual or potential conflict of interest with Class
4 Members, and/or the Administrator. In their Declarations, Plaintiffs and Class Counsels'
5 Declaration shall aver that they are not aware of any other pending matter or action
6 asserting claims that will be extinguished or adversely affected by the Settlement.

7 6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing
8 and filing the Motion for Preliminary Approval no later than thirty (30) days after the full
9 execution of this Agreement; obtaining a prompt hearing date for the Motion for
10 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for
11 Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
12 Approval Order to the Administrator.

13 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
14 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
15 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
16 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
17 not grant Preliminary Approval or conditions Preliminary Approval on any material
18 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
19 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
20 modify the Agreement and otherwise satisfy the Court's concerns.

21
22 **7. SETTLEMENT ADMINISTRATION.**

23 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
24 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
25 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
26 this Agreement in exchange for payment of Administration Expenses. The Parties and
27 their Counsel represent that they have no interest or relationship, financial or otherwise,
28 with the Administrator other than a professional relationship arising out of prior

1 experiences administering settlements.

2 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
3 Identification Number for purposes of calculating payroll tax withholdings and providing
4 reports to the state and federal tax authorities.

5 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
6 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
7 468B-1.

8 7.4. Notice to Class Members.

9 7.4.1. No later than three (3) business days after receipt of the Class Data, the
10 Administrator shall notify Class Counsel that the list has been received and state
11 the number of Class Members, Aggrieved Employees, Workweeks, and Pay
12 Periods in the Class Data.

13 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
14 fourteen (14) days after receiving the Class Data, the Administrator will send to all
15 Class Members identified in the Class Data, via first-class United States Postal
16 Service ("USPS") mail, the Class Notice with Spanish translation, substantially in
17 the form attached to this Agreement as Exhibit A. The first page of the Class
18 Notice shall prominently estimate the dollar amounts of any Individual Class
19 Payment and Individual PAGA Payment (if applicable) payable to the Class Member,
20 and the number of Workweeks and PAGA Pay Periods (if applicable) used to
21 calculate these amounts. Before mailing Class Notices, the Administrator shall
22 update Class Member addresses using the National Change of Address database.

23 7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class
24 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
25 Class Notice using any forwarding address provided by the USPS. If the USPS
26 does not provide a forwarding address, the Administrator shall conduct a Class
27 Member Address Search, and re-mail the Class Notice to the most current address
28 obtained. The Administrator has no obligation to make further attempts to locate

1 or send Class Notice to Class Members whose Class Notice is returned by the
2 USPS a second time.

3 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
4 and/or Pay Periods, and Requests for Exclusion will be extended an additional
5 fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class
6 Notice for all Class Members whose notice is re-mailed. The Administrator will
7 inform the Class Member of the extended deadline with the re-mailed Class
8 Notice.

9 7.4.5. If the Administrator, DEFENDANTS or Class Counsel is contacted by or
10 otherwise discovers any persons who believe they should have been included in the
11 Class Data and should have received Class Notice, the Parties will expeditiously
12 meet and confer in person or by telephone, and in good faith, in an effort to agree
13 on whether to include them as Class Members. If the Parties agree, such persons
14 will be Class Members entitled to the same rights as other Class Members, and the
15 Administrator will send, via email or overnight delivery, a Class Notice requiring
16 them to exercise options under this Agreement not later than fourteen (14) days
17 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever
18 are later.

19 7.5. Requests for Exclusion (Opt-Outs).

20 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
21 must send the Administrator, by fax, email, or mail, a signed written Request for
22 Exclusion not later than forty-five (45) days after the Administrator mails the Class
23 Notice (plus an additional fourteen (14) days for Class Members whose Class
24 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
25 his/her representative that reasonably communicates the Class Member's election
26 to be excluded from the Settlement and includes the Class Member's name,
27 address and email address or telephone number. To be valid, a Request for
28 Exclusion must be timely faxed, emailed, or postmarked by the Response

1 Deadline.

2 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
3 fails to contain all the information specified in the Class Notice. The Administrator
4 shall accept any Request for Exclusion as valid if the Administrator can reasonably
5 ascertain the identity of the person as a Class Member and the Class Member's
6 desire to be excluded. The Administrator's determination shall be final and not
7 appealable or otherwise susceptible to challenge. If the Administrator has reason to
8 question the authenticity of a Request for Exclusion, the Administrator may
9 demand additional proof of the Class Member's identity. The Administrator's
10 determination of authenticity shall be final and not appealable or otherwise
11 susceptible to challenge.

12 7.5.3. Every Class Member who does not submit a timely and valid Request for
13 Exclusion is deemed to be a Participating Class Member under this Agreement,
14 entitled to all benefits and bound by all terms and conditions of the Settlement,
15 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
16 of this Agreement, regardless whether the Participating Class Member actually
17 receives the Class Notice or objects to the Settlement.

18 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
19 Non-Participating Class Member and shall not receive an Individual Class
20 Payment or have the right to object to the class action components of the
21 Settlement. Because future PAGA claims are subject to claim preclusion upon
22 entry of the Judgment, Non-Participating Class Members who are Aggrieved
23 Employees are deemed to release the claims identified in Paragraph 5.3 of this
24 Agreement will still receive an Individual PAGA Payment, notwithstanding their
25 Request for Exclusion from the Class portion of the Settlement.

26 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
27 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days
28 for Class Members whose Class Notice is re-mailed) to challenge the number of Class

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

12 7.7. Objections to Settlement.

13 7.7.1. Only Participating Class Members (i.e., Class Members who do not submit valid
14 and timely Requests for Exclusion) may object to the class action components of
15 the Settlement and/or this Agreement, including contesting the fairness of the
16 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
17 Counsel Litigation Expenses Payment and/or Class Representative Service
18 Payment. Aggrieved Employees have no right to object to the PAGA portion of the
19 Settlement.

20 7.7.2. For any Participating Class Member to object, the Class Member must send written
21 objections to the Administrator, signed by the Class Member, by fax, email or
22 mail, no later than forty-five (45) days after the Administrator's mailing of the
23 Class Notice (plus an additional fourteen (14) days for Class Members whose Class
24 Notice was re-mailed). The Settlement Administrator shall send all objections it
25 receives to Defense Counsel and Class Counsel within three (3) business days of
26 receipt. Participating Class Members may also appear in Court (or hire an attorney
27 to appear in Court on their behalf) to present verbal objections at the Final
28 Approval Hearing. The Court retains final authority with respect to the

1 consideration and admissibility of any Class Member objections.

2 7.7.3. Non-Participating Class Members (i.e., Class Members who submit valid and
3 timely Requests for Exclusion) have no right to object to any of the class action
4 components of the Settlement.

5 7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the
6 Settlement and shall be bound by the Release of claims identified in Paragraph 5.3
7 of this Agreement.

8 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
9 performed or observed by the Administrator contained in this Agreement or otherwise.

10 7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
11 promptly review on a rolling basis Requests for Exclusion to ascertain their
12 validity. Not later than 5 days after the expiration of the deadline for submitting
13 Requests for Exclusion, the Administrator shall email a list to Class Counsel and
14 Defense Counsel containing (a) the names and other identifying information of
15 Class Members who have timely submitted valid Requests for Exclusion
16 ("Exclusion List"); (b) the names and other identifying information of Class
17 Members who have submitted invalid Requests for Exclusion; (c) copies of all
18 Requests for Exclusion from Settlement submitted (whether valid or invalid).

19 7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide written
20 reports to Class Counsel and Defense Counsel that, among other things, tally the
21 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
22 Requests for Exclusion (whether valid or invalid) received, objections received,
23 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
24 mailed for Individual Class Payments and Individual PAGA Payments ("Weekly
25 Report"). The Weekly Reports must include the Administrator's assessment of the
26 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
27 and objections received.

28 7.8.3. Workweek and/or Pay Period Challenges. The Administrator has the authority to

1 address and make final decisions consistent with the terms of this Agreement on all
2 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
3 The Administrator's decision shall be final and not appealable or otherwise
4 susceptible to challenge.

5 7.8.4. Administrator's Declaration. Not later than fourteen (14) days before the date by
6 which Plaintiffs are required to file the Motion for Final Approval of the
7 Settlement, the Administrator will provide to Class Counsel and Defense Counsel,
8 a signed declaration suitable for filing in Court attesting to its due diligence and
9 compliance with all of its obligations under this Agreement, including, but not
10 limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
11 the re-mailing of Class Notices, attempts to locate Class Members, the total
12 number of Requests for Exclusion from Settlement it received (both valid or
13 invalid), the number of written objections and attach the Exclusion List. The
14 Administrator will supplement its declaration as needed or requested by the Parties
15 and/or the Court. Class Counsel is responsible for filing the Administrator's
16 declaration(s) in Court.

17 7.8.5. Final Report by Settlement Administrator. Within ten (10) days after the
18 Administrator disburses all funds in the Gross Settlement Amount, the
19 Administrator will provide Class Counsel and Defense Counsel with a final report
20 detailing its disbursements, by employee identification number only, of all
21 payments made under this Agreement. At least fifteen (15) days before any
22 deadline set by the Court, the Administrator will prepare, and submit to Class
23 Counsel and Defense Counsel, a signed declaration suitable for filing in Court
24 attesting to its disbursement of all payments required under this Agreement. Class
25 Counsel is responsible for filing the Administrator's declaration in Court.

26
27 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**

28 Based on its records at the time of mediation, DEFENDANTS estimated that there were

1 approximately 21,270 Total Workweeks from the start of the Class Period through October 12, 2022. In in
2 the event the actual count of Workweeks during the Class Period increases by more than 15% from
3 original estimate of 21,270 Workweeks, the Gross Settlement Amount may be increased by the percentage
4 that the actual number of Workweeks in the Class Period exceeds 24,461. In the alternative,
5 DEFENDANTS may elect to end the Class Period on the day on which the number of Workweeks reaches
6 24,461.

7
8 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

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

17
18 **10. MOTION FOR FINAL APPROVAL.**

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

25 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
26 a Participating Class Member, including the right to file responsive documents in Court no
27 later that five (5) court days prior to the Final Approval Hearing, or as otherwise ordered
28 or accepted by the Court.

1 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
2 Approval on any material change to the Settlement (including, but not limited to, the scope
3 of release to be granted by Class Members), the Parties will expeditiously work together in
4 good faith to address the Court's concerns by revising the Agreement as necessary to
5 obtain Final Approval. The Court's decision to award less than the amounts requested for
6 the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
7 Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute
8 a material modification to the Agreement within the meaning of this paragraph.

9 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
10 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
11 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
12 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
13 law.

14 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
15 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
16 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
17 Parties, their respective counsel, and all Participating Class Members who did not object to
18 the Settlement as provided in this Agreement, waive all rights to appeal from the
19 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
20 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
21 waiver of appeal does not include any waiver of the right to oppose such motions, writs or
22 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
23 Agreement will be suspended until such time as the appeal is finally resolved and the
24 Judgment becomes final, except as to matters that do not affect the amount of the Net
25 Settlement Amount.

26 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
27 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
28 material modification of this Agreement (including, but not limited to, the scope of release

1 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
2 nevertheless expeditiously work together in good faith to address the appellate court's
3 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis,
4 any additional Administration Expenses reasonably incurred after remittitur. An appellate
5 decision to vacate, reverse, or modify the Court's award of the Class Representative
6 Service Payments or any payments to Class Counsel shall not constitute a material
7 modification of the Judgment within the meaning of this paragraph, as long as the Gross
8 Settlement Amount remains unchanged.

9
10 **11. AMENDED JUDGMENT.**

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

13
14 **12. ADDITIONAL PROVISIONS.**

15 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
16 Purposes. This Agreement represents a compromise and settlement of highly disputed
17 claims. Nothing in this Agreement is intended or should be construed as an admission by
18 DEFENDANTS that any of the allegations in the Operative Complaint have merit or that
19 DEFENDANTS have any liability for any claims asserted; nor should it be intended or
20 construed as an admission by Plaintiffs that DEFENDANTS' defenses in the Action have
21 merit. The Parties agree that class certification and representative treatment is for purposes
22 of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final
23 Approval or enter Judgment, DEFENDANTS reserve the right to contest certification of
24 any class for any reasons, and DEFENDANTS reserve all available defenses to the claims
25 in the Action, and Plaintiffs reserve the right to move for class certification on any grounds
26 available and to contest DEFENDANTS' defenses. The Settlement, this Agreement and
27 Parties' willingness to settle the Action will have no bearing on, and will not be admissible
28 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,

1 without regard to conflict of law principles.

2 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
3 this Agreement. This Agreement will not be construed against any Party on the basis that
4 the Party was the drafter or participated in the drafting.

5 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
6 during Action and in this Agreement relating to the confidentiality of information shall
7 survive the execution of this Agreement.

8 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
9 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class
10 Counsel by DEFENDANTS in connection with the mediation, other settlement
11 negotiations, or in connection with the Settlement, may be used only with respect to this
12 Settlement, and no other purpose, and may not be used in any way that violates any
13 existing contractual agreement, statute, or rule of court. Not later than ninety (90) days
14 after the date when the Court discharges the Administrator's obligation to provide a
15 Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all
16 paper and electronic versions of Class Data received from DEFENDANTS unless, prior to
17 the Court's discharge of the Administrator's obligation, DEFENDANTS makes a written
18 request to Class Counsel for the return, rather than the destructions, of Class Data.

19 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
20 inserted for convenience of reference only and does not constitute a part of this
21 Agreement.

22 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
23 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 12.17. Notice. All notices, demands or other communications between the Parties in connection
27 with this Agreement will be in writing and deemed to have been duly given as of the third
28 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
1055 W. Seventh St., Suite 1880
Los Angeles, CA 90017

Isam C. Khoury
Rosemary C. Khoury
COHELAN KHOURY & SINGER
605 C Street, Suite 200
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.

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.

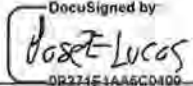
By: _____
Print Name

Signature

Title

Plaintiffs & Class Representatives:

Dated: January 05, 2023

By: 
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

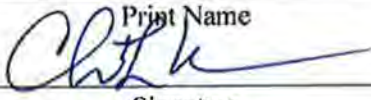
SW INGREDIENTS HOLDINGS, LLC

By: CHRIS L. KISEN
Print Name

Signature
CEO
Title

Dated: January 8, 2023

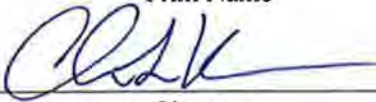
SPICE WORLD, INC.

By: CHRIS L. KISEN
Print Name

Signature
CEO
Title

1 Dated: January 8, 2023

SPICE WORLD, LLC

2
3 By: CHRIS L. KUNER
Print Name

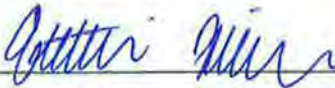
4
5 
Signature

6
7 CEO, Spice World Holdings, LLC
Title

8
9 **Defendants' Counsel:**

10 Dated: January 10, 2023

BARSAMIAN & MOODY

11
12 By: 

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

15 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.

E-mail: brett.gunther@moonyanglaw.com

Julie Oh, Esq.

E-mail: julie.oh@moonyanglaw.com

1055 W. Seventh St., Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

COHELAN KHOURY & SINGER

Isam C. Khoury, Esq.

E-mail: ikhoury@ckslaw.com

Michael D. Singer, Esq.

E-mail: msinger@ckslaw.com

Rosemary C. Khoury, Esq.

E-mail: rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, California 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan, Esq.

E-mail: support@davtyanlaw.com

400 N. Brand Blvd., Suite 700

Glendale, California 91203

Telephone: (818) 875-2008

Facsimile: (818) 722-3974

Defendant's Counsel
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).

Individual Settlement Payments. 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

Ready

EXHIBIT 3

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	
1																								
2																								
3																								
4																								
								REG		OTNS		OT		DT		DTNS		ERDEN		ERMED		REGNS		
	Co		Location	Employee	ID	Chk Date	Chk Vch	N	Hrs	Amount	Hrs	Amount	Hrs	Amount	Hrs	Amount	Hrs	Amount	Hrs	Amount	Hrs	Amount	Hrs	Amount
5																								
6		100-1084-		1160	12/16/2020	1.025E+09	88.25		2.00	26.00														
7				1160	12/30/2020	1.025E+09	1075.08		64.00	832.00				17.70	345.17	0.08	2.08						5.23	70
8		100-1086-		1157	12/02/2020		10879		447.47	36.96	480.48			0.48	9.36									
9				1157			10880		45.67															
10				1157	12/16/2020		11841		841.84	71.84	933.92			1.63	31.80									
11				1157			11842		456.75															
12				1157	12/30/2020		12535		905.38	24.00	312.00			0.52	10.15									
13		105-1049-		970	01/15/2020		171		848.00			0.43	8.40										55.55	722
14				970	01/16/2020		373		25.67			0.43	0.32										55.55	27
15				970	01/29/2020		592		931.18			1.06	21.20										71.98	971
16				970	02/12/2020		943		893.81			3.61	72.20										65.10	878
17				970	02/26/2020		1293		841.47			3.82	77.35										68.07	918
18				970	03/11/2020		1660		915.06			5.24	107.28										71.97	971
19				970	03/25/2020		2052		1640.54			38.15	772.55				3.35	90.45					80.00	1080
20				970	04/08/2020		2432		1345.32			26.93	545.35										72.00	972
21				970	04/22/2020		2810		1207.25			16.19	327.84										79.91	1078
22				970	05/06/2020		3225		930.91			1.02	20.67										72.00	972
23				970	05/20/2020		3670		817.74	8.00	104.00	0.74	15.00	0.15	2.93								62.80	847
24				970	06/03/2020		4136		1086.32			1.34	27.15	10.10	196.95				0.00	13.85	0.00	240.62	62.14	838
25				970	06/17/2020		4609		1027.96			4.32	90.32						0.00	13.86	0.00	240.62	80.00	1115
26				970	07/01/2020		5082		905.78			3.10	64.81						0.00	13.86	0.00	240.62	72.00	1003
	Payroll Register Data Export																							

X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	AI	AJ	AK	AL	AM	AN	AO	AP	AQ	AR	AS	AT	AU
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[illegible]

partly

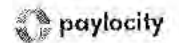
Payroll Register Data Export

Deductions											
REIMB	GTL1	MLB	CHLD1	401L1	GARN1	SLEVY	FSA	CRIT	DCARE	CHLD3	LEVY
Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount
▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼

EXHIBIT 4

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

JPMorgan Chase Bank
2-1/710



Check Date
December 2, 2020

Check Number
1024654849

PAYROLL CHECK

Pay this amount: Nine hundred thirty-two dollars and sixty cents *****

\$ ** 932.60

VOID AFTER 180 DAYS

To the order of 104647 100-1021-10023 1125 1024654849 11493 A
Jose E Lucas

Christina Moriarty

Authorized Signature

SW Ingredients Holdings LLC

Jose E Lucas

Employee ID 1125
Location 100-1021-10023
Hourly \$14.50
Fed Taxable Income
Fed Filing Status
State Filing Status

1,023.56
M
M-5
Check Date December 2, 2020
Period Beginning November 16, 2020
Period Ending November 29, 2020

Earnings Statement

Check Number 1024654849
Net Pay 932.60
Check Amount 932.60
Total Hours Worked 48.32

Earnings	Rate	Hours	Amount	YTD
401k Match		0.00	31.66	225.09
Bonus				50.00
FLOAT	14.50	8.00	116.00	116.00
Holiday				116.00
Overtime	21.75	0.90	19.58	1,777.72
PTO	14.50	16.00	232.00	348.00
REGNS				37.50
Regular	14.50	47.42	687.64	10,153.95
Gross Earnings		72.32	1,055.22	12,599.17

Taxes	Amount	YTD
CA	0.00	0.00
CASDL-E	10.24	123.75
FLTW	0.00	0.00
MED	15.30	182.69
SS	65.42	781.14
Taxes	90.96	1,087.58

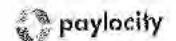
Deductions	Amount	YTD
401k	31.66	225.09
Deductions	31.66	225.09
Direct Deposits	Type Account	Amount

No Direct Deposits

Time Off	Available Plan Year to Use	Used
Families	80.00	0.00
Float	16.00	8.00
PTO	6.77	24.00

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

JPMorgan Chase Bank
2-1/710



Check Date
December 2, 2020

Check Number
1024654850

PAYROLL CHECK

Pay this Forty-five dollars and sixty-seven cents *****
amount:

\$ ** 45.67
VOID AFTER 180 DAYS

To the 104647 100-1021-10023 1125 1024654850 11494 A
order of Jose E Lucas

Christina Moriarty

Authorized Signature

SW Ingredients Holdings LLC

Jose E Lucas

Employee ID 1125
Location 100-1021-10023
Hourly \$14.50
Fed Taxable Income
Fed Filing Status
State Filing Status

50.00
M
M-5

Check Date December 2, 2020
Period Beginning November 16, 2020
Period Ending November 29, 2020

Earnings Statement

Check Number 1024654850
Net Pay 45.67
Check Amount 45.67
Total Hours Worked 0.00

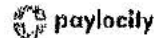
Earnings	Rate	Hours	Amount	YTD
401k Match				225.09
Bonus		0.00	50.00	50.00
FLOAT				116.00
Holiday				116.00
Overtime				1,777.72
PTO				348.00
REGNS				37.50
Regular				10,153.95
Gross Earnings		0.00	50.00	12,599.17
			Amount	YTD
Taxes				
CA			0.00	0.00
CASDI-E			0.50	123.75
FITW			0.00	0.00
MED			0.73	182.69
SS			3.10	781.14
Taxes			4.33	1,087.58

Deductions	Amount	YTD
401k		225.09
		225.09
Direct Deposits	Type Account	Amount
No Direct Deposits		

Time Off	Available Plan Year	
	to Use	Used
Families	80.00	0.00
Float	16.00	8.00
PTO	6.77	24.00

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

Direct Deposit Advice



Check Date
December 16, 2020

Voucher Number
12059

DIRECT DEPOSIT VOUCHER				Direct Deposits	Type	Account	Amount
				EDUCATION C		***3523	840.13
				AL			
				Total Direct Deposits			840.13

104647 105-1021-10080 1075 12059 12936 A
Jose Magallon

Non Negotiable - This is not a check - Non Negotiable

SW Ingredients Holdings LLC

Jose Magallon

Earnings Statement

Employee ID	1075	Fed Taxable Income	951.35	Check Date	December 16, 2020	Voucher Number	12059
Location	105-1021-10080	Fed Filing Status	11	Period Beginning	November 30, 2020	Net Pay	840.13
Hourly	\$14.76	State Filing Status	H-I	Period Ending	December 13, 2020	Total Hours Worked	86.34

Earnings	Rate	Hours	Amount	YTD
401k Match		0.00	41.41	425.32
Bonus				550.00
DTNS				74.32
BR Cost of		0.00	30.18	354.77
BR Cost of		0.00	383.27	4,599.24
FLOAT				118.08
Holiday				466.24
OTNS				3,148.41
Overtime	22.14	14.34	317.50	2,444.73
PTO				472.32
REGNS				9,917.27
Regular	14.76	72.00	1,062.72	9,164.49
Gross Earnings		86.34	1,380.22	26,355.86

Taxes	Amount	YTD
CA	0.00	131.49
CASDI-B	9.51	228.31
FTW	0.00	124.28
MBD	14.40	337.23
SS	61.53	1,441.88
Taxes	85.46	2,263.19

Deductions	Amount	YTD
401k	41.41	425.32
Child Support 1	50.76	1,089.12
Dental Ins	45.58	364.64
Medical Ins	332.90	2,663.20
Reimbursement	-25.00	-450.00
Vision	8.98	71.84
Deductions	454.63	4,164.12
Direct Deposits		Type Account
EDUCATIONAL EMPLOYEES CREDIT U	C	***3523
Total Direct Deposits		840.13

Available Plan Year		
Time Off	to Use	Used
Float	16.00	8.00
PTO	0.00	11.08

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

paylocity
Direct Deposit Advice
Check Date December 16, 2020
Voucher Number 12060

Direct Deposit Voucher	Type	Account	Amount
104647 105-1021-10080 1075 12060 12937 A	EDUCATION C	***3523	456.75
Jose Magallan	AL		
	Total Direct Deposits		456.75

Non Negotiable - This is not a check - Non Negotiable

SW Ingredients Holdings LLC

Jose Magallan

Earnings Statement

Employee ID	1075	Fed Taxable Income	500.00	Check Date	December 16, 2020	Voucher Number	
Location	105-1021-10080	Fed Filing Status	H	Period Beginning	November 30, 2020	Net Pay	
Hourly	\$14.76	State Filing Status	H-1	Period Ending	December 13, 2020	Total Hours Worked	

Earnings	Rate	Hours	Amount	YTD
401k Match				425.32
Bonus		0.00	\$00.00	550.00
DTNS				74.32
BR Cost of				354.77
BR Cost of				4,599.24
FLOAT				118.08
Holiday				466.24
OTNS				3,148.41
Overtime				2,444.73
PTO				472.32
RLBONS				9,917.27
Regular				9,164.49
Gross Earnings		0.00	\$00.00	26,355.86

Taxes	Amount	YTD
CA	0.00	131.49
CASDI-E	5.00	228.31
FITW	0.00	124.28
MED	7.25	337.23
SS	31.00	1,441.88
Taxes	43.25	2,263.19

Deductions	Amount
401k	
Child Support I	
Dental Ins	
Medical Ins	
Reimbursement	
Vision	

Direct Deposits	Type	Account
EDUCATIONAL EMPLOYEES CREDIT U C	***3523	
Total Direct Deposits		

Time Off	Available Plan Year	Used
Floating	16.00	8.00
PTO	0.00	11.08

EXHIBIT 5



500 Enterprise Parkway
Coalinga, CA 93210

Meal Break Waiver
(California only)

General Requirements: An employee who works more than five (5) hours in a day must take an unpaid, off duty meal break of not less than 30 minutes no later than the end of the fifth (5th) hour of work. Additionally, an employee who works more than 10 hours in a day must take a second unpaid, off duty meal break of not less than 30 minutes no later than the end of the tenth (10th) hour of work. Exceptions: When an employee will work more than 10 hours but less than 12 hours for the day, the employee may waive his/her second meal break provided he/she took his/her first off duty meal break.

Employee Consent to Waiver:

By signing below, I, Jose E. Lucas, Voluntary consent to waive my meal break when I work more than ten (10) hours, but not more than twelve (12) hours in a day, if I took my first off duty meal break.

I understand that I can revoke this consent at any time by notifying my supervisor/manager in writing.

Employee Name (print): Jose E. Lucas

Employee Signature: Jose E. Lucas

Date: 7/16/20



500 Enterprise Parkway
Coalinga, CA 93210

Meal Break Waiver
(California only)

General Requirements: An employee who works more than five (5) hours in a day must take an unpaid, off duty meal break of not less than 30 minutes no later than the end of the fifth (5th) hour of work. Additionally, an employee who works more than 10 hours in a day must take a second unpaid, off duty meal break of not less than 30 minutes no later than the end of the tenth (10th) hour of work.

Exceptions: When an employee will work more than 10 hours but less than 12 hours for the day, the employee may waive his/her second meal break provided he/she took his/her first off duty meal break.

Employee Consent to Waiver:

By signing below, I, Jose Magallon, Voluntary consent to waive my meal break when I work more than ten (10) hours, but not more than twelve (12) hours in a day, if I took my first off duty meal break.

I understand that I can revoke this consent at any time by notifying my supervisor/manager in writing.

Employee Name (print): Jose Magallon

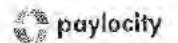
Employee Signature: [Signature]

Date: 4/2/2020

EXHIBIT 6

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

JPMorgan Chase Bank
2-1/710



Check Date
July 29, 2020

Check Number
1023570178

PAYROLL CHECK

Pay this Five hundred fifty-three dollars and eighty-six cents *****
amount:

\$ ** 553.86

VOID AFTER 180 DAYS

To the 104647 100-1021-10023 1125 1023570178 6423 A
order of Jose E Lucas

Christina Moriarty

Authorized Signature

SW Ingredients Holdings LLC

Jose E Lucas

Employee ID 1125 Fed Taxable Income
Location 100-1021-10023 Fed Filing Status
Hourly \$14.50 State Filing Status

606.30 Check Date July 29, 2020
M Period Beginning July 13, 2020
M-5 Period Ending July 26, 2020

Earnings Statement

Check Number 1023570178
Net Pay 553.86
Check Amount 553.86
Total Hours Worked 38.19

Earnings	Rate	Hours	Amount	YTD
Overtime	21.75	2.07	45.03	45.03
REGNS	15.00	2.50	37.50	37.50
Regular	14.50	36.12	523.77	523.77
Gross Earnings		40.69	606.30	606.30

Taxes	Amount	YTD
CA	0.00	0.00
CASDI-E	6.06	6.06
FITW	0.00	0.00
MED	8.79	8.79
SS	37.59	37.59
Taxes	52.44	52.44

Deductions	Amount	YTD
No Deductions		

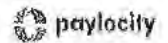
Direct Deposits	Type Account	Amount
No Direct Deposits		

Time Off	Available Plan Year	
	to Use	Used
Families	80.00	0.00
Float	24.00	0.00
PTO	3.08	0.00

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC
02/26/2021	Fri	5:58AM	10:02AM	4.07	0.00	0.00				4.07	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:33AM	2:31PM	3.93	0.03	0.00				3.97	0.00	Work									1	100	Operations	1052	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/01/2021	Mon	6:00AM	9:56AM	3.93	0.00	0.00				3.93	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:28AM	2:45PM	4.07	0.22	0.00				4.28	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/02/2021	Tue	4:46AM	10:01AM	5.25	0.00	0.00				5.25	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:31AM	2:01PM	2.75	0.75	0.00				3.50	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/03/2021	Wed	4:45AM	10:08AM	5.40	0.00	0.00				5.40	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:40AM	1:33PM	2.60	0.28	0.00				2.88	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/04/2021	Thu	4:47AM	9:53AM	5.10	0.00	0.00				5.10	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:24AM	1:50PM	2.90	0.53	0.00				3.43	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/05/2021	Fri	4:46AM	10:04AM	5.30	0.00	0.00				5.30	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:34AM	1:38PM	2.70	0.37	0.00				3.07	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/08/2021	Mon	8:00AM		0.00	0.00	0.00				0.00	8.00	Unpaid Time Off										100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/09/2021	Tue	4:47AM	10:01AM	5.23	0.00	0.00				5.23	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
		10:32AM	1:55PM	2.77	0.62	0.00				3.38	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		
03/10/2021	Wed	6:00AM	10:30AM	4.50	0.00	0.00				4.50	0.00	Work									1	100	Operations	1051	CA Fresh Area - 10023 Indirect	Forklift Operator 5018 2	CA - Cooler		

SW Ingredients Holdings LLC
8101 Presidents Dr
Orlando, FL 32809

Direct Deposit Advice



Check Date
May 6, 2020

Voucher Number
3356

DIRECT DEPOSIT VOUCHER

104647 105-1021-10081 1075 3356 3548
Jose Magallon

Direct Deposits	Type	Account	Amount
EDUCATION C		***3523	1,654.98
AL			
Total Direct Deposits			1,654.98

Non Negotiable - This is not a check - Non Negotiable

SW Ingredients Holdings LLC

Jose Magallon

Earnings Statement

Employee ID	1075	Fed Taxable Income	1,893.52	Check Date	May 6, 2020	Voucher Number	3356
Location	105-1021-10081	Fed Filing Status	H	Period Beginning	April 20, 2020	Net Pay	1,654.98
Hourly	\$14.00	State Filing Status	H-1	Period Ending	May 3, 2020	Total Hours Worked	0.00

Earnings	Rate	Hours	Amount	YTD
OTNS	29.50	0.08	2.36	2.36
OTNS	22.13	32.15	711.29	721.24
REGNS	14.75	79.99	1,179.87	1,530.92
Gross Earnings		112.22	1,893.52	2,254.52

Taxes	Amount	YTD
CA	21.36	21.36
CASDL-E	18.94	22.55
FTW	53.38	53.38
MED	27.46	32.69
SS	112.40	139.78
Taxes	238.54	269.76

Deductions	Amount	YTD
No Deductions		

Direct Deposits	Type	Account	Amount
EDUCATIONAL EMPLOYEES CREDIT U	C	***3523	1,654.98
Total Direct Deposits			1,654.98

Time Off	Available	Plan Year	to Use	Used
Vacat	0.00		0.00	
PTO	6.15		0.00	

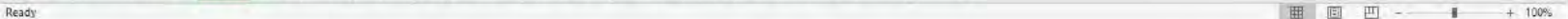


EXHIBIT 7