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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.

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

[Honorable Lon F. Hurwitz,
Department CX103]

**SUPPLEMENTAL DECLARATION OF
KANE MOON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

PRELIMINARY APPROVAL HEARING

Date: February 23, 2024
Time: 1:30 p.m.
Dept: CX103

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

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1. I am an attorney at law duly licensed to practice as such before all Courts of the State of California and am one of the attorneys of record for Plaintiff Jose Elias Barajas and the putative Class. I have personal knowledge of the matters set forth herein and can competently testify to the facts described herein.

3. The proposed First Amended Settlement is attached hereto as **Exhibit A**.¹
4. The Amended [Proposed] Order is attached hereto as **Exhibit B**.
5. Plaintiff Armando Diaz-Garcia's LWDA Notice is attached hereto as **Exhibit C**.
6. The amended Class and PAGA Notice is attached hereto as **Exhibit D**.
7. Plaintiff Armando Diaz-Garcia's Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class and PAGA Action Settlement is attached hereto as **Exhibit E**.

¹ Due to unexpected circumstances, the Parties were not able to fully execute the proposed First Amended Settlement ahead of the February 9, 2024 filing deadline of the instant Supplemental Declaration. However, the Parties intend to file a fully executed version of the proposed First Amended Settlement ahead of the February 23, 2024 Preliminary Approval Hearing.

ISSUES IDENTIFIED IN RULING	HOW ISSUES ARE ADDRESSED
(1) Did the Parties serve the moving papers on the Labor and Workforce Development Agency (“LWDA”)? The Proof of Service of the Motion on the LWDA should be filed with the Court.	The Parties have served Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of Class and PAGA Action Settlement, Declaration of Kane Moon, Declaration of Plaintiff Jose Elias Barajas, Declaration of Armond M. Jackson, Declaration of Plaintiff Armond Diaz-Garcia, Amended [Proposed] Order, Supplemental Declaration of Kane Moon containing the First Amended Class and Representative Action Settlement Agreement (“First Amended Settlement”) and amended Class and PAGA Notice, on the LWDA. The Parties have also filed Proof of Service of such documents on the LWDA with Department CX103 of the Orange County Superior Court.

(2) The Parties were ordered to file the Consolidated Second Amended Class and Representative Action Complaint (“Consolidated SAC”) “within 10 days of” the Court’s approval of the Joint Stipulation to file the Consolidated SAC. ROA 228, Order, ¶ 2. However, the Consolidated SAC has not been filed. This affects the definition of the released claims because it refers to the operative complaint, which it appears is intended to be the Consolidated SAC.

The Parties attempted to file the Consolidated SAC on December 15, 2023. However, the Department CX103 Clerk indicated that both the lead and non-lead Case Numbers were required on the Cover Page. Nonetheless, the Parties successfully refiled the Consolidated SAC on January 2, 2024. *See* ROA 270.

1 (3) The Settlement defines “Defendant”
2 broadly to include entities other than
3 Awesome Products, Inc. *Settlement*, ¶
4 2.16. Because “Defendant” is used in the
5 Class definition, the Class is not limited
6 to the employees of Awesome Products,
7 Inc. Did the Parties intend such a broad
8 definition of the Class?

The broad definition of Defendant was negotiated and agreed to at the time of mediation. Therefore, the broad definition of Defendant, as stipulated to in the proposed First Amended Settlement, was intended. However, the Class was intended to be limited to non-exempt employees of Awesome Products, Inc. who worked in California during the Class Period, including any employee employed through any staffing agency, professional employer organization, or temporary employment agency utilized by Defendant during the Class Period, which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing. Thus, the definitions of “Class” and “Aggrieved Employees” have been amended accordingly. See, **Exhibit A**, *First Amended Settlement*, ¶¶ 2.4, 2.5.

(4) According to the escalator clause in the Settlement, the estimated workweeks is 10,034 (<i>Settlement</i>, ¶ 8), but in the Moon Declaration, the estimated workweeks is 9,478. ROA 241, <i>Moon Decl.</i>, ¶ 19. Why is there a difference in the estimated work weeks? How does this difference affect, if at all, the valuation provided in the Moon Declaration since it is based on the lower number of work weeks?	The total number of Workweeks, as indicated in the Settlement, represents Defendant’s updated estimate of the total number of Workweeks <i>after mediation</i>. The total number of Workweeks, as indicated in the Moon Declaration, represents Plaintiffs’ estimate of the total number of Workweeks based on the sample of time and corresponding payroll records of the putative Class that Defendant produced <i>ahead of mediation</i>. The difference between these estimates does not affect the valuation provided in the Moon Declaration: though the escalator clause is based on total Workweeks, the claims were not valued based on the total number of Workweeks, but instead, on the data-backed violation rates and average regular and overtime rates of pay of the putative Class. <i>See Moon Declaration</i>, ¶¶ 20-25.
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(5) The Settlement provides that uncashed payments will be provided to the <i>cy pres</i> recipient, Legal Aid at Work. The Parties and counsel should identify whether they have any interests in the <i>cy pres</i> recipient and explain why the uncashed checks should be provided to the <i>cy pres</i> recipient rather than the State Controller's Unclaimed Property Fund.	Neither Plaintiffs, nor Defendant have an interest in the <i>cy pres</i> recipient, Legal Aid at Work. Legal Aid at Work is an appropriate <i>cy pre</i> designee pursuant to California Code of Civil Procedure Section 384. California Code of Civil Procedure Section 384 indicates that a <i>cy pres</i> recipient is acceptable if it accepts "the distribution of any unpaid residue or unclaimed or abandoned class member funds" and "provide[s] substantial or commensurate benefit to California consumers." Legal Aid at Work will accept the distribution of any unpaid residue or unclaimed class member funds derived from the instant Action. Further, Legal Aid at Work is a nonprofit organization that provides substantial benefit to California consumers by way of pro bono legal services to indigent California residents.
(6) The Settlement does not provide a tax allocation for the Individual PAGA Payments.	The proposed First Amended Settlement revises Paragraph 3.2.5.1 to state: "100% of the Individual PAGA Payments will be to settlement of claims for penalties and interest. " See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 3.2.5.1.
(7) The definition of Released PAGA Claims is overly broad since it is not limited to civil penalties under PAGA.	The proposed First Amended Settlement limits the Released PAGA Claims to "all claims demands, rights, liabilities and causes of action <i>for civil penalties</i> under the California Labor Code Private

	Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint or Plaintiffs’ respective Notices of Labor Code Violations and PAGA Penalties and ascertained in the course of the Action arising during or with respect to the PAGA Period, including, but not limited to, civil penalties pursuant to Labor Code sections 210, 226.3, 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”) (emphasis added).” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 5.3.
(8) Paragraphs 2.39 and 7.5.1 conflict. Paragraph 2.39 provides a response deadline of 60 days while Paragraph 7.5.1 provides a response deadline of 45 days. A 60-day notice is typically sufficient.	The proposed First Amended Settlement revises Paragraph 7.5.1. to state: “Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email or mail, a signed written Request for Exclusion no later than <i>sixty (60)</i> calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed)...(emphasis added).” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 7.5.1. //

(9) All Requests for Exclusions should be provided to the Court, along with any papers submitted by the Class Member or Parties. The Court has the right to review any decision by the Administrator.	The proposed First Amended Settlement revises Paragraph 7.7.2. to state: “The Administrator has the authority to make an initial determination regarding any challenges to its calculation of Workweeks and/or PAGA Pay Periods based on documentation provided by the Class Member, Aggrieved Employee, and/or Defendant. The Administrator shall promptly provide copies of all challenges to its calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and its initial determination regarding such challenges. The Parties shall provide copies of the same to the Court at the time of Final Approval. The Court has the right to review any decision of the Administrator.” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 7.7.2.
(10) The Settlement must provide that the Court retains final authority as to consideration and admissibility of objections.	The proposed First Amended Settlement revises Paragraph 7.6.2. to state: “The Court retains final authority as to consideration and admissibility of objections.” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 7.6.2.
(11) The Settlement does not include a procedure for disputes about workweeks or pay periods credited to the Class Member or Aggrieved Employee. The deadline for disputes should be the same as for Requests for	The proposed First Amended Settlement now includes Paragraph 7.7., which states: “Each Class Member and/or Aggrieved Employee shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-

1 Exclusion and Objections and the
2 method for submission the same as
3 well. The Administrator may make the
4 initial determination regarding a
5 dispute based on documentation
6 provided by the Class Member and/or
7 Defendant, and the Parties should
8 provide the Administrator's decision
9 and all submissions regarding the
10 dispute to the Court along with the
11 Motion for Final Approval. The Court
12 has the right to review any decision by
13 the Administrator.

mailed) to challenge the number of Workweeks
and PAGA Pay Periods allocated to the Class
Member and/or Aggrieved Employee in the Class
Notice.” See **Exhibit A**, *First Amended Settlement*,
¶ 7.7. Further, the First Amended Settlement now
includes Paragraphs 7.7.1-7.7.2., which state: “The
Class Member and/or Aggrieved Employee may
challenge his or her allocation by communicating
with the Administrator via fax, email, or mail. The
Administrator must encourage the challenging
Class Member and/or Aggrieved Employee to
submit supporting documentation. In the absence
of any contrary documentation, the Administrator
is entitled to presume that the Workweeks and/or
PAGA Pay Periods contained in the Class Notice
are correct so long as they are consistent with the
Class Data” and “The Administrator has the
authority to make an initial determination
regarding any challenges to its calculation of
Workweeks and/or PAGA Pay Periods based on
documentation provided by the Class Member,
Aggrieved Employee, and/or Defendant. The
Administrator shall promptly provide copies of all
challenges to its calculation of Workweeks and/or
PAGA Pay Periods to Defense Counsel and Class
Counsel and its initial determination regarding
such challenges. The Parties shall provide copies
of the same to the Court at the time of Final

	Approval. The Court has the right to review any decision of the Administrator. See Exhibit A , <i>First Amended Settlement</i> , ¶¶ 7.7.1-7.7.2.
(12) At Final Approval, counsel should provide billing records in support of its fees, as well as documentation of costs. Counsel must also disclose whether there is a fee-splitting arrangement with any other counsel or confirm none exists. (Cal. R. Ct. 3.769(b).)	At Final Approval, Class Counsel will submit redacted billing records in support of its request for the Class Counsel Fees Payment. Class Counsel has entered into a fee-splitting arrangement between JACKSON APC and MOON LAW GROUP, P.C. under which the Parties have agreed to an equal division of any fee award.
(13) At Final Approval, Plaintiffs must submit declarations describing circumstances to justify the larger amount for the enhancement, and addressing factors set forth in <i>Golba v. Dick’s Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272, and <i>Clark v. Am. Residential Servs., LLC</i> (209) 175 Cal.App.4th 785, 804. The Court notes that only Plaintiff Barajas submitted a declaration but the proposed Order indicates that Plaintiff Diaz-Garcia also submitted a declaration.	Plaintiff Armando Diaz-Garica hereby submits a Declaration in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. See Exhibit E , <i>Declaration of Plaintiff Armando Diaz-Garcia</i> .

14. The Motion seeks \$10,000.00 for Administration costs but the Administrator’s bid is for \$6,450.00.	The First Amended Settlement provides that the Parties have agreed to “[a]n Administration Expenses Payment of not more than \$10,000.00.” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 3.2.3. The mutually selected Administrator, ILYM Group, Inc., provided a settlement administration quote of \$6,450.00. See <i>Motion</i>, 4:4-11. The Motion does not seek a \$10,000.00 reimbursement for administration costs, but instead, seeks full reimbursement of administration costs up to, but not exceeding, \$10,000.00. If administration costs do not exceed \$6,450.00 at the time of Final Approval, Plaintiffs will move the Court for approval of an Administration Expenses Payment of \$6,450.00, and no more. See, <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 3.2.3 (“To the extent the Administration Expenses Payment is less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.”)
(15) The operative complaint, PAGA Notice letters, and Notice packet should also be posted on the website. The judgment should be posted for 180 days. At Final Approval, Administrator must provide invoice of fees and expenses.	The First Amended Settlement revises Paragraph 7.8.1 to state: “The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Operative Complaint, Plaintiffs’ respective PAGA Notices, the

	Settlement Agreement, the Notice Packet, Plaintiffs' Motion for Preliminary Approval, the Preliminary Approval Order, Plaintiffs' Motion for Final Approval, and the Final Approval Order and Judgment. The Final Approval Order and Judgment shall remain posted for 180 days. See <u>Exhibit A</u> , <i>First Amended Settlement</i> , ¶ 7.7.1.
(16) Counsel has not provided copies of both of Plaintiffs' letters to the LWDA. Only Plaintiff Barajas's LWDA Notice letter was provided. Preliminary approval will not be granted unless both LWDA Notice letters are submitted to the Court.	Plaintiff Armando Diaz-Garcia's LWDA Notice is attached hereto as <u>Exhibit C</u> .
(17) No information on concurrent pending cases has been provided.	The Parties are unaware of any other concurrent pending cases at this time.
(18) The Settlement should state the Court retains continuing jurisdiction pursuant to CCP § 664.6 and CRC Rule 3.769(h).	The First Amended Settlement revises Paragraph 10.3 to state: "The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and Settlement, pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court Rule 3.769(h), solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law." See <u>Exhibit A</u> , <i>First Amended Settlement</i> , ¶ 10.3.

(19) The Notice is to be revised consistent with the issues identified above.	The Class and PAGA Notice has been revised consistent with the Court’s ruling. See <u>Exhibit D.</u>
(20) The Settlement requires the Notice to be translated to Spanish. <i>Settlement</i>, ¶ 2.110. The certified Spanish translations should be provided to the Court.	The Parties will provide the Court with the certified Spanish translations of the amended Class and PAGA Notice at the time of Final Approval.
(21) Both case numbers should be included under the title of the Notice and state that the matters are consolidated.	The Class and PAGA Notice has been revised to provide both case numbers under the title and to clarify that the matters have been consolidated. See <u>Exhibit D.</u>
(22) The Notice does not accurately provide the definition of the Class Members. As indicated above, the definition of the Class in the Settlement uses the term “Defendant” which has a specific definition and is broader than just Awesome Products, Inc. However, the Notice specifically refers to Awesome Products, Inc. but the class as defined in the Settlement is not limited to just Awesome Products, Inc. employees. The Notice also refers to “Defendant” in the Class definition.	The Introduction of the Class and PAGA Notice has been revised to define Class Members in accordance with the First Amended Settlement, as follows: “[A]ll non-exempt employees of Awesome Products who worked in California from April 2, 2017, through March 31, 2023 (“Class Period”), including any employee employed through any staffing agency, professional employer organization, or temporary employment agency utilized by Defendant during the Class Period, which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing.” See <u>Exhibit D.</u>

(23) Section 3 improperly states that “the following amounts will be paid” from the gross settlement amount (GSA). The amounts identified are only proposed, not-to-exceed amounts of the disbursements. The Court has not yet ruled on any actual awards.	Section 3 of the Class and PAGA Notice has been revised to state: “The following amounts will be paid from the Gross Settlement Amount, subject to Court approval[.]” See <u>Exhibit D</u>.
(24) The tax allocation for the individual class payments is 20% wages, 40% penalties and 40% interest but the Settlement does not provide a breakdown of the penalties and interest. The tax allocation is 100% penalties for the individual PAGA payment but this allocation is not provided in the Settlement.	The First Amended Settlement revises Paragraph 3.2.4.1. to state: “20% of each Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Individual Class Payment will be allocated to settlement of claims for interest (40%) and penalties (40%) (the “Non-Wage Portion”).” See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 3.2.4.1. Further, the First Amended Settlement revises Paragraph 3.2.5.1. to state: “100% of the Individual PAGA Payments will be to settlement of claims for penalties and interest. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. See <u>Exhibit A</u>, <i>First Amended Settlement</i>, ¶ 3.2.5.1.
(25) Section 3 should also advise that Aggrieved Employees will be bound by	Section 3 of the Class and PAGA Notice has been revised to state: “In the event you do not cash your

1 2 3 4	the Settlement even if they do not cash their Settlement Checks.	Individual PAGA Payment, you will still be bound by the Settlement to the extent it releases the Released PAGA Claims, as defined below.” See <u>Exhibit D.</u>
5 6 7 8	(26) Section 6 should be consistent throughout in advising that Requests for exclusion may be returned to the Administrator by fax, email or US mail.	Sections 3 and 6 of the Class and PAGA Notice have been revised to be consistent as to the mode of submitting a Request for Exclusion. See <u>Exhibit D.</u>
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	(27) Section 7 should be consistent throughout in advising that written objections may be returned to the Administrator by fax, email or US mail. Section 7 should also advise that class members may verbally object in person or through counsel at the final approval hearing and the Court has final authority regarding the consideration and admissibility of the objection. Further, Section 7 states that if a class member submits a Request for Exclusion and objects, the class member will be included in the Settlement but this is not in the Settlement. Additionally, why should the objection rather than the Request for Exclusion govern?	Section 7 of the Class and PAGA Notice has been revised to be consistent as to the mode of submitting an Objection. Further, the Class and PAGA Notice has also been revised to inform Class Members of their right to verbally object in person or through counsel at the Final Approval Hearing, and that the Court has final authority regarding the consideration and admissibility of the Objection. See <u>Exhibit D.</u> The First Amended Settlement has incorporated Paragraph 7.6.3., which states: “In the event a Class Member submits a valid Request for Exclusion and valid Objection, the Objection will control, and the Class Member will be included in the Settlement and considered a Settlement Class Member.” See <u>Exhibit A</u> , <i>First Amended Settlement</i> , ¶ 7.6.3. This provision is based on the presumption that a Class Member who objects to the Settlement is still interested in participating in the Settlement, but

	under the condition that he or she has an opportunity to have his or her concerns or questions about the Settlement heard—even if he or she also filed a Request for Exclusion.
(28) A date for the final approval hearing should be provided and class members should be advised that they may attend but are not required to do so.	The date of the Final Approval Hearing will be provided under Section 8 of the Class and PAGA Notice once it is scheduled. Further, Section 8 of the Class and PAGA Notice has been amended to state: “Class Members are permitted, but not required, to attend the Final Approval Hearing.” See <u>Exhibit D</u> .
(29) Section 9 states that the Court has decided counsel for Plaintiffs are “qualified to represent the Settlement Class Members”. However, this is inaccurate as the Court has not made a final ruling on this issue.	Section 9 of the Class and PAGA Notice has been revised to state: “The Court has preliminary found that the Attorneys for Plaintiffs and the Class are qualified to represent the Settlement Class Members.” See <u>Exhibit D</u> .
(30) Section 11 should provide more detailed instructions on how to access documents on the Court’s website.	Section 11 of the Class and PAGA Notice has been revised to state: “For the precise terms and conditions of the Settlement and other important case documents, please see the settlement agreement available at www._____.com , by contacting Class Counsel at the address or telephone number provided in Section 9, above, or by visiting the office of the Clerk of the Superior Court of the State of California, County of Orange, Department CX103, located at 751 West Santa

	Ana Boulevard, Santa Ana, California 92701, or the Court’s website https://www.occourts.org/online-services/case-access by going to the “Civil Case & Document Access” tab, searching the Case No. 30-2021-01193589 in the Year of 2021, and clicking ‘Register of Actions.’”
(31) The proposed Order is to be revised consistent with the issues identified above.	The [Proposed] Order has been revised to be consistent with the First Amended Settlement and amended Class and PAGA Notice. The Amended [Proposed] Order is attached hereto as <u>Exhibit B</u> .
(32) Caption of proposed Order should remove the attorney information.	The Amended [Proposed] Order does not include the attorney information. See <u>Exhibit B</u> , Amended [Proposed] Order.
(33) Paragraph 1 should reference the Settlement by the register of action (ROA) number of the declaration to which it is attached.	Paragraph 1 of the [Proposed] Order has been revised to include the ROA number of the Moon Declaration. See <u>Exhibit B</u> , Amended [Proposed] Order.
(34) Paragraph 2 states the Administration Expenses Payment “is not to exceed \$6,000” but this is less than the actual quote provided by the Administrator and the Motion seeks \$10,000 for the Administration Expenses Payment. This is also inconsistent with paragraph 9, which sets the Administration Expenses	Paragraph 2 of the [Proposed] Order has revised to state: “...and the Administration Expenses Payment, which is not to exceed \$10,000.00.” See <u>Exhibit B</u> , Amended [Proposed] Order.

1	Payment at \$6,450.	
2		
3	(35) The implementation schedule in	The Final Approval Hearing date is dependent on
4	Paragraph 11 should include the actual	the date preliminary approval of the First
5	proposed date of Final Approval	Amended Settlement is granted. Because the
6	Hearing and the address of the Civil	Parties do not know the precise date on which
7	Complex Center should be provided.	preliminary approval of the First Amended
8		Settlement will be granted, the Final Approval
9		Hearing date cannot be specified ahead of the
10		Preliminary Approval Hearing. Paragraph 11 of
11		the [Proposed] Order has been revised to specify
12		the physical address of the Orange County
13		Superior Court Civil Complex Center. See <u>Exhibit</u>
14		<u>B</u> , Amended [Proposed] Order.
15	(36) Instead of referring to the “Response	The Response Deadline is dependent on the date
16	Deadline” in the implementation	preliminary approval of the First Amended
17	schedule, it should specifically state the	Settlement is granted. Because the Parties do not
18	deadline for requests for exclusion,	know the precise date on which preliminary
19	objections and disputes, and the also	approval of the First Amended Settlement will be
20	provide the extended deadline for any	granted, the Response Deadline cannot be
21	re-mailed notices.	specified ahead of the Preliminary Approval
22		Hearing. Paragraph 11 of the [Proposed] Order has
23		been revised to provide the extended deadline for
24		any re-mailed notices. See <u>Exhibit B</u> , Amended
25		[Proposed] Order.

1 I declare under penalty of perjury, under the laws of the State of California and the United
2 States, that the foregoing is true and correct.

3 Executed on February 9, 2024, at Los Angeles, California.

4
5 

6 Kane Moon

EXHIBIT A

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*Attorney for Plaintiff,
Armando Diaz-Garcia*

Attorneys for Plaintiff Jose Elias Barajas and Defendant on following page.

**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.

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

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.

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT

1 Kane Moon (SBN 249834)
2 Allen Feghali (SBN 301080)
3 Jacquelyne Vanemmerik (SBN 339338)
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Attorneys for Defendant,
Awesome Products, Inc.

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT

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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 Law Group, P.C.

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,

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

2.19. “Final Approval” means the Court Order Granting Final Approval of the Settlement.

2.20. “Final Approval Hearing” means the Court Hearing on the Motion for Final Approval of the Settlement.

2.21. “Final Judgment” means the Court Judgment made upon granting final approval of the Settlement.

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

2.23. “Individual Class Payments” means the individual payments made to each Settlement Class Member from the Net Settlement Amount.

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

2.25. “LWDA” means the California Labor and Workforce Development Agency.

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

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

2.28. “Non-Participating Class Members” means Class Members who submit a valid

and timely Request for Exclusion from the Settlement.

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

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

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

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

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

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

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

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

2.37. "Released Parties" means: Defendant and all of their 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, attorneys; and any staffing agency, professional employer organization, or temporary employment agency utilized by Defendant during the Class Period, including Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing, and any of their 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,

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:

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

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

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

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

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

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

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

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the total Individual PAGA Payment (\$15,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA

Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. [100% of the Individual PAGA Payments will be to settlement of claims for penalties and interest.](#)

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

4. SETTLEMENT FUNDING AND PAYMENTS.

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

4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay their share of payroll taxes, by transmitting the funds to the Administrator no later than twenty-one (21) business days after the Effective Date. If Defendant fails to timely transfer the funds as set forth in this Agreement, Defendant shall have fourteen (14) business days from the last day the payment is due to cure the untimely payment. Defendant shall transmit the funds pursuant to the Settlement Administrator's electronic transfer instructions. Defendant's payment obligations with respect to the Gross Settlement Amount, Defendant's share of payroll taxes, and any cure payment shall be met upon initiating the electronic transfer of funds to the Administrator, pursuant to the Administrator's instructions. In the event of an unsuccessful electronic transfer of funds, the 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
28

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

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**
21 **have materially affected his or her settlement with the debtor or**
22 **Released Party.**

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

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

5.3. Released PAGA Claims by Aggrieved Employees: All Class Members who are Aggrieved Employees, regardless of whether they are Settlement Class Members or Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims demands, rights, liabilities and causes of action for civil penalties under the California Labor Code Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint or Plaintiffs' respective Notices of Labor Code Violations and PAGA Penalties and ascertained in the course of the Action arising during or with respect to the PAGA Period, including, but not limited to, civil penalties pursuant to Labor Code sections 210, 226.3, 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

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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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obligation to make further attempts to locate or send Class Notices to Class Members whose Class Notice is returned by the USPS a second time.

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

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

7.5. Requests for Exclusion (Opt-Outs).

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

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the

identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity.

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

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

7.6. Objections to Settlement.

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

~~7.6.2.~~ Settlement Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Settlement Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members

whose Class Notice was re-mailed). The Court retains final authority as to consideration and admissibility of objections.

7.6.2.

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

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

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

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

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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 by of 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

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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

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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Judgment, the Court will retain jurisdiction over the Parties, Action, and ~~the~~ Settlement, pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court Rule 3.769(h), solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

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

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil

Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

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

12.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant 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; (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.

12.3. Each Party agrees to immediately notify each other of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant 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.

12.4. 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.

12.5. 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.

12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, 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.

12.7. 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.

12.8. 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.

12.9. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant 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.

12.10. 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.

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

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

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

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

12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code section 1152, and all copies and summaries of the Class Data provided to

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

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

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

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

To Plaintiffs:

MOON LAW GROUP, P.C.
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
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

To Defendant:

FISHER & PHILLIPS, LLP
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:

By:

Armando Diaz-Garcia

//

Dated:

By:

Jose Elias Barajas

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Dated:

By:

For Awesome Products, Inc.

JACKSON APC

Dated:

By:

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

MOON LAW GROUP, P.C.

Dated: By: _____
Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
Attorneys for Plaintiff, Jose Elias Barajas

FISHER & PHILLIPS, LLP

Dated: By: _____
Christine Baran, Esq.
Andrew C. Crane, Esq.
Attorneys for Defendant, Awesome Products, Inc.

THE LAW OFFICES OF ROBERT
MACKEY

Dated: By: _____
Robert Mackey, Esq.
Attorneys for Defendant, Awesome Products, Inc.

EXHIBIT A

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EXHIBIT B

Armond M. Jackson (SBN 281547)
JACKSON APC
2 Venture Plaza, Suite 240
Irvine, California 92618
Telephone: (949) 281-6857
Fax: (949) 777-6218
Email: ajackson@jacksonapc.com

Attorney for Plaintiff, Armando Diaz Garcia

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
MOON LAW GROUP, PC
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
Email: kmooon@moonlawgroup.com
Email: afeghali@moonlawgroup.com
Email: jvanemmerik@moonlawgroup.com

Attorneys for Plaintiff, Jose Elias Barajas

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

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT

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1	ARMANDO DIAZ-GARCIA, as an individual, and on behalf of all other similarly situated employees,	Case No.: 30-2021-01193589-CU-OE-CXC Consolidated with Case No.: 30-2021- 01217438-CU-OE-CXC
3	<i>Plaintiff,</i>	[Honorable Lon F. Hurwitz, Department CX103]
4	vs.	
5	AWESOME PRODUCTS, INC., a California corporation and DOES 1-50, inclusive,	[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT
6	<i>Defendant.</i>	
7		<i>[Filed concurrently with <u>the Supplemental</u> <u>Plaintiffs' Notice of Motion and Motion for</u> <u>Preliminary Approval, Declaration of Kane</u> <u>Moon, Declaration of Armond Jackson, and</u> <u>Declaration of Plaintiff Jose Elias Barajas]</u></i>
8	JOSE ELIAS BARAJAS, individually, and on behalf of all others similarly situated,	
9	<i>Plaintiff,</i>	
10	vs.	PRELIMINARY APPROVAL HEARING
11	AWESOME PRODUCTS, INC., a California corporation; and DOES 1 through 10, inclusive,	Date: October 6, 2023 <u>February 23, 2024</u> Time: 1:30 PM Dept: CX103
12	<i>Defendants.</i>	Complaint Filed: April 2, 2021 Trial Date: Not Set

1 The Court has before it the unopposed Motion for Preliminary Approval of Class and
2 PAGA Action Settlement (“Motion”) of Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas
3 (“Plaintiffs”). Having reviewed the Notice of Motion, Motion, the Declaration of Kane Moon,
4 the Declaration of Armond Jackson, the Declaration of Plaintiff Armando Diaz-Garcia, the
5 Declaration of Plaintiff Jose Elias Barajas, and the Joint Stipulation of Class and PAGA Action
6 Settlement (“Settlement”), and good cause appearing, **THE COURT HEREBY ORDERS AS**
7 **FOLLOWS:**

8 1. The Settlement, which is attached as Exhibit 1 to the Declaration of Kane Moon
9 in Support of Plaintiffs’ Motion for Preliminary Approval of Class and PAGA Action
10 Settlement, appears to be fair, adequate and reasonable, and therefore, meets the requirements
11 for preliminary approval. ROA 271. The Settlement appears to be fair and reasonable in light of
12 the good faith, non-collusive negotiations between Plaintiffs and Defendant Awesome Products,
13 Inc. (together, the “Parties”), which resulted in the Settlement; the significant informal
14 discovery, investigation, and analysis conducted by the Parties, which enabled them to
15 intelligently evaluate, litigate and mediate the alleged claims; and the probable outcome of
16 further litigation relating to class certification, liability and damages issues; the substantial
17 costs, delay and risks of further litigation relating to the same; and the risk of potential appeal.

18 2. The Settlement provides that Defendant will pay a Gross Settlement Amount of
19 \$630,000.00, which will be used to pay the Individual Class Payments; PAGA Settlement
20 Payment in the amount of \$60,000.00, with 75% (\$45,000.00) allocated to the LWDA PAGA
21 Payment, and 25% (\$15,000.00) allocated to the Individual PAGA Payment; the Class Counsel
22 Fees Payment, which is not to exceed one third of the Gross Settlement Amount, or
23 \$210,000.00; the Class Counsel Litigation Expenses Payment, which is not to exceed
24 \$20,000.00; the Class Representative Service Payments, which are not to exceed \$7,500.00
25 each; and the Administration Expenses Payment, which is not to exceed \$106,000.00. These
26 terms appear to contain the requisite criteria for preliminary approval, pursuant to *California*
27 *Code of Civil Procedure* section 382 and other applicable law; and appear to fall within the
28 range of reasonableness which could ultimately be granted final approval.

1 3. The Class, which includes all non-exempt employees of Defendant who worked
2 in California from April 2, 2017, through March 31, 2023 (“Class Period”), including any
3 employee employed through any staffing agency, professional employer organization, or
4 temporary employment agency utilized by Defendant during the Class Period, which are
5 identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel,
6 Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing, is
7 provisionally certified for settlement purposes only. The Class is provisionally certified because
8 it appears to meet the following requirements for certification under *California Code of Civil*
9 *Procedure* section 382: (1) the Class is so numerous that joinder is impractical; (2) there are
10 questions of law and fact that are common, or of general interest, to all Settlement Class
11 Members which predominate over individual issues; (3) Plaintiffs’ claims are typical of the
12 claims of the Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and
13 adequately protect the interests of the Settlement Class Members; and (5) a class action is
14 superior to other available methods for the fair and efficient adjudication of the controversy.
15 The Court notes that Class Members who do not request exclusion from the Settlement may
16 object thereto and may raise their objections at the Final Fairness Hearing on the Settlement.

17 4. The Aggrieved Employees, which include all non-exempt employees of
18 Defendant who worked in California from February 23, 2020, through March 31, 2023 (“PAGA
19 Period”), including any employee employed through any staffing agency, professional employer
20 organization, or temporary employment agency utilized by Defendant during the Class Period,
21 which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise
22 Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic
23 Staffing, are provisionally approved for settlement purposes only.

24 5. The Class Representatives, Settlement Class Members, and Aggrieved Employees
25 (regardless of whether they are Settlement Class Members), will release claims in accordance
26 with the terms of the Settlement upon final approval by the Court of this Settlement and
27 Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or
28 claims as may be created by this Settlement.

1 6. Effective on the date Defendant fully funds the entire Gross Settlement Amount and
2 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs,
3 Settlement Class Members, Aggrieved Employees, and Class Counsel will release the class and
4 PAGA claims against all Released Parties as follows:

- 5 a. **Released Parties.** “Released Parties” means Defendant and all of their past,
6 present, and future respective subsidiaries, dba’s, affiliates, parents,
7 predecessors, successors, investors, and their current and former employees,
8 managing agents, servants, consultants, agents, directors, officers, members,
9 independent contractors, representatives, insurers, reinsurers, attorneys; and
10 any staffing agency, professional employer organization, or temporary
11 employment agency utilized by Defendant during the Class Period, including
12 Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise
13 Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel,
14 and Dynamic Staffing, and any of their past, present, and future respective
15 subsidiaries, dba’s, affiliates, parents, predecessors, successors, investors,
16 and their current and former employees, managing agents, servants,
17 consultants, agents, directors, officers, members, independent contractors,
18 representatives, insurers, reinsurers, attorney. *Settlement*, ¶ 2.37.
- 19 b. **Released Class Claims.** “Released Class Claims” means all claims that
20 were alleged, or reasonably could have been alleged, in the Operative
21 Complaint, and ascertained in the course of the Action, that arose during the
22 Class Period including with respect to the following claims: (a) failure to
23 pay all overtime wages owed; (b) failure to pay minimum wages owed; (c)
24 failure to provide meal periods, or premium pay for non-compliant meal
25 periods; (d) failure to authorize and permit rest periods, or premium pay for
26 non-compliant rest periods; (e) failure to issue accurate, itemized wage
27 statements and maintain payroll records; (f) failure to pay all wages due
28 upon separation of employment; (g) failure to reimburse for necessary

business expenses; (h) all claims under California Business & Professions Code § 17200 for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (i) violation of or claims under the following sections of the California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226(c), 226.3, 226.7, 227.3, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802; and (j) violation of the California Industrial Wage Orders that could have been premised on the facts, claims, causes of action or legal theories described above, as well as any potential penalties, interest or attorneys' fees associated with all of such causes of action under California law ("Released Class Claims"). Except as set forth in Section 5.3 of this Agreement, Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful. *Settlement*, ¶¶ 2.35, 5.2.

- c. **Released PAGA Claims.** "Released PAGA Claims" means all claims demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint or Plaintiffs' respective Notices of Labor Code Violations and PAGA Penalties and ascertained in the course of the Action arising during or with respect to the PAGA Period including, but not limited to, civil penalties pursuant to Labor Code sections 210, 226.3, 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. *Settlement*, ¶¶ 2.36, 5.3.

7. For settlement purposes only, the Class Representatives appointed for this matter are Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas. The Class Representative Settlement Payments, which are not to exceed \$7,500.00 each, are preliminarily approved.

8. For settlement purposes only, Class Counsel appointed for this matter is Jackson, APC and Moon Law Group, PC. The Class Counsel Fees Payment, which is not to exceed \$210,000.00; and Class Counsel Litigation Expenses Payment, which is not to exceed \$20,000.00, are preliminarily approved.

9. For settlement purposes only, the Administrator appointed for this matter is ILYM Group, Inc. The Administration Expenses Payment, which is not to exceed \$6,450.00, is preliminarily approved.

10. For settlement purposes only, the Notice Packet to be sent to Class Members, as to form and content, is adequate. Further, on a preliminary basis, the plan for distribution of the Notice Packet to Class Members satisfies Due Process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Class Notice is attached to the Settlement as Exhibit A.

11. A Final Fairness Hearing on the question of whether the Settlement terms, including the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments, should be finally approved as fair, adequate and reasonable as to the Settlement Class Members is hereby set in accordance with the following Implementation Schedule:

Defendant to provide Class Data to the Administrator	Within fifteen (15) calendar days from the date of preliminary approval by the Court
Administrator to mail the Notice Packets by First Class Mail	Within fourteen (14) days after the Administrator receives the Class Data
Response Deadline	Within sixty (60) days after the Administrator initially mails the Notice Packet to Class Members and Aggrieved Employees <u>(plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed)</u>
Deadline to file Motion for Final Approval	No later than sixteen (16) court days prior to the Final Fairness Hearing

	_____, 2023 at _____
Final Fairness Hearing	in <u>Department CX103 of the Superior Court of the State of California, County of Orange, Department CX103, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701</u> <u>Orange County Superior Court.</u>

12. If any of the dates in the above schedule fall on a weekend, or bank or court holiday, the time to act shall be extended to the next business day.

13. Pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the Settlement, are stayed.

14. To facilitate the administration of the Settlement pending final approval, the Court hereby enjoins the Plaintiffs and all Settlement Class Members from filing or prosecuting any claims, suits or administrative proceedings, including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations, regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Administrator and the time for filing claims with the Administrator has lapsed.

15. The Settlement is preliminarily approved but is not an admission by the Defendant of the validity of any claims in the instant Class and PAGA action, or of any wrongdoing or violation of law by Defendant.

16. Neither the Settlement nor any related document shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to consummate or enforce the Agreement and Settlement.

17. The obligations set forth in the Settlement are deemed part of this Order. The Parties are to carry out the Settlement in accordance with its terms.

IT IS SO ORDERED.

DATE: _____

Honorable Lon W. Hurwitz
Judge of the Orange County Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
1880, Los Angeles, California 90017. On ~~February 9, 2024~~February 9, 2024~~January 25, 2024~~,
5 I served the foregoing document described as:

6 **ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

7 X by placing ____ the original X a true copy thereof enclosed in sealed envelope(s)
8 addressed as follows:

9 Eric S. Oto
10 Law Offices of Eric S. Oto
11 1111 South Grand Avenue, Suite 517
12 Los Angeles, California 90015
13 Telephone: (213) 749-7540
Facsimile: (213) 607-1363
14 Email: eso@otoesq.com
Attorney for Defendant
Western Pacific Crane & Equipment, LLC

15 [☒] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the
16 parties to accept electronic service, I caused the documents to be sent to the persons at
the electronic service addresses listed above via e-mail. I did not receive an error
message.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed this, ~~February 9, 2024~~February 9, 2024~~January 25, 2024~~ at Los Angeles,
California.

20
21 _____
22 Type or Print Name

21 _____
22 Signature

EXHIBIT C

JACKSON APC

2 Venture Plaza, Ste. 240 * Irvine, CA 92618 * Tel: 949-281-6857 * Fax: 949-777-6218

Armond M. Jackson
ajackson@jacksonapc.com

February 23, 2021

Sent By Certified Mail to Awesome Products, Inc.

Submitted Via Online to Labor and Workforce Development Agency

Awesome Products, Inc.

6730 Altura Blvd.
Buena Park, California 90620

**Loksarang D. Hardas, Agent for Service of
Process for Awesome Products, Inc.**

6730 Altura Blvd.
Buena Park, California 90620

**Labor and Workforce Development
Agency**

Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(415) 703-4810

**PRIVATE ATTORNEY GENERAL ACT (PAGA) NOTICE
PURSUANT TO LABOR CODE § 2699**

Re: Notice Pursuant to California Labor Code Section 2699
Violations of California Labor Code Sections 201, 202, 203, 204, 226(a) 1-2, 4-5, 8-9,
226.3, 226.7, 510, 512, 558, 1194, 2802
Violations of California Labor Code Section 1198 (Industrial Welfare Commission Order
Nos. 1-2001, Nos. 4-2001, 7-2001, 9-2001 (“Wage Orders 1, 4, 7, 9,”), Sections 3, 7, 11
and 12
Labor and Workforce Development Agency Right to Investigate and Issue a Citation (Lab.
Code § 2699.3)
Armando Diaz Garcia v. Awesome Products, Inc. et al.

Dear Awesome Products, Inc. and Corporation Service Company:

This letter is issued pursuant to Labor Code § 2698, et seq. (Specifically Labor Code § 2699(f), which provides notice to the PAGA Administrator, Awesome Products, Inc., and Corporation Service Company by (“Mr. Garcia”) (referred to herein collectively as “Plaintiff”)

February 23, 2021

Page 2 of 7

on behalf of all California aggrieved current and aggrieved former similarly situated employees of, Awesome Products, Inc. (collectively referred to herein as “API” or “Defendants”), a private right of action under the Private Attorney General Act (PAGA) of 2004.

As a prerequisite to prosecuting this private action in superior court, Mr. Garcia and the employers regarding each violation, along with facts and theories supporting each violation as mentioned below. (Labor Code § 2699.3) If you have any questions regarding this letter, please contact Armond M. Jackson, Esq. at Jackson Law, APC at 949-281-6857 or via email at ajackson@jacksonapc.com.

Facts and Theories

Defendants are in a business that sells products to customers and operates manufacturing and distribution facilities.

This letter encompasses violations for all of Defendants California employees entitled to the California Labor code protections.

Plaintiff worked for Defendants. Plaintiff worked as a general laborer that performed many duties such as obtaining products in order to fulfill customer orders at Defendants facilities.

Plaintiff and other aggrieved employees were not provided with all proper 30-minute duty-free uninterrupted meal periods every five hours of their working shifts that they were entitled to when they worked over five and ten-hour shifts as the meal breaks were either interrupted, short, on-premises, late or not taken at all approximately 10 to 15 shifts per month for each aggrieved employee throughout their employment.

Furthermore, Plaintiff and other aggrieved employees were not provided with all proper 10 minute duty-free uninterrupted rest periods every four hours or major fraction thereof of their working shifts that they were entitled to when they worked over 3.5 hours as the rest periods were either interrupted, short, on-premises, late or not taken at all approximately 10 to 15 shifts per month for each aggrieved employee throughout their employment.

Moreover, Plaintiff and other aggrieved employees were required to take on-call meal breaks and was not compensated for this time spent working while off-the clock.

The Defendants have violated California Labor Code sections 226.7, 512, and Wage Orders 1, 4, 7, and 9, Sections 3, 7, 11 and 12 and any other applicable wage orders. Other similarly situated employees at the Defendants were under the same conditions as the Plaintiff.

Additionally, Defendant failed to compensate Plaintiff and similarly situated employees for vacation time upon resignation, termination, or end of employment in violation of California Labor Code sections 201, 202, and 203 for failing to pay for on-call meal breaks and premium wages for missed rest breaks and meal breaks.

Moreover, Defendants failed to incorporate Plaintiff’s premium wages and hours’ worth of work, full name and address of legal entity employer, and applicable rates for all hours worked on

2 Venture Plaza, Ste. 240 * Irvine, CA 92618 * Tel: 949-281-6857 * Fax: 949-777-6218

Jackson APC

February 23, 2021

Page 3 of 7

their wage statements as required by California Labor Code section 226(a) 1-2, 4-5, 9. Moreover, Defendant failed to include the full name and address of the legal entity employer on its paystubs in violation of Labor Code section 226(a)8. All other similarly situated employees were subjected to the same working conditions as Plaintiff, such as not being provided with their entitled meal breaks depicting their wages or for off-the-clock work thereby failing to include net wages earned, gross wages earned, applicable hourly rates for all hours worked and actual hours worked or premium wages earned and the full name and address of the legal entity employer on their wage statements.

Furthermore, Defendants worked under conditions that required cell phone usage to complete a task and communicate with management in violation of Labor Code section 2802. Moreover, Defendant required employees to purchase masks to protect from the transmission of COVID-19 and failed to reimburse employees for this expense in violation of Labor Code section 2802.

By virtue of not authorizing or permitting Plaintiff and all other similarly situated employees to take their entitled meal breaks, failing to incorporate hours worked and wages earned on the itemized wage statements disclosing total hours worked, total gross wages earned, net wages earned, hours worked at the applicable hourly rate and deductions that should have been taken out for failing to include premium wages for meal break violations and failure to capture on-call meal break work time on their final paycheck hours' worth of work for meal breaks violations, and failure to include the full name and address of the employer and failure to, Defendants are violating California Labor Code Sections 201, 202, 203, 204, 226(a) 1-2, 4-5, 8-9, 226.2, 226.3, 226.7, 510, 512, 558, 1194, and Wage Orders 1, 4, 7, and 9, Sections 3, 7, 11 and 12.

Violation of California Labor Code Sections, 201, 202, 203, 204

An employer may not willfully fail to pay any wages owed to an employee who is either discharged or quits. If the employer does fail to pay its employees upon separation of employment, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action, therefore, is commenced; but the wages shall not continue for more than 30 days. (See Lab. Code §203) Here, Defendants did not compensate Plaintiff and do not compensate other similarly situated employees at the time of separation who is either discharged or quits for the entitled vacation wages in violation of Labor Code sections 201, 202, 203, and 204.

Violation of California Labor Code § 210

Labor Code section 210, an employer may not fail to pay the wages of each employee. Here, Defendants failed to pay for all hours worked due to having associates work during their unpaid meal breaks.

Violation of California Labor Code § 221

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Again, here, Defendants failed to pay for all hours worked due to requiring employees to work through unpaid meal breaks.

Violation of California Labor Code § 226(a)

Labor Code § 226 (a) requires employers to provide “accurate itemized statement in writing” each pay period that includes nine categories of information. These categories include (1) gross wages earned, (2) total hours worked, (4) deductions taken, (5) net wages earned, (8) and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (See Labor Code §226, subsection (a)) Any employer who has violated California Labor Code Section 226(a) will also be subject to penalties under California Labor Code Section 226.3. These records must be maintained for a period of at least three years. It is the Plaintiff’s contention that Defendants are in violation of the following California Labor Codes:

Violation of 226 (a)(1)

Section a (1) requires gross wages to be inserted on an employee’s paystubs. Plaintiff and other similarly situated employees’ paystubs did not accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Defendants did not accurately depict gross wages as it failed to disclose all hours worked for off-the-clock work or premium wages for violations for meal breaks and rest periods.

Violation of 226 (a)(2)

Section a (2) requires the total hours worked by the employee to be inserted on an employee’s paystubs. Plaintiff and other similarly situated employees’ paystubs did not accurately reflect their total hours worked by virtue of not accurately depicting total hours worked as it failed to disclose all hours worked for off-the-clock work or premium wages for violations for meal breaks and rest periods.

Violation of 226 (a)(4)

Section a (4) requires all deductions out of the employees’ wages to be inserted on an employee’s paystubs. Plaintiff and other similarly situated employees’ paystubs did not accurately reflect their deductions by virtue of excluding hours worked and wages earned because Defendants did not accurately depict deductions as it failed to record off-the-clock work or premium wages for violations for meal breaks and rest periods.

Violation of 226 (a)(5)

Section a (5) requires net wages to be inserted on an employee’s paystubs. Plaintiff and other similarly situated employees’ paystubs did not accurately reflect net wages earned by virtue of excluding hours worked and net wages earned because Defendants did not accurately depict net

February 23, 2021

Page 5 of 7

wages as it failed to record off-the-clock work or premium wages for violations for meal breaks and rest periods.

Violation of 226 a (8)

Section a (8) requires the name and address of the legal entity that is the employer on an employee's paystub. Plaintiff and other similarly situated employees' paystubs did not reflect the name and address of the legal entity employer.

Violation of 226 (a)(9)

Section a (9) requires all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and other similarly situated employees' paystubs did not disclose all applicable hourly rates and a corresponding number of hours as it failed to disclose wages for on-call meal breaks, and premium wages owed on their final paycheck that should have been included.

Violation of California Labor Code Sections 226.2, 226.7, 510, 512, 1194, 1198 and Wage Orders 1, 4, 7, 9, Sections 7, 11, 12

An employer must provide a rest period pursuant to an applicable order of the Industrial Welfare Commission. (See Lab. Code §226.7)

Under Labor Code § 1198 an employer is required to comply with the standard conditions of labor required in the orders set by the Industrial Welfare Commission. Industrial Welfare Commission Order Nos. 1-2001, Nos. 4-2001, 7-2001, 9-2001 (hereinafter "Wage Orders 1, 4, 7, 9") covering the various industries comprising of Defendants employees.

Under these circumstances, Plaintiff' position at Defendants falls within Wage Orders 1, 4, 7, 9 as Defendants employed Plaintiff as a non-exempt employee. Thus, below all sections and subsections that pertain to California Wage Orders 1, 4, 7, 9 are applicable to Plaintiff and all similarly situated aggrieved employees that were employed or remain employed by Defendants.

California Labor Code sections 226.7, 512 and Wage Orders 1, 4, 7, 9, Section 11, requires employers to provide employees with uninterrupted meal breaks for 30 minutes every 5 hours unless waived by mutual consent and the work shift is not above 6 hours. California Labor Code sections 226.7, 512 and Wage Orders 1, 4, 7, 9, Section 11 requires every employer to provide its employees with uninterrupted meal breaks for 30 minutes every 5 hours if the employee works more than a 6-hour shift. As described above, Plaintiff and other similarly situated employees regularly worked above five, six, and ten-hour shifts and were not provided legally entitled meal breaks every five hours nor were they compensated premium wages for working through their meal breaks.

California Labor Code sections 226.7 and Wage Orders 1, 4, 7, 9, Section 12, requires employers to provide employees with uninterrupted rest breaks for 10 minutes every 4 hours or major fraction thereof. As described above, Plaintiff and other similarly situated employees regularly worked above 3.5, 6, 8, 10, and 12 hours and were not provided legally entitled rest breaks every four hours or major fraction thereof nor were they compensated premium wages for working through their rest breaks.

Plaintiff and other similarly situated employees did not receive their entitled uninterrupted legally entitled timely meal breaks pursuant to California Labor Code sections 226.7, 512, Wage Orders 1, 4, 7, 9, Sections 11 during their employment at Defendants while regularly working above 5, 6- and 7.5-hour shifts.

Wage Orders 1, 4, 7, 9, Section -7- Records

Section 7 sets out the requirements for the maintenance of employee records by an employer. Subsection (A) requires employers to “keep accurate information with respect to each employee” regarding identification information, including their “[f]ull name, home address, occupation, and social security number,” “[t]ime records showing when the employee begins and ends each work period,” “[m]eal periods,” and “[t]otal hours worked in the payroll period and applicable rates of pay.”

Subsection (B) requires an employer to provide accurate, itemized statements showing deductions and the dates of the pay period. Subsection (C) requires such records to be kept for three (3) years and made available on request.

As discussed above, Defendants failed to record “meal periods” as Plaintiff and other similarly situated employees were not provided with proper meal periods. Furthermore, Defendants failed to incorporate the extra hours’ worth of work when Plaintiff and other similarly situated employees worked through their entitled meal breaks and rest breaks without being paid premium wages. The extra hours’ worth of work at the applicable rate of pay and work were not disclosed on the itemized wage statements in violation of Wage Orders 1, 4, 7, 9, Section -7-Record.

Violation of California Labor Code Section 510

Work in excess of eight hours in one workday and/or 40 hours in one workweek, and the first eight hours on the seventh day of work in any workweek must be compensated at no less than one and one-half times the employee’s regular rate of compensation. (See Lab. Code §510) “Double time” is required after twelve hours in any workday, after eight hours on the seventh day of work. Plaintiff and other similarly situated employees were not paid any overtime for hours worked in excess of 8 hours per day or forty hours per week because they worked through shifts above 8 hours per day and 40 hours per week and worked off-the-clock during being required to work through on-call meal periods and working through meal periods. The employees were never provided with overtime compensation for this time.

Violation of California Labor Code Section 558

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in addition to recover unpaid wages. (See Lab. Code §558)

Violation of California Labor Code Section 1194

Any employee receiving less than the legal minimum wage or overtime compensation applicable to the employee is entitled to recover, in a civil action, the unpaid balance of the full amount of the minimum wage or overtime compensation including interest, reasonable attorney's fees, and costs of suit. (See Lab. Code §1194) When the employees were required to work above 8 hours in a day and 40 hours in a week they were not paid overtime for this work for his off-the-clock work time being required to work through on-call meal periods and working through meal periods, these work shifts would amount to above 8 hours of work per day or above 40 hours per week. The employees were never provided with minimum wages or overtime compensation for this time.

Violation of California Labor Code 2802

Under California Labor Code § 2802, an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. In violation of Lab. Code § 2802, Defendants required Plaintiff and other similarly situated employees to pay for their personal cell phones and use these cell phones for work purposes without any reimbursement in violation of California Labor Code section 2802. Moreover, Defendant required employees to purchase masks to protect from the transmission of COVID-19 and failed to reimburse employees for this expense in violation of Labor Code section 2802.

Conclusion

Pursuant to the above-stated facts, it is Plaintiff's theory that Defendants are in violation of Labor Code Labor Code Sections 201, 202, 203, 204, 226(a) 1-2, 4-5, 8-9, 226.3, 226.7, 510, 512, 558, 1194, 2802 and Wage Orders 1, 4, 7, 9, Sections 3, 7, 11, 12. It is the Plaintiff's contention that all similarly situated employees at Defendants are subjected to all of the above-mentioned violations as Defendants employees.

Sincerely,
Jackson Law, APC

/s/ Armond M. Jackson

Armond M. Jackson

EXHIBIT D

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

Armando Diaz-Garcia, et. al. v. Awesome Products, Inc.
Orange County Superior Court, [Lead](#) Case No. 30-2021-01193589-CU-OE-CXC,
[consolidated with Case No. 30-2021-01217438-CU-OE-CXC](#)

PLEASE READ THIS NOTICE

The above [consolidated](#) class and representative action (“Action”) was filed by Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas (“Plaintiffs”) against Defendant Awesome Products, Inc. (“Awesome Products”). In the Action, Plaintiffs allege Awesome Products failed to pay minimum wages for all hours worked; failed to pay overtime compensation; failed to provide compliant meal periods or compensation in lieu thereof; failed to provide compliant rest breaks or compensation in lieu thereof; failed to indemnify necessary business expenses; failed to timely pay all compensation due upon termination or resignation; failed to provide accurate itemized wage statements; engaged in unfair competition in violation of Business and Professions Code sections 17200, *et. seq.*; and owes civil penalties to the Labor and Workforce Development Agency (“LWDA”) and all Aggrieved Employees under the Private Attorneys General Act, California Labor Code sections 2698, *et. seq.* (“PAGA”). Awesome Products denies these allegations and contends that it complied with all applicable law.

A Joint Stipulation of Class and PAGA Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) has been reached in the Action and preliminarily approved by the Court. You have been identified by Awesome Products’ records as a Class Member, as defined below. Thus, you are subject to the terms of the Settlement. Please read this notice carefully, as it may affect your legal rights.

“Class” or “Class Member(s)” is defined as: all non-exempt employees of Awesome Products who worked in California from April 2, 2017, through March 31, 2023 (“Class Period”), [including any employee employed through any staffing agency, professional employer organization, or temporary employment agency utilized by Defendant during the Class Period, which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing.](#)

“Aggrieved Employee(s)” is defined as: all non-exempt employees of Awesome Products who worked in California from February 23, 2020, through March 31, 2023 (“PAGA Period”), [including any employee employed through any staffing agency, professional employer organization, or temporary employment agency utilized by Defendant during the Class Period, which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing.](#)

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT

Participate in the Settlement	If you want to be bound by the Settlement, remain in the Class, and receive your Individual Class Payment and, <i>if eligible</i> , Individual PAGA Payment, you do not need to do anything.
--------------------------------------	---

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Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement or remain in the Class, you should follow the instructions in Section 6, below. If you exclude yourself, you will not receive your Individual Class Payment, and you will not release the Released Claims against the Released Parties (defined in Section 4 below). If this Settlement is approved by the Court and you are an Aggrieved Employee, you <i>will</i> receive your Individual PAGA Payment and release the Released PAGA Claims, even if you exclude yourself from the Settlement.
Object to the Settlement	If you want to object to the Settlement but remain in the Class, you should follow the instructions in Section 7, below. If you object, you will still be bound by the terms of the Settlement, if the Settlement is approved by the Court.

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1. WHY DID I GET THIS NOTICE?

You have received this Notice because Awesome Products' records reflect that you are a Class Member, as defined above. This Notice provides you with information about (1) the monetary terms of the Settlement, (2) your estimated Individual Class Payment, provided you remain a "Settlement Class Member" (i.e., a Class Member who does not request to be excluded from the Settlement), (3) your estimated Individual PAGA Payment, provided you are an "Aggrieved Employee," (4) the claims that are being released under the Settlement, (5) how to participate in, exclude yourself from, or object to the Settlement, and (6) where to find additional information regarding the Action and Settlement.

2. WHAT IS THIS CASE ABOUT?

Plaintiff Armando Diaz-Garcia filed a Class Action Complaint on April 2, 2021, which commenced the lawsuit entitled *Armando Diaz-Garcia v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-CXC. Plaintiff Jose Elias Barajas filed a separate Class Action Complaint on August 23, 2021, which commenced the separate lawsuit entitled *Jose Elias Barajas v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01217438-CU-OE-CXC. The Orange County Superior Court consolidated the lawsuits on or around May 24, 2023, and Plaintiffs filed a Consolidated Second Amended Class and Representative Action Complaint ("Operative Complaint") on or around the same.

The Operative Complaint alleges that Awesome Products: failed to pay Class Members minimum wages for all hours worked; failed to pay Class Members overtime compensation; failed to provide Class Members with compliant meal periods or compensation in lieu thereof; failed to provide Class Members with compliant rest breaks or compensation in lieu thereof; failed to indemnify Class Members for necessary business expenses; failed to timely pay Class Members all compensation due upon termination or resignation; failed to provide Class Members with accurate itemized wage statements; engaged in unfair competition in violation of Business and Professions Code sections 17200, *et seq.*; and owes civil penalties under PAGA.

Awesome Products denies any liability or wrongdoing of any kind. Awesome Products contends, among other things, that it complied at all times with the California Labor Code, Industrial Welfare Commission Wage Orders and Business and Professions Code, that employees were correctly and

timely paid all wages, and that meal periods and rest breaks were provided as required by applicable law.

The Court has not ruled on the merits of the claims alleged in the Operative Complaint. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine, on a preliminary basis, that the proposed Settlement is fair, adequate and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Awesome Products reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations.

3. THE MONETARY TERMS OF THE SETTLEMENT AND CALCULATION OF YOUR INDIVIDUAL CLASS PAYMENT AND INDIVIDUAL PAGA PAYMENT

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Awesome Products has agreed to pay a Gross Settlement Amount of Six Hundred Thirty Thousand Dollars and Zero Cents (\$630,000.00) to settle the Action.

The following amounts will be paid from the Gross Settlement Amount, [subject to Court approval](#):

- A Class Counsel Litigation Expenses Payment, which is not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) and is to be paid to Class Counsel for reimbursement of all reasonable litigation costs and expenses (“Class Counsel Litigation Expenses Payment”);
- A Class Counsel Fees Payment, which is not to exceed Two Hundred Ten Thousand Dollars and Zero Cents (\$210,000.00) and is to be paid to Class Counsel for their work in furtherance of the Action (“Class Counsel Fees Payment”);
- An Administration Expenses Payment, which is not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) and is to cover costs incurred by the Administrator in administering the terms of the Settlement (“Administration Expenses Payment”);
- Class Representative Service Payments, which are not to exceed Seventy Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) each and are for Plaintiffs’ services as Class Representatives and their general releases (“Class Representative Service Payments”); and
- A PAGA Settlement Payment, which is Sixty Thousand Dollars and Zero Cents (\$60,000.00) and will be allocated to the payment of civil penalties under PAGA (“PAGA Settlement Payment”).

The amount remaining from the Gross Settlement Amount after the above amounts are deducted is called the Net Settlement Amount. The Net Settlement Amount will be allocated to all Settlement Class Members (*i.e.*, Class Members who do not request to be excluded from the Settlement) on a *pro rata* basis. Each such payment is called an Individual Class Payment and will be calculated as follows:

1. The Administrator will determine the number of weeks in which any Settlement Class Member actually worked one shift during the Class Period (“Workweeks”);

2. The Administrator will determine the value of a single Workweek by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members; and
3. Each Settlement Class Member shall receive an Individual Class Payment equal to his or her Workweeks multiplied by the value of a single Workweek.

You have been credited with [REDACTED] Workweeks. Based on these Workweeks, your Individual Class Payment, prior to any applicable withholdings, is estimated to be \$ [REDACTED].

PAGA Settlement Payment: A total of Sixty Thousand Dollars and Zero Cents (\$60,000.00) of the Gross Settlement Amount has been allocated to the PAGA Settlement Payment. Seventy-five percent (75%) of this amount (\$45,000.00) ("LWDA PAGA Payment") will be paid to the California LWDA, and twenty-five percent (25%) of this amount (\$15,000.00) ("Individual PAGA Payment") will be paid on a *pro rata* basis to all Aggrieved Employees. Each such payment is called an Individual PAGA Payment and will be calculated as follows:

1. The Administrator will determine the number of pay periods in which any Aggrieved Employee actually worked one shift during the PAGA Period ("PAGA Pay Periods");
2. The Administrator will determine the value of a single PAGA Pay Period by dividing the Individual PAGA Payment by the total number of PAGA Pay Periods worked by all Aggrieved Employees; and
3. Each Aggrieved Employee shall receive an Individual PAGA Payment equal to his or her PAGA Pay Periods multiplied by the value of a single PAGA Pay Period.

You have been credited with [REDACTED] PAGA Pay Periods. Based on these PAGA Pay Periods, your Individual PAGA Payment is estimated to be \$ [REDACTED]. In the event you do not cash your Individual PAGA Payment, you will still be bound by the Settlement to the extent it releases the Released PAGA Claims, as defined below.

If you dispute the above information, you may submit a written dispute to the Administrator. Your Dispute must (1) contain your name, address, and telephone number and the case name and number of the Action (i.e., *Armando Diaz-Garcia, et. al. v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-CXC; (2) be signed by you; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Administrator at the [physical address](#), [email address](#), or fax number listed below; (4) clearly state the basis on which you dispute your Individual Class or PAGA Payment; and (5) attach any documentary evidence you have in support of that basis.

[Administrator]

[contact info including [physical address](#), e-mail address, and fax number]

Twenty percent (20%) of each Individual Class Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; forty percent (40%) of each Individual Class Payment will be considered penalties; and forty percent (40%) of each Individual Class

Payment shall be allocated to interest and any other non-wage related amount. The amount allocated as wages will be reported on an IRS form W-2 and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties and reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Awesome Products will pay all employer payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages. Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor.

Checks will be valid and negotiable for 180 days. After that, checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within 180 days of mailing, or are returned to the Administrator, will be cancelled, and the Administrator shall send the funds associated with uncashed checks to the mutually agreeable *cy pres*, Legal Aid at Work, for use in Orange County and in the name of the Settlement Class Member. Settlement Class Members who do not timely cash their checks should contact the Administrator to determine how they can obtain their payment. **Settlement Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date (as defined in the Agreement), all Class Members who do not opt out of the Settlement (*i.e.*, all Settlement Class Members) do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all Released Class Claims against any and all Released Parties.

“Released Class Claims” means all claims that were alleged, or reasonably could have been alleged, in the Operative Complaint, and ascertained in the course of the Action, that arose during the Class Period, including, but not limited to, the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime compensation; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages due upon separation of employment; (g) failure to reimburse for necessary business expenses; (h) all claims under California Business and Professions Code sections 17200, *et seq.* for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (i) violation of or claims under the following sections of the California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226(c), 226.3, 226.7, 227.3, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802; and (j) violation of the California Industrial Wage Orders that could have been premised on the facts, claims, causes of action or legal theories described above, as well as any potential penalties, interest or attorneys’ fees associated with all of such causes of action under California law.

“Released Parties” means Awesome Products 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, attorneys; and any staffing agency, professional employer organization, or temporary employment agency utilized by Awesome Products during the Class Period, including Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing, and any of their 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, attorneys.

5. WHAT AM I RELEASING AS AN AGGRIEVED EMPLOYEE UNDER THE SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date (as defined in the Agreement), and after payment of all funds due under the terms of the Settlement, all Aggrieved Employees do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Released PAGA Claims. Released Parties is defined in Section 4 of this Notice, above.

“Released PAGA Claims” means all claims demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint or Plaintiffs’ Amended Notices of Labor Code Violations and PAGA Penalties and ascertained in the course of the Action arising during or with respect to the PAGA Period.

AGGRIEVED EMPLOYEES CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR THE RELEASE OF RELEASED PAGA CLAIMS.

6. WHAT IF I DON’T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Released Class Claims, but you are not able to exclude yourself as an Aggrieved Employee. To exclude yourself as a Settlement Class Member, you should submit a written request for exclusion to the Administrator (“Opt Out Request”) at the physical address, email address, or fax number listed in Section 3 of this Notice, above.

A valid and complete Opt Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the Action (i.e., *Armando Diaz-Garcia, et. al. v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-CXC); (2) be signed by the Class Member; (3) be postmarked, e-mailed, or fax stamped on or before **[Response Deadline]** and returned to the Settlement Administrator at the specified physical address, email address, or fax number listed in Section 3 of this Notice, above; and (4) contain a statement substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS
IN THE *ARMANDO DIAZ-GARCIA, ET. AL. v. AWESOME PRODUCTS, INC.*,

LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. If you wish to object, you may submit your objection in writing to the Settlement Administrator (“Objection”) at the [specified-physical](#) address, e-mail address, or fax number listed in Section 3 of this Notice, above. A valid and timely Objection should (1) contain the name, address and telephone number of the Settlement Class Member objecting and the case name and number of the Action (i.e., *Armando Diaz-Garcia, et. al. v. Awesome Products, Inc.*, Orange County Superior Court, Case No. 30-2021-01193589-CU-OE-CXC); (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or before [\[Response Deadline\]](#) and returned to the Settlement Administrator at the [specified-physical](#) address, [email address](#), or fax number listed in Section 3 of this Notice, above; and (4) give the legal and factual basis for their objection. [If you wish to object, you may also verbally object in person or through counsel at the Final Approval Hearing, which will be held on the date and time and at the location indicated in Section 8, below. The Court has final authority regarding the consideration and admissibility of the Objection.](#)

Filing an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Class Payment and you will be barred from pursuing the Released Class Claims. **Do not file both an Objection and Opt Out Request. You may file one or neither.** If you file neither, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [\[redacted\]](#), at [\[redacted\]](#) a.m. in the Superior Court of the State of California, County of Orange, Department CX103, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. [Class Members are permitted, but not required, to attend the Final Approval Hearing.](#)

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiffs and the Class:

Armond M. Jackson, Esq.
Andrea Fernandez-Jackson,
Esq.
Anthony Filer, Jr. Esq.
JACKSON APC

Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
MOON LAW GROUP, P.C.
1055 West Seventh Street,

Attorneys for Defendants:

Christine Baran, Esq.
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(213) 232-3128

Robert Mackey (SBN 125961)
The Law Offices of Robert Mackey
16320 Murphy Road
Sonora, CA 95370
Telephone: (412) 370-9110

The Court has preliminary decided that the Attorneys for Plaintiffs and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys' Fees and Costs approved by the Court, to be paid out of the Gross Settlement Amount, **you will not be charged for their services.**

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement and other important case documents, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section 9, above, or by visiting the office of the Clerk of the Superior Court of the State of California, County of Orange, Department CX103, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, or the Court's website <https://www.occourts.org/online-services/case-access> by going to the "Civil Case & Document Access" tab, searching the Case No. 30-2021-01193589 in the Year of 2021, and clicking "Register of Actions."

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

EXHIBIT E

Armond M. Jackson, SBN 281547
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Phone: (949) 281-6857
Fax: (949) 777-6218

Attorneys for Plaintiff Armando Diaz-Garcia,
individually, and on behalf of all other similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE-CIVL COMPLEX CENTER

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.

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

Assigned for all purposes to:
Hon. Lon F. Hurwitz
Dept. CX-103

**DECLARATION OF PLAINTIFF
ARMANDO DIAZ-GARCIA IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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.

Date: February 24, 2024
Time: 1:30 p.m.
Place: Department CX103

DECLARATION OF ARMANDO DIAZ-GARCIA

I, Armando Diaz-Garcia, declare as follows:

1. I am over the age of eighteen and have personal knowledge of everything stated below and could competently testify to these facts if sworn.

2. I submit this Declaration in support of the motion for preliminary approval of class action settlement and class representative enhancement fee.

3. I worked for Defendant Awesome Products, Inc., (referred to herein as “Defendant”). As I worked for Defendant as an hourly worker during the class period, I worked very hard, especially when I worked above five and six hours and not able to take all of my entitled meal breaks and rest breaks and worked without receiving all wages I was entitled to. After my employment ended with Defendant, I determined that I would attempt to effectuate a change in Defendant’s practices and policies through a wage and hour class action and representative action under the Private Attorney General Act and class action.

4. After consulting with a law firm, I decided to file a class action and Private Attorney General Action claim and class action against Defendant. I would consider myself a low wage hourly worker but despite this I still decided to take the risk of filing this class action and losing this case that could have exposed myself to certain attorneys' fees and costs incurred by Defendant. However, my passion to vindicate the rights of my coworkers outweighed the risk exposure to myself as I believed that my co-workers deserved to be treated fairly in the eyes of the law.

5. Throughout this case, I was required to appear at my attorneys' office, answering questions during several interviews by my attorney and his staff either in person or via telephone related to the case, and locating and submitting documents to my attorney in support of the claims.

6. I remained involved and provided information and details about Defendant's practices and policies in support of the class claims so that the claims could be maximized for the class members. Through the litigation I made myself available to complete the settlement agreement and finalize the terms of the settlement agreement and execute the settlement agreement.

7. In this litigation, I was committed throughout the entire process to ensure that the class members were treated fairly and committed approximately 55 hours to this case.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 19th day of Decmber, 2023 in California.

Armando Garcia-Diaz
Armando Diaz-Garcia, Declarant

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
Angeles, California 90017. On **February 9, 2024**, I served the foregoing document described as:

5 **SUPPLEMENTAL DECLARATION OF KANE MOON IN SUPPORT OF PLAINTIFFS'**
6 **MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION**
7 **SETTLEMENT**

8 X by placing ____ the original X a true copy thereof enclosed in sealed envelope(s) addressed as
follows:

9 Christine D. Baran
10 Andrew C. Crane
11 Samantha E. Cardarelli
12 **FISHER & PHILLIPS LLP**
13 2050 Main Street, Suite 1000
14 Irvine, California 92614
15 cbaran@fisherphillips.com
16 acrane@fisherphillips.com
17 scardarelli@fisherphillips.com

18 *Attorneys for Defendant Awesome*
19 *Products, Inc.*

Robert Mackey (SBN 125961)
THE LAW OFFICES OF ROBERT
MACKEY
16320 Murphy Road
Sonora, CA 95370
Email: bobmackeyesq@aol.com

Attorneys for Defendant Awesome
Products, Inc.

20 Armond M. Jackson
21 **JACKSON APC**
22 2 Venture Plaza, Suite 400
23 Irvine, California 92618
24 Email: ajackson@jacksonapc.com

25 *Attorney for Plaintiff, Armando Diaz-Garcia*
26 [

27 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California.
28 The envelope was mailed with postage thereon fully prepaid. I am "readily familiar"
with the firm's practice of collection and processing correspondence for mailing.
Under that practice it would be deposited with U.S. postal service on that same day
with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter date is more than one day after date of deposit
for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Executed this, **February 9, 2024** at Los Angeles, California.

Janelle Jickain
Type or Print Name

Signature