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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET

ERIC DEL TORO IBARRA, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

WEST PICO DISTRIBUTORS, LLC, a
limited liability company; and DOES 1
through 10, inclusive,

Defendants

Case No.: 21STCV31247

CLASS ACTION

[Hon. Lawrence P. Riff, Department 7]

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

Complaint filed: August 20, 2021
Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff ERIC DEL TORO IBARRA (“Plaintiff”) and defendant WEST PICO DISTRIBUTORS, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Del Toro Ibarra v. West Pico Distributors, LLC*, Case No. 21STCV31247 initiated on August 20, 2021, pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all persons who worked for Defendant in California as an hourly paid, non-exempt employee during the PAGA Period.
- 1.5. “Class” or “Class Members” means all persons who worked for Defendant in California as an hourly paid, non-exempt employee during the Class Period.
- 1.6. “Class Counsel” means Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from April 25, 2021 through the date of granting preliminary approval of this settlement or January 1, 2023, whichever date occurs earlier.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means named Defendant WEST PICO DISTRIBUTORS, LLC.
- 1.17. “Defense Counsel” means LEWIS BRISBOIS BISGAARD & SMITH LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means One Hundred Thirty Thousand Dollars (\$130,000) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the

- Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from April 25, 2021 through the date of granting preliminary approval of this settlement or January 1, 2023, whichever date occurs earlier.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. “PAGA Notice” means Plaintiff’s August 14, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. “Plaintiff” means ERIC DEL TORO IBARRA, the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41. “Released Parties” means: Defendant and its respective former, current and future parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be

excluded from the Class Settlement signed by the Class Member.

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

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

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

2. RECITALS.

2.1. On August 20, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On November 12, 2021, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On October 24, 2022, the Parties participated in an all-day mediation presided over by Steven Rottman, Esq. and reached a settlement of the Action.

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

2.5. The Court has not granted class certification.

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

3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$130,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$ 5,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative

1 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
2 approves a Class Representative Service Payment less than the amount requested, the
3 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay
4 the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
5 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

6 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is
7 currently estimated to be \$43,333.33 and a Class Counsel Litigation Expenses Payment of not
8 more than \$20,000.00. Defendant will not oppose requests for these payments provided that they
9 do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
10 Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to
11 the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
12 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
13 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
14 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
15 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
16 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS
17 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class
18 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
19 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or
20 sharing of any of these Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$20,000.00
22 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$20,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount. ILYM Group, Inc. has
25 been selected as the Administrator, based upon its "not to exceed" bid of \$ 9, 150.

26 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a)
27 dividing the Net Settlement Amount by the total number of Workweeks worked by all
28 Participating Class Members during the Class Period and (b) multiplying the result by each

1 Participating Class Member's Workweeks.

2 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
3 Class Member's Individual Class Payment will be allocated to settlement
4 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
5 withholding and will be reported on an IRS W-2 Form by the
6 Administrator. 80% of each Participating Class Member's Individual Class
7 Payment will be allocated to settlement of claims for interest and penalties
8 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
9 wage withholdings and will be reported on IRS 1099 Forms by the
10 Administrator, who will also prepare any other filings required by any
11 governmental taxing authority. Participating Class Members assume full
12 responsibility and liability for any employee taxes owed on their Individual
13 Class Payment.

14 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
15 Class Payments. Non-Participating Class Members will not receive any
16 Individual Class Payments. The Administrator will retain amounts equal to
17 their Individual Class Payments in the Net Settlement Amount for
18 distribution to Participating Class Members on a pro rata basis.

19 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to
20 be paid from the Gross Settlement Amount, with 75% (\$18,750) allocated to the LWDA PAGA Payment
21 and 25% (\$6,250) allocated to the Individual PAGA Payments.

22 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
23 dividing the amount of the Aggrieved Employees' 25% share of PAGA
24 Penalties (\$6,250) by the total number of PAGA Period Pay Periods
25 worked by all Aggrieved Employees during the PAGA Period and (b)
26 multiplying the result by each Aggrieved Employee's PAGA Period Pay
27 Periods. Aggrieved Employees assume full responsibility and liability for
28 any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms and prepare any other filings required by any governmental taxing authority.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 102 Class Members who collectively worked a total of 5,800 Workweeks, and 102 of Aggrieved Employees who worked a total 2,949 of PAGA Pay Periods.

4.2. Class Data. Not later than twenty (20) days after the Court grants Preliminary Approval of the Settlement, Defendant will 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 notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which 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 missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the

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

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

20 4.4.2. The Administrator

21 4.4.3. must conduct a Class Member Address Search for all other Class Members whose
22 checks are returned undelivered without USPS forwarding address. Within seven
23 (7) days of receiving a returned check the Administrator must re-mail checks to the
24 USPS forwarding address provided or to an address ascertained through the Class
25 Member Address Search. The Administrator need not take further steps to deliver
26 checks to Class Members whose re-mailed checks are returned as undelivered. The
27 Administrator shall promptly send a replacement check to any Class Member
28 whose original check was lost or misplaced, requested by the Class Member prior

1 to the void date.

2 4.4.4. For any Class Member whose Individual Class Payment check or Individual PAGA
3 Payment check is uncashed and cancelled after the void date, the Administrator
4 shall transmit the funds represented by such checks to the California Controller's
5 Unclaimed Property Fund in the name of the Class Member thereby leaving no
6 "unpaid residue" subject to the requirements of California Code of Civil Procedure
7 § 384(b).

8 4.4.5. The payment of Individual Class Payments and Individual PAGA Payments shall
9 not obligate Defendant to confer any additional benefits or make any additional
10 payments to Class Members (such as 401(k) contributions or bonuses) beyond
11 those specified in this Agreement.

12
13 **5. RELEASES OF CLAIMS.**

14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all
15 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class
16 Members, and Class Counsel will release claims against all Released Parties as follows:

17 5.1. Plaintiff's Release.

18 5.1.1. Scope of Plaintiff's Release. Plaintiff and his respective former and present
19 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
20 assigns generally, release and discharge Released Parties from all claims,
21 transactions, or occurrences that occurred during the Class Period, including, but
22 not limited to all claims, demands, rights, liabilities and causes of action of every
23 nature and description whatsoever, known or unknown, asserted or that might have
24 been asserted, whether in tort, contract, or for violation of any state or federal
25 statute, rule or regulation arising out of, relating to, or in connection with any act or
26 omission by or on the part of any of the Released Parties arising out of, based upon,
27 or relating to Class Representative's employment with Defendants or the
28 remuneration for or termination of such employment committed or omitted prior to

the execution of this Agreement. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, rights, demands, damages, liabilities and causes of action, arising during employment in a non-exempt position in California at any time during the Class Period for unpaid wages and/or related penalties, interest, costs, attorneys' fees, and/or injunctive or other equitable remedies, arising out of, or related to the claims which could be alleged based on the allegations and operative facts asserted in the Action, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) failure to provide accurate wage statements; (6) failure to timely pay all wages due at separation; (7) failure to reimburse business expenses under Labor Code section 2802; (8) unfair business practices in violation of Business and Professions Code section 17200, et. seq. premised on the above claims; (9) violation of the Private Attorneys General Act of 2004 (PAGA);

1 and violation of or liability under California Labor Code sections 201, 202, 203, 204, 206, 218.5, 218.6,
2 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1182.12, 1198,
3 2802, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related
4 claims for attorneys' fees and costs. Except as set forth in Section 5.2 of this Agreement, Participating
5 Class Members do not release any other claims, including claims for vested benefits, wrongful
6 termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability,
7 social security, workers' compensation, or claims based on facts occurring outside the Class Period.

8 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-
9 Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
10 themselves and their respective former and present representatives, agents, attorneys, heirs, administrators,
11 successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
12 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint
13 and the PAGA Notice attached hereto as **Exhibit B**.

14
15 **6. MOTION FOR PRELIMINARY APPROVAL.**

16 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary
17 Approval") that complies with the Court's current checklist for Preliminary Approvals.

18 6.1. Defendant's Declaration in Support of Preliminary Approval. Within thirty (30) days of
19 the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
20 Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential
21 conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall
22 aver that they are not aware of any other pending matter or action asserting claims that will be
23 extinguished or adversely affected by the Settlement.

24 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
25 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
26 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
27 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code §
28 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA

1 Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching
2 its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve;
3 competency; operative procedures for protecting the security of Class Data; amounts of insurance
4 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or
5 potential conflicts of interest with Class Members; and the nature and extent of any financial relationship
6 with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
7 willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of
8 interest with Class Members or the Administrator; (v) a signed declaration from each Class Counsel firm
9 attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all
10 necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint
11 (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); (vi) a redlined version of the
12 parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the
13 Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the
14 Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not
15 aware of any other pending matter or action asserting claims that will be extinguished or adversely
16 affected by the Settlement.

17 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
18 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than sixty (60) days
19 after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
20 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class
21 Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

22 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
23 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
24 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,
25 and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or
26 conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense
27 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,
28 and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

1
2 **7. SETTLEMENT ADMINISTRATION.**

3 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
4 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be
5 bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
6 for payment of Administration Expenses. The Parties and their Counsel represent that they have no
7 interest or relationship, financial or otherwise, with the Administrator other than a professional relationship
8 arising out of prior experiences administering settlements.

9 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
10 Identification Number for purposes of calculating payroll tax withholdings and providing reports state and
11 federal tax authorities.

12 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
13 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation § 468B-1.

14 7.4. Notice to Class Members.

15 7.4.1. No later than three (3) business days after receipt of the Class Data, the
16 Administrator shall notify Class Counsel that the list has been received and state
17 the number of Class Members, PAGA Members, Workweeks, and Pay Periods in
18 the Class Data.

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

1 7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class
2 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
3 Class Notice using any forwarding address provided by the USPS. If the USPS
4 does not provide a forwarding address, the Administrator shall conduct a Class
5 Member Address Search, and re-mail the Class Notice to the most current address
6 obtained. The Administrator has no obligation to make further attempts to locate
7 or send Class Notice to Class Members whose Class Notice is returned by the
8 USPS a second time.

9 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
10 and/or Pay Periods, and Requests for Exclusion will be extended an additional
11 fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class
12 Notice for all Class Members whose notice is re-mailed. The Administrator will
13 inform the Class Member of the extended deadline with the re-mailed Class
14 Notice.

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

25 7.5. Requests for Exclusion (Opt-Outs).

26 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
27 must send the Administrator, by fax, email, or mail, a signed written Request for
28 Exclusion not later than forty-five (45) days after the Administrator mails the Class

1 Notice or as otherwise extended for re-mailed Class Notices as described herein. A
2 Request for Exclusion is a letter from a Class Member or his/her representative that
3 reasonably communicates the Class Member's election to be excluded from the
4 Settlement and includes the Class Member's name, address and email address or
5 telephone number. To be valid, a Request for Exclusion must be timely faxed,
6 emailed, or postmarked by the Response Deadline, subject to extension for
7 remailed Class Notices as described herein.

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

18 7.5.3. Every Class Member who does not submit a timely and valid Request for
19 Exclusion is deemed to be a Participating Class Member under this Agreement,
20 entitled to all benefits and bound by all terms and conditions of the Settlement,
21 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
22 of this Agreement, regardless whether the Participating Class Member actually
23 receives the Class Notice or objects to the Settlement.

24 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
25 Non-Participating Class Member and shall not receive an Individual Class
26 Payment or have the right to object to the class action components of the
27 Settlement. Because future PAGA claims are subject to claim preclusion upon
28 entry of the Judgment, Non-Participating Class Members who are Aggrieved

1 Employees are deemed to release the claims identified in Paragraph 5.4 of this
2 Agreement and are eligible for an Individual PAGA Payment.

3 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
4 days after the Administrator mails the Class Notice, or as otherwise extended for re-mailed
5 Class Notices as described herein, to challenge the number of Class Workweeks and
6 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
7 Member may challenge the allocation by communicating with the Administrator via fax,
8 email or mail. The Administrator must encourage the challenging Class Member to submit
9 supporting documentation. In the absence of any contrary documentation, the
10 Administrator is entitled to presume that the Workweeks contained in the Class Notice are
11 correct so long as they are consistent with the Class Data. The Administrator's
12 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall
13 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
14 promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods
15 to Defense Counsel and Class Counsel and the Administrator's determination the
16 challenges.

17 7.7. Objections to Settlement.

18 7.7.1. Only Participating Class Members may object to the class action components of
19 the Settlement and/or this Agreement, including contesting the fairness of the
20 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
21 Counsel Litigation Expenses Payment and/or Class Representative Service
22 Payment.

23 7.7.2. Participating Class Members may send written objections to the Administrator, by
24 fax, email, or mail. In the alternative, Participating Class Members may appear in
25 Court (or hire an attorney to appear in Court) to present verbal objections at the
26 Final Approval Hearing. A Participating Class Member who elects to send a
27 written objection to the Administrator must do so not later than the Response
28 Deadline, or as otherwise extended for re-mailed Class Notices as described herein.

1 7.7.3. Non-Participating Class Members have no right to object to any of the class action
2 components of the Settlement.

3 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
4 performed or observed by the Administrator contained in this Agreement or otherwise.

5 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
6 and maintain and use a page on its internet website to post information of interest
7 to Class Members including the date, time and location for the Final Approval
8 Hearing and copies of the Settlement Agreement, Motion for Preliminary
9 Approval, the Preliminary Approval, the Class Notice, the Motion for Final
10 Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation
11 Expenses Payment and Class Representative Service Payment, the Final Approval
12 and the Judgment. The Administrator will also maintain and monitor an email
13 address and a toll-free telephone number to receive Class Member calls, faxes and
14 emails. The Administrator will translate the Notice to Spanish.

15 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
16 promptly review on a rolling basis Requests for Exclusion to ascertain their
17 validity. Not later than seven (7) days after the expiration of the deadline for
18 submitting Requests for Exclusion, the Administrator shall email a list to Class
19 Counsel and Defense Counsel containing (a) the names and other identifying
20 information of Class Members who have timely submitted valid Requests for
21 Exclusion (“Exclusion List”); (b) the names and other identifying information of
22 Class Members who have submitted invalid Requests for Exclusion; (c) copies of
23 all Requests for Exclusion from Settlement submitted (whether valid or invalid).

24 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
25 reports to Class Counsel and Defense Counsel that, among other things, tally the
26 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
27 Requests for Exclusion (whether valid or invalid) received, objections received,
28 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks

1 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
2 Report”). The Weekly Reports must include the Administrator’s assessment of the
3 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
4 and objections received.

5 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
6 address and make final decisions consistent with the terms of this Agreement on all
7 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
8 The Administrator’s decision shall be final and not appealable or otherwise
9 susceptible to challenge.

10 7.8.5. Administrator’s Declaration. Not later than fourteen (14) days before the date by
11 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
12 the Administrator will provide to Class Counsel and Defense Counsel, a signed
13 declaration suitable for filing in Court attesting to its due diligence and compliance
14 with all of its obligations under this Agreement, including, but not limited to, its
15 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
16 of Class Notices, attempts to locate Class Members, the total number of Requests
17 for Exclusion from Settlement it received (both valid or invalid), the number of
18 written objections and attach the Exclusion List. The Administrator will
19 supplement its declaration as needed or requested by the Parties and/or the Court.
20 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

21 7.8.6. Final Report by Settlement Administrator. Within fourteen (14) days after the
22 Administrator disburses all funds in the Gross Settlement Amount, the
23 Administrator will provide Class Counsel and Defense Counsel with a final report
24 detailing its disbursements by employee identification number only of all payments
25 made under this Agreement. At least fourteen (14) days before any deadline set by
26 the Court, the Administrator will prepare, and submit to Class Counsel and
27 Defense Counsel, a signed declaration suitable for filing in Court attesting to its
28 disbursement of all payments required under this Agreement. Class Counsel is

1 responsible for filing the Administrator's declaration in Court. The
2 Administrator will prepare IRS W2 and 1099 Tax Forms
3 and any other filings required by any governmental
4 taxing authority.
5

6 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.**

7 Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are
8 102 Class Members and 5,800 Total Workweeks during the Class period. If the total number of
9 Workweeks during the Class Period exceeds 5,800 by more than 15%, then Defendant can either have
10 the Class Period end on the date that the Workweeks exceed 6,670 or January 1, 2023, whichever is
11 earlier; or increase the Gross Settlement Amount on a pro rata basis per Workweek for each addition
12 Workweek above the 15% escalation margin. (i.e., if there was 16% increase in the number workweeks
13 during the Class period, Defendant would agree to increase the Gross Settlement Amount by 1%).
14 Notwithstanding the foregoing, if Defendant wishes to exercise option one and cut off the class release
15 period prior to January 1, 2023 Defendant will notify Plaintiff's counsel of the verified number of
16 workweeks prior to their filing of the Motion for Preliminary Approval.
17

18 **9. DEFENDANT'S RIGHT TO WITHDRAW**

19 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all
20 Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties
21 agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
22 whatsoever, and that neither Party will have any further obligation to perform under this Agreement;
23 provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses
24 incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not
25 later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late
26 elections will have no effect.
27
28

1 **10. MOTION FOR FINAL APPROVAL.**

2 Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in
3 Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA
4 settlement under Labor Code § 2699(l), a Proposed Final Approval Order and a proposed Judgment
5 (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense
6 Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and
7 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to
8 resolve any disagreements concerning the Motion for Final Approval.

9 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
10 a Participating Class Member, including the right to file responsive documents in Court no
11 later than nine (9) court days prior to the Final Approval Hearing, or as otherwise ordered
12 or accepted by the Court.

13 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
14 Approval on any material change to the Settlement (including, but not limited to, the scope
15 of release to be granted by Class Members), the Parties will expeditiously work together in
16 good faith to address the Court’s concerns by revising the Agreement as necessary to
17 obtain Final Approval. The Court’s decision to award less than the amounts requested for
18 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
19 Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute
20 a material modification to the Agreement within the meaning of this paragraph.

21 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
22 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
23 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
24 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
25 law.

26 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
27 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
28 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the

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

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

11. AMENDED JUDGMENT.

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

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in

1 this Agreement is intended or should be construed as an admission by Defendant that any of the
2 allegations in the Operative Complaint have merit or that Defendant has any liability for any claims
3 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in
4 the Action have merit. The Parties agree that class certification and representative treatment is for
5 purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final
6 Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any
7 reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves
8 the right to move for class certification on any grounds available and to contest Defendant's defenses. The
9 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will
10 not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
11 Settlement and this Agreement).

12 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
13 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed,
14 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to
15 disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or
16 generally, to any person, corporation, association, government agency, or other entity except: (1) to the
17 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
18 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate
19 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or
20 subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each
21 other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class
22 Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
23 conversation or other communication, before the filing of the Motion for Preliminary Approval, any with
24 third party regarding this Agreement or the matters giving rise to this Agreement except to respond only
25 that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
26 communications with Class Members in accordance with Class Counsel's ethical obligations owed to
27 Class Members.

28 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and

employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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

12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff 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.

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

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

12.8. No Tax Advice. Neither Plaintiff, 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.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,

1 modified, changed, or waived only by an express written instrument signed by all Parties or their
2 representatives, and approved by the Court.

3 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
4 benefit of, the successors of each of the Parties.

5 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
6 governed by and interpreted according to the internal laws of the state of California, without regard to
7 conflict of law principles.

8 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
9 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was
10 the drafter or participated in the drafting.

11 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
12 during Action and in this Agreement relating to the confidentiality of information shall survive the
13 execution of this Agreement.

14 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
15 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by
16 Defendant in connection with the mediation, other settlement negotiations, or in connection with the
17 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in
18 any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days
19 after the date when the Court discharges the Administrator's obligation to provide a Declaration
20 confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic
21 versions of Class Data received from Defendant.

22 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
23 inserted for convenience of reference only and does not constitute a part of this Agreement.

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

27 12.17. Notice. All notices, demands or other communications between the Parties in connection
28 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 Plaintiff:

Kane Moon
kane.moon@moonyanglaw.com
Lilit Tunyan
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant:

Vi N. Applen
Vi.Applen@lewisbrisbois.com
Rachel J. Lee
Rachel.Lee@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213 (250) 1800
Facsimile: 213 (250) 7900

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

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

Plaintiff & Class Representative:

Dated: 11/17/2022

By: _____

ERIC DEL TORO IBARRA

DocuSigned by:



1 **Plaintiff's Counsel:**

2 Dated: 11/17/2022

MOON & YANG, APC

3
4 By: 

Kane Moon
Lilit Tunyan

5
6 Attorneys for Plaintiff ERIC DEL TORO
IBARRA

7
8 **Defendant:**

9 Dated: November 21, 2022

WEST PICO DISTRIBUTORS, LLC

10
11 By: Kurt Mitchell

Print Name

12
13 
Signature

14
15 COO

Title

16
17 **Defendant's Counsel:**

18 Dated: November 21, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20 By: 

Rachel J. Lee
Vi N. Applen

21
22 Attorneys for Defendant
WEST PICO DISTRIBUTORS, LLC

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR
FINAL COURT APPROVAL**

Del Toro Ibarra v. West Pico Distributors, LLC
Los Angeles Superior Court Case No. 21STCV31247

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit (“Action”) against defendant WEST PICO DISTRIBUTORS, LLC (“Defendant” or “WEST PICO DISTRIBUTORS”) for alleged wage and hour violations. The Action was filed by former WEST PICO DISTRIBUTORS employee, plaintiff Eric Del Toro Ibarra (“Plaintiff”) and seeks payment of unpaid minimum wages, overtime wages, missed meal and rest period premiums, unreimbursed business expenses, wage statement penalties, waiting time penalties, and restitution under California Business and Professions Code section 17200 for a class of hourly, non-exempt employees (“Class Members”) who worked for WEST PICO DISTRIBUTORS during the Class Period (April 25, 2021 to [REDACTED]) and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for WEST PICO DISTRIBUTORS during the PAGA Period (April 25, 2021 to - [REDACTED]) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring WEST PICO DISTRIBUTORS to fund Individual Class Payments, and (2) a PAGA Settlement requiring WEST PICO DISTRIBUTORS to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during any of the respective periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires WEST PICO DISTRIBUTORS to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against WEST PICO DISTRIBUTORS.

If you worked for WEST PICO DISTRIBUTORS during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against WEST PICO DISTRIBUTORS.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against WEST PICO DISTRIBUTORS, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

WEST PICO DISTRIBUTORS will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against WEST PICO DISTRIBUTORS that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [REDACTED]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. WEST PICO DISTRIBUTORS must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [REDACTED]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to WEST PICO DISTRIBUTORS' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former WEST PICO DISTRIBUTORS employee. The Action claims WEST PICO DISTRIBUTORS violated California labor laws by failing to pay overtime wages, minimum and straight time wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil

penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Moon & Yang, APC (“Class Counsel.”)

WEST PICO DISTRIBUTORS strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether WEST PICO DISTRIBUTORS or Plaintiff is correct on the merits. In the meantime, Plaintiff and WEST PICO DISTRIBUTORS hired an experienced, neutral mediator Steve Rottman in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and WEST PICO DISTRIBUTORS have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, WEST PICO DISTRIBUTORS does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) WEST PICO DISTRIBUTORS has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. WEST PICO DISTRIBUTORS will pay \$130,000 as the Gross Settlement Amount (Gross Settlement). WEST PICO DISTRIBUTORS has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, WEST PICO DISTRIBUTORS will fund the Gross Settlement not more than fifteen (15) days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$43,333.33 (33 and 1/3% of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive for representing the Class in this Action other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$ 9,150 to the Administrator for services administering the Settlement.

- D. Up to \$25,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and WEST PICO DISTRIBUTORS are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. WEST PICO DISTRIBUTORS will separately pay employer payroll taxes it owes on the Wage portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and WEST PICO DISTRIBUTORS have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion should be a signed letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against WEST PICO DISTRIBUTORS.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against WEST PICO DISTRIBUTORS based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and WEST PICO DISTRIBUTORS have agreed that, in either case, the Settlement will be void: WEST PICO DISTRIBUTORS will not pay any money and Class Members will not release any claims against WEST PICO DISTRIBUTORS.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and WEST PICO DISTRIBUTORS has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of another lawsuit against WEST PICO DISTRIBUTORS or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and WEST PICO DISTRIBUTORS has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against WEST PICO DISTRIBUTORS, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against WEST PICO DISTRIBUTORS or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees 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 for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice attached to the Settlement Agreement as Exhibit B.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in WEST PICO DISTRIBUTORS' records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept WEST PICO DISTRIBUTORS' calculation of Workweeks and/or Pay Periods based on WEST PICO DISTRIBUTORS' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and WEST PICO DISTRIBUTORS' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment (if any).
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Del Toro Ibarra v. West Pico Distributors, LLC*, Case No. 21STCV31247 pending in Los Angeles Superior Court, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and WEST PICO DISTRIBUTORS are asking the Court to approve. At least [redacted] days before the [redacted] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website <https://www.ilymgroup.com> or the Court's website <http://www.lacourt.org/casesummary/ui/index.aspx>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [redacted].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action and include your name, current address, telephone number, and approximate dates of employment for WEST PICO DISTRIBUTORS and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 7 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://www.ilymgroup.com> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything WEST PICO DISTRIBUTORS and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <https://www.ilymgroup.com>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21STCV31247. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Kane Moon

Email: kane.moon@moonyanglaw.com

Lilit Tunyan

Email: lilit.tunyan@moonyanglaw.com

MOON & YANG, APC

1055 W. Seventh St., Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

Settlement Administrator:

ILYM Group Inc.

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

August 14, 2021

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

West Pico Distributors, LLC
5201 Downey Road
Vernon, CA 90058

Notice of Labor Code Violations and PAGA Penalties

Re: ***Eric Del Toro Ibarra v. West Pico Distributors, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Eric Del Toro Ibarra ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, West Pico Distributors, LLC ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff individually as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a forklift driver from approximately July 2019 to July 2021, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Throughout the statutory period, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all time worked. For example, Plaintiff and the Aggrieved Employees were required to work "off the clock", in that Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into work each workday. Also, Plaintiff and the Aggrieved Employees were required to undergo a COVID screening prior to clocking into work each workday, which included waiting in line for that screening and a temperature check, uncompensated. Additionally in or around November 2020, Plaintiff and the Aggrieved Employees were required to conduct work prior to clocking in, which included gearing up equipment to enter the freezer, uncompensated. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the use of their personal cellular telephones for work, without reimbursement Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-

two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, 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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

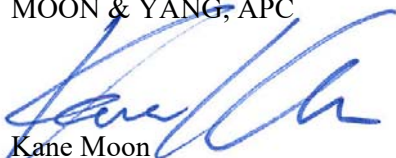
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law

MOON & YANG, APC
ATTORNEYS AT LAW
1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017

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