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

ARMANDO DIAZ-GARCIA, as an individual,
and on behalf of all other similarly situated
employees,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation and DOES 1-50, inclusive,

Defendant.

JOSE ELIAS BARAJAS, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01193589-CU-OE-CXC
Consolidated with Case No.: 30-2021-
01217438-CU-OE-CXC

[Honorable Lon F. Hurwitz,
Department CX103]

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

Complaint Filed: April 2, 2021
Trial Date: Not Set

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FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA ACTION

SETTLEMENT

This First Amended Joint Stipulation of Class and PAGA Action Settlement (“Joint Stipulation,” “Settlement,” or “Agreement”) is made and entered into by and between Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas (“Plaintiffs” or “Class Representatives”), as individuals, and on behalf of all others similarly situated, and Defendant Awesome Products, Inc. (“Defendant”). Plaintiffs and Defendant will be referred to herein collectively as the “Parties.” The Parties stipulate and agree as follows:

1. RECITALS.

1.1 On February 23, 2021, Plaintiff Armando Diaz-Garcia filed with the Labor and Workforce Development Agency (“LWDA”), and sent via certified mail to Defendant, written notice of the California Labor Code sections he alleged Defendant had violated, pursuant to Labor Code section 2699.3, subdivision (a).

1.2 On April 2, 2021, Plaintiff Armando Diaz-Garcia filed a Class Action Complaint against Defendant, which alleged, on behalf of all non-exempt employees of Defendant who worked in California from the date four years before the filing of the complaint through the date of the signed order certifying the Class: Failure to Pay Minimum Wages [*Labor Code* §§ 510 and 1194]; Failure to Pay Overtime Wages [*Labor Code* §§ 510 and 1194]; Failure to Pay Timely Wages [*Labor Code* § 210]; Failure to Lawfully Receive Wages [*Labor Code* § 221]; Failure to Provide Meal Breaks [*Labor Code* §§ 226.7 and 512]; Failure to Provide Rest Periods [*Labor Code* § 226.7]; Failure to Provide and Maintain Accurate Itemized Wage Statements and Maintain Records [*Labor Code* § 226(a)]; Failure to Pay Timely Wages Upon Termination [*Labor Code* § 203]; and Unlawful Business Practices [*Business & Professions Code* §§ 17200, *et seq.*].

1.3 On August 22, 2021, Plaintiff Jose Elias Barajas filed with the Labor and Workforce Development Agency (“LWDA”), and sent via certified mail to Defendant, written notice of the California Labor Code sections he alleged Defendant had violated, pursuant to Labor Code section 2699.3, subdivision (a).

1.4 On August 23, 2021, Plaintiff Jose Elias Barajas filed a Class Action Complaint against Defendant, which alleged the same or similar causes of action as alleged in *Armando Diaz-Garcia v. Awesome Products, Inc.*, Case No. 30-2021-01193589-CU-OE-CXC.

1.5 On May 26, 2021, Plaintiff Armando Diaz-Garcia filed a First Amended Class Action and Representative Action Complaint, which alleged an additional cause of action for Civil Penalties under the Private Attorneys General Act [*Labor Code* §§ 2698, *et. seq.*] (“PAGA”); and on December 14, 2021, Plaintiff Jose Elias Barajas filed the same.

1.6 On January 26, 2023, the Parties participated in a private mediation with experienced, professional mediator, Marc Feder, Esq., which resulted in the Parties executing a Memorandum of Understanding containing the main financial terms of the instant Settlement.

1.7 On May 24, 2023, the Parties filed a Joint Stipulation to consolidate *Armando Diaz-Garcia v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-CXC and *Jose Elias Barajas v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01217438-CU-OE-CXC, and to name the former as the lead case. Thereafter the Court granted an order thereon, rendering the Consolidated Second Amended Class and Representative Action Complaint (“Operative Complaint”) attached thereto as operative.

1.8 Now, therefore, the Parties enter into the instant Joint Stipulation and, solely for purposes of settling the Action and addressing any discrepancies identified herein, stipulate and agree that the requisites for establishing class certification with respect to the Class Members (defined below) have been met and are met, including that the putative Class is ascertainable and so numerous as to make it impracticable to join all putative Class Members; there are common questions of law and fact which predominate over any question(s) affecting any individual putative Class Member; Plaintiffs’ claims are typical of the claims of the putative Class; Plaintiffs and Class Counsel will fairly and adequately protect the interests of the putative Class; the prosecution of separate actions by individual members of the putative Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct; and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

1 **2. DEFINITIONS**

2 2.1. “Action” means the consolidated action entitled *Armando Diaz-Garcia, et. al. v.*
3 *Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-
4 CXC.

5 2.2. “Administrator” means the neutral entity the Parties have appointed to administer
6 the Settlement, ILYM Group, Inc.

7 2.3. “Administration Expenses Payment” means the amount the Administrator will be
8 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
9 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
10 with Preliminary Approval of the Settlement.

11 2.4. “Aggrieved Employees” means all non-exempt employees of [Defendant](#)
12 [Awesome Products, Inc.](#) who worked in California during the PAGA Period, including any
13 employee employed through any staffing agency, professional employer organization, or
14 temporary employment agency utilized by Defendant during the Class Period, which are
15 identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel,
16 Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing.

17 2.5. “Class” or “Class Members” means all non-exempt employees of [Defendant](#)
18 [Awesome Products, Inc.](#) who worked in California during the Class Period, including any
19 employee employed through any staffing agency, professional employer organization, or
20 temporary employment agency utilized by Defendant during the Class Period, which are
21 identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel,
22 Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing.

23 2.6. “Class Counsel” means Jackson APC and Moon & Yang, APC.

24 2.7. “Class Counsel Fees Payment” means the amount allocated to Class Counsel for
25 reimbursement of their reasonable fees incurred to prosecute the Action.

26 2.8. “Class Counsel Litigation Expenses Payment” means the amount allocated to
27 Class Counsel for reimbursement of their reasonable expenses incurred to prosecute the Action.

2.9. "Class Data" means Class Member identifying information, including the name, last-known mailing address and Social Security number of the Class Member.

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

2.11. "Class Notice" means the Court-approved notice of class action settlement and hearing date for final court approval, to be mailed to Class Members in English and Spanish.

2.12. "Class Period" means April 2, 2017, through March 31, 2023.

2.13. "Class Representatives" means Armando Diaz-Garcia and Jose Elias Barajas, the named Plaintiffs in the Action.

2.14. "Class Representative Service Payments" means the payments to the Class Representatives for initiating and providing services in support of the Action and for their general release, as described in Paragraph 5.1 below.

2.15. "Court" means the Orange County Superior Court.

2.16. "Defendant" means Awesome Products, Inc. and each of its past, present, and future respective subsidiaries, dba's, affiliates, parents, predecessors, successors, investors, and their current and former employees, managing agents, servants, consultants, agents, directors, officers, members, independent contractors, representatives, insurers, reinsurers, and attorneys.

2.17. "Defense Counsel" means Fisher & Phillips, LLP and the Law Offices of Robert Mackey.

2.18. "Effective Date" means the date on which 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 Settlement Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Settlement Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed,

1 the day after the appellate court affirms the Judgment and issues a remittitur.

2 2.19. "Final Approval" means the Court Order Granting Final Approval of the
3 Settlement.

4 2.20. "Final Approval Hearing" means the Court Hearing on the Motion for Final
5 Approval of the Settlement.

6 2.21. "Final Judgment" means the Court Judgment made upon granting final approval
7 of the Settlement.

8 2.22. "Gross Settlement Amount" means \$630,000.00, the total amount Defendant
9 agrees to pay under the Settlement, except as provided in Paragraph 8 below, and which will be
10 used to pay the Individual Class Payments, PAGA Settlement Payment, Class Counsel Fees
11 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments,
12 and Administration Expenses Payment.

13 2.23. "Individual Class Payments" means the individual payments made to each
14 Settlement Class Member from the Net Settlement Amount.

15 2.24. "Individual PAGA Payment(s)" means the allocation of twenty-five percent of the
16 PAGA Settlement Payment, to be paid to the Aggrieved Employees, pursuant to Labor Code
17 section 2699, subdivision (i).

18 2.25. "LWDA" means the California Labor and Workforce Development Agency.

19 2.26. "LWDA PAGA Payment" means the allocation of seventy-five percent of the
20 PAGA Settlement Payment, to be paid to the LWDA, pursuant to Labor Code section 2699,
21 subdivision (i).

22 2.27. "Net Settlement Amount" means the Gross Settlement Amount less the following
23 payments, in the amounts approved by the Court: the PAGA Settlement Payment, Class
24 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
25 Expenses Payment, and Administration Expenses Payment. The Net Settlement Amount is to
26 be paid to Settlement Class Members as Individual Class Payments.

27 2.28. "Non-Participating Class Members" means Class Members who submit a valid
28

1 and timely Request for Exclusion from the Settlement.

2 2.29. "PAGA" means the California Labor Code Private Attorneys General Act.

3 2.30. "PAGA Period" means February 23, 2020, through March 31, 2023.

4 2.31. "PAGA Pay Period" means the pay periods in which any Aggrieved Employee
5 actually worked one shift during the PAGA Period.

6 2.32. "PAGA Settlement Payment" means \$60,000.000, the total amount of PAGA
7 civil penalties to be paid from the Gross Settlement Amount, and which shall be allocated
8 seventy-five percent to the LWDA (\$45,000.00) ("LWDA PAGA Payment") and twenty-five
9 percent to the Aggrieved Employees (\$15,000.00) ("Individual PAGA Payment"), in settlement
10 of the Released PAGA Claims.

11 2.33. "Plaintiffs" means Armando Garcia-Diaz and Jose Elias Barajas.

12 2.34. "Preliminary Approval" means the Court Order Granting Preliminary Approval
13 of the Settlement and Class Notice.

14 2.35. "Released Class Claims" means the claims being released as described in
15 Paragraph 5.2 below.

16 2.36. "Released PAGA Claims" means the claims being released as described in
17 Paragraph 5.3 below.

18 2.37. "Released Parties" means: Defendant and all of their past, present, and future
19 respective subsidiaries, dba's, affiliates, parents, predecessors, successors, investors, and their
20 current and former employees, managing agents, servants, consultants, agents, directors,
21 officers, members, independent contractors, representatives, insurers, reinsurers, attorneys; and
22 any staffing agency, professional employer organization, or temporary employment agency
23 utilized by Defendant during the Class Period, including Southbay Safety, Next Level Staffing,
24 Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing,
25 Selective Personnel, and Dynamic Staffing, and any of their past, present, and future respective
26 subsidiaries, dba's, affiliates, parents, predecessors, successors, investors, and their current and
27 former employees, managing agents, servants, consultants, agents, directors, officers, members,

1 independent contractors, representatives, insurers, reinsurers, attorneys.

2 2.38. "Request for Exclusion" means the submission of a written request by a Class
3 Member to be excluded from the Settlement, which is signed by the Class Member.

4 2.39. "Response Deadline" means sixty (60) calendar days after the Administrator
5 mails the Class Notice to the Class Members and Aggrieved Employees and the last date on
6 which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement,
7 or (b) fax, email or mail Objections to the Settlement. Class Members to whom Notice Packets
8 are resent after having been returned undeliverable to the Administrator shall have an additional
9 fourteen (14) calendar days beyond the Response Deadline.

10 2.40. "Settlement" means the disposition of the Action effected by this Agreement.

11 2.41. "Settlement Class Member" or "Participating Class Member" means a Class
12 Member who does not submit a valid and timely Request for Exclusion from the Settlement.

13 2.42. "Workweeks" means the weeks in which any Settlement Class Member actually
14 worked one shift during the Class Period.

15 **3. MONETARY TERMS.**

16 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
17 Defendant agrees to pay the Gross Settlement Amount of \$630,000.00 and to separately pay any
18 and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.
19 Defendant has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to
20 the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the
21 entire Gross Settlement Amount without asking or requiring Settlement Class Members or
22 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross
23 Settlement Amount will revert to Defendant.

24 3.2. Net Settlement Amount. The Administrator will make and deduct the following
25 payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final
26 Approval:

1 3.2.1. To Plaintiffs: The Class Representative Service Payments to the Class
2 Representatives of not more than \$7,500.00 each (in addition to any Individual Class Payments
3 and Individual PAGA Payments the Class Representatives are entitled to receive as Settlement
4 Class Members and Aggrieved Employees). Defendant will not oppose a request for payments
5 that do not exceed this amount. As part of their motion for the Class Counsel Fees Payment and
6 Class Counsel Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class
7 Representative Service Payments no later than sixteen (16) court days prior to the Final
8 Approval Hearing. If the Court approves Class Representative Service Payments less than the
9 amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
10 The Administrator will pay the Class Representative Service Payments using IRS Form 1099.
11 Plaintiffs assume full responsibility and liability for employee taxes owed on the Class
12 Representative Service Payments.

13 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
14 \$210,000.00, or one third of the Gross Settlement Amount, and a Class Counsel Litigation
15 Expenses Payment of not more than \$20,000.00. Defendant will not oppose a request for
16 payments that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion
17 for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than
18 sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class
19 Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment less than the
20 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.
21 Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising
22 from any claim to any portion of any Class Counsel Fees Payment and/or Class Counsel
23 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and
24 Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel
25 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and
26 Class Counsel Litigation Expenses Payment and hold Defendant harmless from and indemnify
27 Defendant for any dispute or controversy regarding division or sharing of such payments.

1 3.2.3. To the Administrator: An Administration Expenses Payment of not more
2 than \$10,000.00, except for a showing of good cause and as approved by the Court. To the extent
3 the Administration Expenses Payment is less or the Court approves payment less than
4 \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

5 3.2.4. To Each Settlement Class Member: An Individual Class Payment
6 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks
7 worked by all Settlement Class Members during the Class Period and (b) multiplying the result
8 by each Settlement Class Member's Workweeks.

9 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each
10 Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
11 The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 80%
12 of each Individual Class Payment will be allocated to settlement of claims for interest (40%) and
13 penalties (40%) (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage
14 withholdings and will be reported on IRS 1099 Forms. Settlement Class Members assume full
15 responsibility and liability for any employee taxes owed on their Individual Class Payment.

16 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
17 Individual Class Payments. Non-Participating Class Members will not receive any Individual
18 Class Payments. The Administrator will retain amounts equal to their Individual Class
19 Payments in the Net Settlement Amount for distribution to Settlement Class Members on a pro
20 rata basis.

21 3.2.5. To the LWDA and Aggrieved Employees: A PAGA Settlement Payment
22 in the amount of \$60,000.00 to be paid from the Gross Settlement Amount, with seventy-five
23 percent (\$45,000.00) allocated to the LWDA PAGA Payment and twenty-five percent
24 (\$15,000.00) allocated to the Individual PAGA Payment.

25 3.2.5.1. The Administrator will calculate each Individual PAGA
26 Payment by (a) dividing the amount of the total Individual PAGA Payment (\$15,000.00) by the
27 total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
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1 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. 100%
2 of the Individual PAGA Payments will be to settlement of claims for penalties and interest.

3 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
4 Individual PAGA Payment.

5 **4. SETTLEMENT FUNDING AND PAYMENTS.**

6 4.1. Class Data. Not later than fifteen (15) business days after the Court grants
7 Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data
8 to the 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 Data
10 only for purposes of this Settlement and for no other purpose, and restrict access to the Class
11 Data to Administrator employees who need access to the Class Data to effect and perform under
12 this Agreement. Defendant has a continuing duty to immediately (a) notify Class Counsel if it
13 discovers the Class Data omitted a class member and (b) provide corrected/updated Class Data
14 as soon as reasonably feasible. Without any extension of the deadline by which Defendant must
15 send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
16 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to omitted data.

17 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
18 Settlement Amount and the amounts necessary to fully pay their share of payroll taxes, by
19 transmitting the funds to the Administrator no later than twenty-one (21) business days after the
20 Effective Date. If Defendant fails to timely transfer the funds as set forth in this Agreement,
21 Defendant shall have fourteen (14) business days from the last day the payment is due to cure
22 the untimely payment. Defendant shall transmit the funds pursuant to the Settlement
23 Administrator's electronic transfer instructions. Defendant's payment obligations with respect
24 to the Gross Settlement Amount, Defendant's share of payroll taxes, and any cure payment
25 shall be met upon initiating the electronic transfer of funds to the Administrator, pursuant to the
26 Administrator's instructions. In the event of an unsuccessful electronic transfer of funds, the
27 Parties agree to cooperate in good faith to resolve the issues.

1 4.3. Payments from the Gross Settlement Amount. Within fourteen (14) business
2 days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail
3 checks for the Individual Class Payments, Individual PAGA Payments, LWDA PAGA
4 Payment, Administration Expenses Payment, Class Counsel Fees Payment, Class Counsel
5 Litigation Expenses Payment, and Class Representative Service Payments. Disbursement of the
6 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class
7 Representative Service Payments shall not precede disbursement of the Individual Class
8 Payments and Individual PAGA Payments.

9 4.3.1. The Administrator will issue checks for the Individual Class Payments
10 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.
11 Mail, postage prepaid. The face of each check shall prominently state the date (not less than
12 180 calendar days after the date of mailing) when the check will be voided. The Administrator
13 will cancel all checks not cashed by the void date. The Administrator will send checks for
14 Individual Settlement Payments to all Settlement Class Members, including those for whom
15 Class Notice was returned undelivered.

16 4.3.2. The Administrator will send checks for Individual PAGA Payments to all
17 Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved
18 Employees, including those for whom a Class Notice was returned undelivered. The
19 Administrator may send Settlement Class Members a single check combining his or her
20 Individual Class Payment and Individual PAGA Payment. Before mailing any checks, the
21 Administrator must update the recipients' mailing addresses using the National Change of
22 Address Database.

23 4.3.3. The Administrator must conduct a Class Member Address Search for all
24 other Class Members whose checks are returned undelivered without USPS forwarding
25 addresses. Within seven (7) calendar days of receiving a returned check the Administrator must
26 re-mail checks to the USPS forwarding address provided or to an address ascertained through
27 the Class Member Address Search. The Administrator need not take further steps to deliver
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1 checks to Class Members whose re-mailed checks are returned as undelivered. The
2 Administrator shall promptly send a replacement check to any Class Member whose original
3 check was lost or misplaced, requested by the Class Member prior to the void date.

4 4.3.4. Any Individual Class Payment check or Individual PAGA Payment check
5 that is uncashed and cancelled after the void date shall be canceled and funds associated with
6 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
7 of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest,
8 if any, as provided in Code of Civil Procedure section 384, shall be transmitted to the mutually
9 agreeable *cy pres*, Legal Aid at Work, in compliance with Code of Civil Procedure sections 384
10 and 384.5, for use in Orange County and in the name of the Settlement Class Member. The
11 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
12 Procedure section 384 and the report shall be presented to the Court by Class Counsel along
13 with a proposed amended judgment that is consistent with the provisions of Code of Civil
14 Procedure section 384.

15 4.3.5. The payment of Individual Class Payments and Individual PAGA
16 Payments shall not obligate Defendant to confer any additional benefits or make any additional
17 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
18 this Agreement.

19 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
20 Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the
21 Individual Class Payments, Plaintiffs, Class Members and Class Counsel will release claims
22 against all Released Parties as follows:

23 5.1. Plaintiffs' Release. In addition to the Released Class Claims and Released
24 PAGA Claims described below, Plaintiffs and their respective former and present spouses,
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
26 release and discharge Released Parties from all claims, demands, rights, liabilities and causes of
27 action of every nature and description whatsoever, whether known or unknown, asserted or that
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1 might have been asserted, whether in tort, contract, or for violation of any state or federal
2 statute, rule, law or regulation arising out of, relating to, or in connection with any act or
3 omission of the Released Parties through the date of full execution of this Settlement Agreement
4 in connection with his or her employment or the termination thereof (“Plaintiffs’ Release”).
5 Plaintiffs’ Release does not extend to any claims or actions to enforce this Agreement, or to
6 those rights that as a matter of law cannot be waived, including, but not limited to any claims
7 for vested benefits, unemployment benefits, disability benefits, social security benefits, or
8 workers’ compensation benefits that arose at any time. Plaintiffs acknowledge that they may
9 discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know
10 or believe to be true but agree, nonetheless, that Plaintiffs’ Release shall be and remain effective
11 in all respects, notwithstanding such different or additional facts or Plaintiffs’ discovery of
12 them. Irrespective of any terms in this agreement, this agreement does not impact or release any
13 of Plaintiff Garcia Diaz’s claims alleged in the case entitled *Garcia-Diaz v. Awesome Products,*
14 *Inc.* Case No. 30-2022-01253120-CU-WT-CJC.

15 5.1.1. Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542.

16 For purposes of Plaintiffs’ Release, Plaintiffs expressly waive and relinquish the provisions,
17 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

21 5.2. Released Class Claims by Settlement Class Members: All Settlement Class
22 Members, on behalf of themselves and their respective former and present representatives,
23 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from
24 all claims that were alleged, or reasonably could have been alleged, in the Operative Complaint,
25 and ascertained in the course of the Action, that arose during the Class Period including with
26 respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay
27 minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant
28

1 meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant
2 rest periods; (e) failure to issue accurate, itemized wage statements and maintain payroll
3 records; (f) failure to pay all wages due upon separation of employment; (g) failure to reimburse
4 for necessary business expenses; (h) all claims under California Business & Professions Code §
5 17200 for unfair business practices that could have been premised on the facts, claims, causes of
6 action or legal theories described above; (i) violation of or claims under the following sections
7 of the California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226(c), 226.3,
8 226.7, 227.3, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802;
9 and (j) violation of the California Industrial Wage Orders that could have been premised on the
10 facts, claims, causes of action or legal theories described above, as well as any potential
11 penalties, interest or attorneys' fees associated with all of such causes of action under California
12 law ("Released Class Claims"). Except as set forth in Section 5.3 of this Agreement, Settlement
13 Class Members do not release any other claims, including claims for vested benefits, wrongful
14 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
15 disability, social security, workers' compensation, or claims based on facts occurring outside the
16 Class Period.

17 5.3. Released PAGA Claims by Aggrieved Employees: All Class Members who are
18 Aggrieved Employees, regardless of whether they are Settlement Class Members or Non-
19 Participating Class Members, are deemed to release, on behalf of themselves and their
20 respective former and present representatives, agents, attorneys, heirs, administrators,
21 successors, and assigns, the Released Parties from all claims demands, rights, liabilities and
22 causes of action [for civil penalties](#) under the California Labor Code Private Attorneys General
23 Act that were alleged, or reasonably could have been alleged, based on the claims asserted in
24 the Operative Complaint or Plaintiffs' respective Notices of Labor Code Violations and PAGA
25 Penalties and ascertained in the course of the Action arising during or with respect to the PAGA
26 Period, including, but not limited to, civil penalties pursuant to Labor Code sections 210, 226.3,
27 558, 1197.1, and 2699 in connection with violations of Labor Code sections 201, 202, 203, 204,

226, 226.7, 227.3, 246, 432, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198.5, 2802, and 2810.5 (“Released PAGA Claims”). The Released PAGA Claims excludes all claims outside of the PAGA Period.

5.3.1. The foregoing release shall be binding on Plaintiffs, the Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiffs will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approval.

6.1. Responsibilities of Counsel. Class Counsel is responsible for timely finalizing and filing the Motion for Preliminary Approval. The Parties are jointly responsible for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator to initiate the notice process.

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

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this

1 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
2 represent that they have no interest or relationship, financial or otherwise, with the
3 Administrator other than a professional relationship arising out of prior experiences
4 administering settlements.

5 7.2. Employer Identification Number. The Administrator shall have and use its own
6 Employer Identification Number for purposes of calculating payroll tax withholdings and
7 providing reports to state and federal tax authorities.

8 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund
9 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
10 Regulation section 468B-1.

11 7.4. Notice to Class Members.

12 7.4.1. No later than three (3) business days after receipt of the Class Data, the
13 Administrator shall notify Class Counsel that the list has been received and provide the number
14 of Class Members and Aggrieved Employees.

15 7.4.2. Using best efforts to perform as soon as possible, and in no event later
16 than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to
17 all Class Members identified in the Class Data, via first-class United States Postal Service
18 (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit**
19 **A**. The Class Notice shall prominently estimate the dollar amounts of any Individual Class
20 Payment and/or Individual PAGA Payment payable to the Settlement Class Member and/or
21 Aggrieved Employee. Before mailing Class Notices, the Administrator shall update Class Member
22 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
24 any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
25 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
26 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-
27 mail the Class Notice to the most current address obtained. The Administrator has no
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1 obligation to make further attempts to locate or send Class Notices to Class Members whose
2 Class Notice is returned by the USPS a second time.

3 7.4.4. The deadlines for Class Members' written objections and Requests for
4 Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days provided
5 in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will
6 inform the Class Member of the extended deadline with the re-mailed Class Notice.

7 7.4.5. If the Administrator, the Defendant, Defense Counsel or Class Counsel is
8 contacted by or otherwise discovers any persons who believe they should have been included in
9 the Class Data and should have received a Class Notice, the Parties will expeditiously meet and
10 confer in person or by telephone, and in good faith, in an effort to agree on whether to include
11 them as Class Members. If the Parties agree, such persons will be Class Members entitled to the
12 same rights as other Class Members, and the Administrator will send, via email or overnight
13 delivery, a Class Notice requiring them to exercise options under this Agreement no later than 14
14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

15 7.5. Requests for Exclusion (Opt-Outs).

16 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class
17 Settlement must send the Administrator, by fax, email or mail, a signed written Request for
18 Exclusion no later than ~~forty-fivesixty~~ (60~~45~~) calendar days after the Administrator mails the
19 Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class
20 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
21 representative that reasonably communicates the Class Member's election to be excluded from
22 the Settlement and includes the Class Member's name, address and email address or telephone
23 number. To be valid, a Request for Exclusion must be timely faxed, emailed or postmarked by
24 the Response Deadline.

25 7.5.2. The Administrator may not reject a Request for Exclusion as invalid
26 because it fails to contain all the information specified in the Class Notice. The Administrator
27 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
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1 identity of the person as a Class Member and the Class Member's desire to be excluded. The
2 Administrator's determination shall be final and not appealable or otherwise susceptible to
3 challenge. If the Administrator has reason to question the authenticity of a Request for
4 Exclusion, the Administrator may demand additional proof of the Class Member's identity.

5 7.5.3. Every Class Member who does not submit a timely and valid Request for
6 Exclusion is deemed to be a Settlement Class Member under this Agreement, entitled to all
7 benefits and bound by all terms and conditions of the Settlement, including the Settlement Class
8 Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the
9 Settlement Class Member actually receives the Class Notice or objects to the Settlement.

10 7.5.4. Every Class Member who submits a valid and timely Request for
11 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
12 Payment or have the right to object to the class action components of the Settlement. Because
13 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
14 Participating Class Members who are Aggrieved Employees are deemed to release the claims
15 identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

16 7.6. Objections to Settlement.

17 7.6.1. Only Settlement Class Members may object to the class action
18 components of the Settlement and/or this Agreement, including contesting the fairness of the
19 Settlement and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment and/or Class Representative Service Payments. Non-Participating
21 Class Members have no right to object to any of the class action components of the Settlement.

22 ~~7.6.2.~~ Settlement Class Members may send written objections to the
23 Administrator, by fax, email, or mail. In the alternative, Settlement Class Members may appear
24 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final
25 Approval Hearing. A Settlement Class Member who elects to send a written objection to the
26 Administrator must do so not later than sixty (60) calendar days after the Administrator's
27 mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members
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1 whose Class Notice was re-mailed). The Court retains final authority as to consideration and
2 admissibility of objections.

3 7.6.2.

4 7.6.3. In the event a Class Member submits a valid Request for Exclusion and
5 valid Objection, the Objection will control, and the Class Member will be included in the
6 Settlement and considered a Settlement Class Member.

7 7.7. Challenges to Calculation of Workweeks. Each Class Member and/or Aggrieved
8 Employee shall have sixty (60) days after the Administrator mails the Class Notice
9 (plus an additional fourteen (14) days for Class Members whose Class Notice is re-
10 mailed) to challenge the number of Workweeks and PAGA Pay Periods allocated
11 to the Class Member and/or Aggrieved Employee in the Class Notice.

12 7.7.1. The Class Member and/or Aggrieved Employee may challenge the his or
13 her allocation by communicating with the Administrator via fax, email, or
14 mail. The Administrator must encourage the challenging Class Member
15 and/or Aggrieved Employee to submit supporting documentation. In the
16 absence of any contrary documentation, the Administrator is entitled to
17 presume that the Workweeks and/or PAGA Pay Periods contained in the
18 Class Notice are correct so long as they are consistent with the Class Data.
19 The Administrator's determination of each Class Member's allocation of
20 Workweeks and/or PAGA Pay Periods shall be final and not appealable or
21 otherwise susceptible to challenge. The Administrator shall promptly
22 provide copies of all challenges to calculation of Workweeks and/or PAGA
23 Pay Periods to Defense Counsel and Class Counsel and the Administrator's
24 determination the challenges.

25 7.7.2. The Administrator has the authority to address and make final an initial
26 determination regarding any challenges to its calculation of Workweeks
27 and/or PAGA Pay Periods, based on documentation provided by the Class

1 Member, Aggrieved Employee, and/or Defendant. The Administrator shall
2 promptly provide copies of all challenges to its calculation of Workweeks
3 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the
4 Administrator's initial determination regarding the such challenges.
5 However, The Parties shall provide copies of the same to the Court at the
6 time of Final Approval. the Parties shall provide the Administrator's
7 decision and all submissions regarding any challenges to the Court at the
8 time of Final Approval decisions consistent with the terms of this
9 Agreement on all Class Member and/or Aggrieved Employee challenges
10 over the calculation of Workweeks and/or PAGA Pay Periods, and. TtThe
11 Administrator's decision shall be final and not appealable or otherwise
12 susceptible to challenge. Court has the right to review any decision byof the
13 Administrator.

14 7.7.7.8. Administrator Duties. The Administrator has a duty to perform or observe all
15 tasks to be performed or observed by the Administrator contained in this Agreement.

16 7.7.1.7.8.1. Website, Email Address and Toll-Free Number. The
17 Administrator will establish and maintain and use an internet website to post information of
18 interest to Class Members including the date, time, and location for the Final Approval Hearing
19 and copies of the Operative Complaint, Plaintiffs' respective PAGA Notices, the Settlement
20 Agreement, the Notice Packet, Plaintiffs' Motion for Preliminary Approval, the Preliminary
21 Approval Order, Plaintiffs' Motion for Final Approval, and the Final Approval Order and
22 Judgment. The Final Approval Order and Judgment shall remain posted for 180 days. The
23 Administrator will establish and maintain and use an internet website to post information of
24 interest to Class Members including the date, time and location for the Final Approval Hearing
25 and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary
26 Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees
27 Payment, Class Counsel Litigation Expenses Payment and Class Representative Service

1 ~~Payments, the Final Approval and the Judgment.~~ The Administrator will also maintain and
2 monitor an email address and a toll-free telephone number to receive Class Member calls, faxes
3 and emails.

4 7.7.2.7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The
5 Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their
6 validity. Not later than 5 days after the expiration of the deadline for submitting Requests for
7 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing
8 (a) the names and other identifying information of Class Members who have timely submitted
9 valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying
10 information of Class Members who have submitted invalid Requests for Exclusion; (c) copies
11 of all Requests for Exclusion from Settlement submitted (whether valid or invalid). The Court
12 has the right to review any decision by the Administrator concerning the validity of a Request
13 for Exclusion. The Parties will inform the Court of any and all Requests for Exclusion from the
14 Settlement, subsequent to completion of the Class Notice process.

15 7.7.3.7.8.3. Weekly Reports. The Administrator must, on a weekly basis,
16 provide written reports to Class Counsel and Defense Counsel that, among other things, tally the
17 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
18 Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks
19 and/or PAGA Pay Periods, and checks mailed for Individual Class Payments and Individual
20 PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s
21 assessment of the validity of Requests for Exclusion and attach copies of all Requests for
22 Exclusion and objections received.

23 7.7.4.7.8.4. Administrator’s Declaration. Not later than fourteen (14) days
24 before the date by which Plaintiffs are required to file the Motion for Final Approval of the
25 Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed
26 declaration suitable for filing in Court attesting to its due diligence and compliance with all of
27 its obligations under this Agreement, including, but not limited to, its mailing of the Class
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1 Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to
2 locate Class Members, the total number of Requests for Exclusion from Settlement it received
3 (both valid or invalid), the number of written objections and attach the Exclusion List. The
4 Administrator will supplement its declaration as needed or requested by the Parties and/or the
5 Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

6 ~~7.7.5.~~7.8.5. Final Report by Administrator. Within ten (10) days after the
7 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will
8 provide Class Counsel and Defense Counsel with a final report detailing its disbursements by
9 employee identification number only of all payments made under this Agreement. At least
10 fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and
11 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
12 attesting to its disbursement of all payments required under this Agreement. Class Counsel is
13 responsible for filing the Administrator's declaration in Court.

14 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
15 Defendant estimates that, as of the date of this Settlement Agreement, there are no more than
16 10,034 total Workweeks worked by all Settlement Class Members during the Class Period. If
17 the number of Workweeks as of March 31, 2023, increases by more than 6% (more than 602),
18 Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by
19 the Workweeks in excess of 10,636 multiplied by the workweek value; or (b) cap the Release
20 Period as of the date that the 6% of Workweeks is exceeded. In the event Defendant chooses
21 option (a) to increase the Gross Settlement Amount, the workweek value shall be calculated by
22 dividing the Gross Settlement Amount by 10,034. The Parties agree that the workweek value
23 amounts to and the settlement amounts to \$62.78 per Workweek (\$630,000.00 / 10,034
24 workweeks). Thus, for example, should there be 11,000 Workweeks in the Class Period, then
25 the Gross Settlement Amount shall be increased by \$62,567.82 ([11,000 workweeks – 10,034
26 workweeks] x \$62.78 per Workweek).

27 **9. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
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1 Exclusion identified in the Exclusion List exceeds 6% of the Class Members representing more
2 than an aggregate total of 6% of the verified Workweeks, Defendant may, but is not obligated
3 to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the
4 Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will
5 have any further obligation to perform under this Agreement; provided, however, Defendant
6 will remain responsible for paying all Settlement Administration Expenses incurred to that
7 point. Defendant must notify Class Counsel and the Court of its election to withdraw not later
8 than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel;
9 late elections will have no effect.

10 **10. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the
11 calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of
12 the Settlement that includes a request for approval of the PAGA settlement under Labor Code
13 section 2699, subd. (l), a Proposed Final Approval Order, and a proposed Judgment
14 (collectively “Motion for Final Approval”).

15 10.1. Response to Objections. Each Party retains the right to respond to any objection
16 raised by a Settlement Class Member, including the right to file responsive documents in Court
17 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
18 accepted by the Court.

19 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions
20 Final Approval on any material change to the Settlement (including, but not limited to, the
21 scope of release to be granted by Class Members), the Parties will expeditiously work together
22 in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain
23 Final Approval. The Court’s decision to award less than the amounts requested for the Class
24 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
25 Expenses Payment and/or Administration Expenses Payment shall not constitute a material
26 modification to the Agreement within the meaning of this paragraph.

27 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
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1 Judgment, the Court will retain jurisdiction over the Parties, Action, and ~~the~~ Settlement,
2 [pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court](#)
3 [Rule 3.769\(h\)](#), solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii)
4 addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
5 are permitted by law.

6 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
7 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
8 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,
9 their respective counsel, and all Settlement Class Members who did not object to the Settlement
10 as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights
11 to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
12 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include
13 any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
14 Judgment, the Parties' obligations to perform under this Agreement will be suspended until such
15 time as the appeal is finally resolved and the Judgment becomes final, except as to matters that
16 do not affect the amount of the Net Settlement Amount.

17 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
18 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
19 material modification of this Agreement (including, but not limited to, the scope of release to be
20 granted by Class Members), this Agreement shall be null and void. The Parties shall
21 nevertheless expeditiously work together in good faith to address the appellate court's concerns
22 and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional
23 Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate,
24 reverse, or modify the Court's award of the Class Representative Service Payments or any
25 payments to Class Counsel shall not constitute a material modification of the Judgment within
26 the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

27 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
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1 Procedure section 384, the Parties will work together in good faith to jointly submit a proposed
2 amended judgment.

3 **12. ADDITIONAL PROVISIONS.**

4 12.1. No Admission of Liability, Class Certification or Representative Manageability
5 for Other Purposes. This Agreement represents a compromise and settlement of highly
6 disputed claims. Nothing in this Agreement is intended or should be construed as an admission
7 by Defendant that any of the allegations in the Operative Complaint have merit or that
8 Defendant has any liability for any claims asserted; nor should it be intended or construed as an
9 admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree
10 that class certification and representative treatment is for purposes of this Settlement only. If,
11 for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, or
12 if Defendant exercises its option pursuant to paragraph 9 of this Joint Stipulation to nullify the
13 settlement, Defendant reserves the right to contest certification of any class for any reasons and
14 all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for
15 class certification on any grounds available and to contest Defendant's defenses. The
16 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
17 and will not be admissible in connection with, any litigation, except for proceedings to enforce
18 or effectuate the Settlement and this Agreement.

19 12.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel,
20 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary
21 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
22 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
23 terms of the Agreement directly or indirectly, specifically or generally, to any person,
24 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
25 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)
26 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
27 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or

1 subpoena issued by a state or federal government agency.

2 12.3. Each Party agrees to immediately notify each other of any judicial or agency
3 order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and
4 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
5 communication, before the filing of the Motion for Preliminary Approval, with any third party
6 regarding this Agreement or the matters giving rise to this Agreement except to respond only
7 that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class
8 Counsel’s communications with Class Members in accordance with Class Counsel’s ethical
9 obligations owed to Class Members.

10 12.4. No Solicitation. The Parties separately agree that they and their respective
11 counsel and employees will not solicit any Class Member to opt out of or object to the
12 Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to
13 restrict Class Counsel’s ability to communicate with Class Members in accordance with Class
14 Counsel’s ethical obligations owed to Class Members.

15 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this
16 Agreement together with its attached exhibits shall constitute the entire agreement between the
17 Parties relating to the Settlement, superseding any and all oral representations, warranties,
18 covenants, or inducements made to or by any Party.

19 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant
20 and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
21 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
22 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
23 terms of this Agreement including any amendments to this Agreement.

24 12.7. Cooperation. The Parties and their counsel will cooperate with each other and
25 use their best efforts, in good faith, to implement the Settlement by, among other things,
26 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
27 points and authorities as requested by the Court. In the event the Parties are unable to agree
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1 upon the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 12.8. No Prior Assignments. The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity and portion of any liability, claim, demand, action,
7 cause of action, or right released and discharged by the Party in this Settlement.

8 12.9. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 12.10. Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits
18 will be governed by and interpreted according to the internal laws of the state of California,
19 without regard to conflict of law principles.

20 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 12.14. Confidentiality. To the extent permitted by law, all agreements made, and
24 orders entered during Action and in this Agreement relating to the confidentiality of information
25 shall survive the execution of this Agreement.

26 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code section 1152, and all copies and summaries of the Class Data provided to
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1 Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or
2 in connection with the Settlement, may be used only with respect to this Settlement, and no
3 other purpose, and may not be used in any way that violates any existing contractual agreement,
4 statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges
5 the Administrator's obligation to provide a Declaration confirming the final pay out of all
6 Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data
7 received from Defendant unless, prior to the Court's discharge of the Administrator's
8 obligation, Defendant makes a written request to Class Counsel for the return, rather than the
9 destructions, of Class Data.

10 12.16. Headings. The descriptive heading of any section or paragraph of this
11 Agreement is inserted for convenience of reference only and does not constitute a part of this
12 Agreement.

13 12.17. Calendar Days. Unless otherwise noted, all reference to "days" in this
14 Agreement shall be to calendar days. In the event any date or deadline set forth in this
15 Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first
16 business day thereafter.

17 12.18. Notice. All notices, demands or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiffs:

22 **MOON & YANG, APC**
23 Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
24 1055 West Seventh Street, Suite 1880
Los Angeles, California 90017

JACKSON APC
Armond M. Jackson
Andrea Fernandez-Jackson
Anthony Filer, Jr.
2 Venture Plaza, Suite 240
Irvine, California 92618

25 To Defendant:

26 **FISHER & PHILLIPS, LLP**
27 Christine Baran

The Law Offices of Robert Mackey
Robert Mackey (SBN 125961)

Andrew C. Crane
2050 Main Street, Suite 1000
Irvine, California 92614

16320 Murphy Road
Sonora, CA 95370

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

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

Dated: ~~May —, 2023~~ February , 2024

By:

Armando Diaz-Garcia

//

Dated: February , 2024 ~~May —, 2023~~

By:

Jose Elias Barajas

//

Dated: February , 2024 ~~May —, 2023~~

By:

For Awesome Products, Inc.

JACKSON APC

Dated: February , 2024 ~~May —, 2023~~

By:

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Armond Jackson, Esq.
Andrea Fernandez-Jackson, Esq.
Anthony Filer, Jr., Esq.
*Attorney for Plaintiff, Armando Diaz-
Garcia*

MOON & YANG, APC

Dated: February , 2024~~May , 2023~~

By:

Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
*Attorneys for Plaintiff, Jose Elias
Barajas*

FISHER & PHILLIPS, LLP

Dated: February , 2024~~May , 2023~~

By:

Christine Baran, Esq.
Andrew C. Crane, Esq.
*Attorneys for Defendant, Awesome
Products, Inc.*

THE LAW OFFICES OF ROBERT
MACKEY

Dated: February , 2024~~May , 2023~~

By:

Robert Mackey, Esq.
*Attorneys for Defendant, Awesome
Products, Inc.*

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EXHIBIT A