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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICKI FLORES, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

[Case Assigned for All Purposes to Hon.
David Cohn in Dept. S-26]

**DECLARATION OF ARI J. STILLER IN
SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND MOTION FOR
APPROVAL OF ATTORNEYS' FEES
AND COSTS**

*[Filed concurrently with Motion for Final
Approval; Motion for Approval of Attorneys'
Fees and Costs; Declarations of Vicki Flores
and Nicole Bench, Proposed Order, and
Judgment]*

Date: August 2, 2022

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: October 20, 2020
Trial Date: None Set

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1. I am an attorney licensed to practice before all of the courts of the State of California. I practice in the law firm of Kingsley & Kingsley, APC and one of the attorneys of record for Plaintiff Vicki Flores in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

3. I have been involved in all of the settlement discussions leading to the present settlement as embodied in the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**.

4. Plaintiff worked as an inspector/packer for Defendant Heritage Bag Company (“Defendant”) at its facility in Rancho Cucamonga, California. Her job duties included packing and inspecting trash bags, lawn bags and waste basket bags sold by Defendant.

5. In this action, she alleges that Defendant failed to blend her shift differential pay into her regular rate of pay for purposes of calculating overtime, that it failed to pay premium wages for missed meal and rest periods at the appropriate rate of pay, and that it failed to reimburse for work-related expenses, among other claims.

6. On October 20, 2020, Plaintiff filed a Class Action Complaint against Defendant alleging claims for: (1) Failure to Pay all Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Penalties Pursuant to Labor Code § 203; and (4) Violation of Business & Professions Code § 17200.

7. On August 12, 2021, Plaintiff filed a notice with the California's Labor and Workforce Development Agency ("LWDA") regarding her intent to file an action seeking civil

1 penalties under PAGA.

2 8. She submitted an amended PAGA notice on January 3, 2021.

3 9. On March 16, 2022, Plaintiff filed a First Amended Complaint with claims for
4 failure to provide accurate itemized wage statements in violation of Labor Code § 226(a), failure
5 to reimburse business expenses, and penalties pursuant to Labor Code § 2699, *et seq.*

6 **THE DISCOVERY PROCESS**

7 10. After the matter was at issue, the Parties engaged in discovery to understand the
8 nature of the allegations and the scope of potential liability.

9 11. In advance of mediation, Defendant provided Plaintiff's counsel with pertinent data
10 for the Class Members so that the Parties could fully investigate the claims at issue and understand
11 their strengths and weaknesses.

12 12. Defendant provided its handbook and other relevant policy documents; thousands
13 of pages of timekeeping and payroll data for the entire class over six randomly selected payroll
14 periods during the class period; the number of pay periods in the PAGA and class periods; the
15 number of class members, including those who signed arbitration agreements; and an analysis of
16 the number of pay periods worked by class members with arbitration agreements.

17 13. Plaintiff's counsel also served formal discovery but agreed to stay it pending
18 settlement negotiations.

19 14. Plaintiff's counsel had mediation data analyzed by an expert to prepare a damage
20 model for mediation.

21 15. On July 30, 2021, the Parties attended a full-day mediation with experienced
22 mediator Kelly A. Knight. Although the parties did not resolve the matter that day, they continued
23 their settlement efforts in the following months with the assistance of the mediator and, in
24 September 2021, reached a settlement, as provided herein, to settle Plaintiff's claims on a class-
25 wide and representative basis.

26 16. The Parties also engaged in meaningful confirmatory discovery after the mediation
27 in which Defendant provided Plaintiff's counsel with an exemplar wage statement confirming that
28 Defendant cured the alleged paystub and wage blending claims.

17. This information was provided on October 20, 2021.

18. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. Defendant contends, among other things, that, at all times, it has complied with the California Labor Code and the Industrial Wage Commission Orders.

19. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here.

PRELIMINARY APPROVAL

20. On March 23, 2022, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Notice of Class Action Settlement ("Class Notice" or "Notice"), ordering that the Settlement Administrator send Notice to the Settlement Class Members (as defined below), and setting a date for the Final Approval and Fairness Hearing.

SETTLEMENT

21. The settlement class is defined as: "all hourly paid, non-exempt persons employed by Defendant in the State of California during the Settlement Period" of October 20, 2016 through December 31, 2021 ("Settlement Class Members" or "Class Members").

22. The PAGA settlement group is defined as: "all hourly paid, non-exempt persons employed by Defendant in the State of California during the PAGA Settlement Period" from August 12, 2020 through December 31, 2021 ("PAGA Settlement Group").

23. As detailed fully in the Settlement Agreement, the Settlement provides for

1 Defendant to pay a Gross Settlement Fund of \$475,000.00, which includes the sum of the Class
2 Counsel Award, Incentive Award, Individual Settlement Payments, PAGA Payment, and
3 Settlement Administrator Costs.

4 24. The Net Settlement Fund is the Gross Settlement Fund less Court-approved Class
5 Counsel Award, Incentive Award, payment to the LWDA, and Settlement Administrator Costs.

6 **CLASS NOTICE**

7 25. The Court approved the proposed Class Notice and directed the mailing of the
8 Notice by first-class mail to Settlement Class Members in accordance with the proposed
9 implementation schedule.

10 **THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

11 26. All settlement discussions were made by experienced and informed counsel, who
12 believe that this settlement represents a favorable resolution for the Settlement Class Members.

13 27. The settlement negotiations have been, at all times, adversarial and non-collusive,
14 with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken
15 place.

16 28. The Parties engaged in formal and informal discovery, which included policy
17 documents time and pay data, payroll records, the class size, wage statements issued to Settlement
18 Class Members, and an analysis of the number of pay periods worked by class members with
19 arbitration agreements.

20 29. Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the
21 exposure and risks associated with each claim alleged in the lawsuit.

22 30. Class Counsel have significant experience in cases of this type, including decades
23 prosecuting wage, hour, and working condition violations.

24 31. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the
25 best interests of the class and that the average net recovery for each Settlement Class Member of
26 over \$466 is substantial, given the risks inherent in litigation and the defenses asserted.

27 **CLASS COUNSEL'S KULLAR ANALYSIS**

28 32. The discovery conducted extensively in this matter permitted Class Counsel to

1 fairly evaluate the strength of the case and the risks associated with ongoing litigation.

2 33. The Parties also engaged in meaningful confirmatory discovery after the mediation
3 in which Defendant provided Plaintiff's counsel with an exemplar wage statement confirming that
4 Defendant cured the alleged paystub and wage blending claims.

5 34. Class Counsel is experienced in handling wage and hour class actions and, after
6 weighing all of the following factors, supports this Settlement Agreement.

7 35. Plaintiff alleges that Defendant failed to pay overtime at the proper rate by not
8 blending shift differentials into the employees' regular rate of pay.

9 36. Plaintiff's wage statements show her overtime rate as 1.5 times her standard hourly
10 rate of \$13.50 even in pay periods where most of Plaintiff's regular hours were paid at a higher
11 rate due to earning a shift differential.

12 37. While this type of claim normally does not involve much risk, Defendant here
13 argued that it paid overtime on shift differentials, just with a different pay code on its wage
14 statements compared to the pay code used for overtime on non-shift-differential hours.

15 38. Plaintiff argued that the separate calculations did not follow California's rules for
16 calculating the "regular rate of pay" but Defendant contended that its practice was unlikely to result
17 in under-compensation of wages regardless.

18 39. Plaintiff disputes this but had to acknowledge the risk posed by Defendant's
19 argument.

20 40. Plaintiff perceived some risk on this claim based on Defendant's argument that it
21 used the blended rate for meal period premiums.

22 41. Plaintiff contests this argument based on paystub evidence that she believes
23 demonstrates the violation under *Ferra. v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858,
24 863.

25 42. Plaintiff alleges that Defendant required employees to incur business expenditures
26 for which they were never reimbursed, including the costs of steel-toed boots and protective
27 eyewear.

28 43. It appears Defendant issued vouchers to employees for the cost of these items.

1 44. Also, there is a risk that the Court would find no liability if the voucher was
2 sufficient to cover the realistic cost of these items, even if certain employees paid more.

3 45. Plaintiff alleges that Defendant failed to provide employees with accurate itemized
4 wage statements, as required by the Labor Code, because Defendant issued Plaintiff and the
5 aggrieved employees wage statements that fail to accurately show the total hours worked and the
6 applicable hourly rates in effect. Specifically, whenever Plaintiff and the aggrieved employees
7 earned meal period premiums, the extra hour of pay was added to total hours worked.

8 46. Moreover, Defendant failed to accurately list total overtime hours worked and the
9 corresponding number of hours worked at each hourly rate when an employee earns shift
10 differential pay or other bonuses and works overtime.

11 47. While Plaintiff believes there is lower risk in her claim for including meal period
12 premiums as total hours worked, the meal premiums and regular hours were separately listed
13 elsewhere on the stub, so there was still risk that a Court would find no liability as to this issue.

14 48. Here, Plaintiff and some members of the Proposed Class are no longer employed
15 by Defendant.

16 49. Plaintiff argues that she is owed waiting time penalties due to Defendant's failure
17 to pay appropriate overtime wages and meal period premiums. (*See Diaz v. Grill Concepts*
18 *Services, Inc.* (2018) 23 Cal.App.5th 859.)

19 50. While Plaintiff disputes that not knowing the law is a sufficient defense, she still
20 had to acknowledge that this argument posed some risk.

21 51. Moreover, the parties dispute how the Court would interpret Defendant's use of a
22 formula that paid overtime on shift differentials separate from the overtime on non-shift-
23 differential hours.

24 52. Defendant argues that this shows inadvertence as to the pay periods where Plaintiff
25 alleges a violation.

26 53. Finally, Plaintiffs expected Defendant to argue that the Court has discretion to
27 lower the waiting time penalty amount where it is significantly higher than the wages owed, which
28 is the case here. Plaintiffs disagree that the Court has this discretion, but nonetheless had to

1 consider this argument when determining an appropriate settlement.

2 54. Finally, the Settlement Class is compensated for these violations in the proposed
3 Settlement Agreement, and thus any PAGA recovery would be duplicative. Thus, PAGA did not
4 make up a significant percentage of the overall potential liability compared to other claims.

5 55. As such, the Settlement Agreement's contemplated PAGA payment of \$30,000.00
6 is appropriate.

7 56. There is significant expense associated with the class certification process, which
8 the Parties can avoid by entering into the contemplated Settlement Agreement now.

9 57. If the Court did eventually certify a class, trial of a case involving approximately
10 565 Settlement Class Members would require the retention of expensive expert witnesses, the
11 accrual of extensive litigation costs, and a significant time overlay by the parties.

12 58. Moreover, given the complexity and unsettled nature of the issues in this case it is
13 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal
14 would result in further delay for the Settlement Class Members who are waiting for a resolution in
15 this matter.

16 59. This case has not been certified as a class action. While Plaintiff believes there is
17 strong evidence to support certification of several possible subclasses, certification is always hard
18 fought and subject to judicial discretion. Moreover, in class actions, decertification is always a
19 possibility. In attempting to certify a class, the parties would need to conduct multiple depositions,
20 including of the Named Plaintiff and of several person(s) most knowledgeable regarding
21 Defendant's policies. There is a risk for both sides as to what these depositions will reveal and
22 whether they will support certification to the extent expected.

23 60. It was very difficult for the Parties to reach this Settlement of \$475,000.00.

24 61. This Settlement is the result of adversarial, non-collusive, and arms-length
25 negotiations. The Parties arrived at it after extensive investigation and discovery, careful
26 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
27 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
28 of an experienced mediator, Kelly A. Knight.

1 62. Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any
2 discount, at approximately \$12,396.

3 63. Plaintiff used an hourly average rate of \$18.07 and 25,647 workweeks for
4 Settlement Class Members.

5 64. The full value of the Meal Period claim, without any discount, was approximately
6 \$2,152.

7 65. Meal period premiums were paid infrequently, and the claim requires both a meal
8 premium and shift differential in the same pay period.

9 66. This brought the damages for this claim to \$10,889.74 (\$20 x average of 1.18 years
10 worked/class member x 459 class members).

11 67. Plaintiff valued the Wage Statement Claim, without discount, at approximately
12 \$669,277.

13 68. Due to the risk discussed above that 226(a) liability wouldn't attach under *Morgan*
14 *v. United Retail Inc.* (2010) 186 Cal.App.4th 1136 and *Maldonado v. Epsilon Plastics, Inc.* (2018)
15 22 Cal.App.5th 1308, 1336–1337, Plaintiff determined that a steep discount of this claim was fair
16 for settlement purposes.

17 69. Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at
18 \$506,571.

19 70. This accounts for Defendant's argument that it did, in fact, pay overtime for hours
20 worked at the shift differential rate, even if they were not listed under the overtime pay code on its
21 wage statements.

22 71. Considering the derivate nature of Labor Code section 203 and the dispute over
23 willfulness, Plaintiffs determined that accepting a discount on this claim was appropriate.

24 72. Finally, Plaintiff calculated the value of the PAGA claim at \$162,317 for pay
25 periods with a regular rate violation and another \$529,826 for pay periods with an independent
26 wage statement violation.

27 73. The main risk taken into account with PAGA is the discretionary nature of the
28 penalty award.

1 74. The court could award the statutory maximum of one hundred (\$100) dollars for
2 the initial violation and two hundred (\$200) dollars thereafter or – in theory – one cent per wage
3 statement.

4 75. While there is a dearth of available authority, in Plaintiffs' view, were they to
5 succeed on any of the underlying Labor Code violations (especially waiting time penalties), it is
6 not likely that the Court would also award a large amount of PAGA penalties on top of damages.

7 76. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
8 Settlement Class Members' claims was approximately \$1,893,429.

9 77. However, as a result of the forgoing risks on the merits, Class Counsel believes the
10 Gross Settlement Fund of \$475,000.00 is fair and reasonable.

11 78. As outlined above, Class Counsel conducted a thorough investigation into the facts.
12 The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient
13 information to make an informed judgement regarding the likelihood of success on the merits and
14 the results that could be obtained through further litigation.

15 **ATTORNEY COMPETENCE**

16 79. Kingsley & Kingsley is experienced in prosecuting employment litigation, and
17 since 2000 we have focused a substantial percentage of our practice on complex wage, hour, and
18 working condition violations. The firm is extremely well-versed in class action litigation and has
19 diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class
20 counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.

21 80. Below is a small but representative sampling of wage and hour class cases handled
22 by my firm:

23 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
24 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
25 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.

26 b. *Daniel v. Network Management Corp.* (No. BC274004, L.A. Super. Ct.) In
27 September 2003, the court granted final approval of Settlement in the gross amount
28 of \$475,000 and the court approved the attorneys' fee request of 30%.

- c. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- d. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- e. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.
- f. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- g. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- h. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.
- i. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.
- j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement

1 in the gross amount of \$995,000.00, and the court granted attorney's fees request
2 of 33.33%.

3 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
4 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
5 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
6 fees.

7 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
8 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
9 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
10 33.33%.

11 m. *Pineda, et al. v. Grimmway Enterprises, Inc.*, (No. BCV-15-101333, Kern Super.
12 Ct.) In January 2018, the Hon. Stephen D. Schuett granted final approval of
13 Settlement in the gross amount of \$9,000,000 with attorneys' fees request of
14 33.33%.

15 81. Kingsley & Kingsley, APC filed its first motion for class certification in the year
16 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions
17 that have been approved for class certification. A brief sampling of these cases includes:

18 a. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
19 December 19, 2012) (court granted contested class certification and appointed
20 Kingsley & Kingsley class counsel).

21 b. *Amaro et al. v Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
22 filed February 3, 2014) (court granted contested class certification and appointed
23 Kingsley & Kingsley co-class counsel).

24 c. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
25 filed January 27, 2015) (court granted contested class certification and appointed
26 Kingsley & Kingsley class counsel).

27 d. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16C0214).
28 contested class certification granted in June 2020.

1 e. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
2 (BCV-16-102833), contested class certification granted in 2018.

3 f. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
4 contested class certification granted in June 2020.

5 g. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
6 contested class certification granted in August 2020.

7 82. After factoring in the risks explained above, Class Counsel believes that the
8 proposed settlement is fair and reasonable.

9 83. There is no governmental participation in this action aside from the LWDA as
10 represented by Plaintiff. The LWDA has been notified of the settlement and has not objected.

11 **ATTORNEYS' FEE AWARD**

12 84. From the Gross Settlement Fund of \$475,000.00, Plaintiff requests an award of
13 attorneys' fees in the amount of \$158,333.33, or 1/3 of the Gross Settlement Fund created on behalf
14 of members of the class.

15 85. In addition to the complexity of this case, Class Counsel has borne the entire risk
16 and costs of this litigation during the entire time that it has been pending, all on a pure contingency
17 basis. Through the investment of substantial effort and resources, Class Counsel has secured an
18 outstanding Settlement of behalf of the Settlement Class Members. Defendant vigorously
19 contested liability, the amount of claimed damages, and the propriety of class certification. It is
20 this kind of situation, involving complex issues, that has been recognized as justifying a substantial
21 attorney fee award.

22 86. I am very familiar with the contingent fee market throughout California and in the
23 San Bernardino County area, particularly as it pertains to complex employment, wage and hour,
24 and class action litigation. On behalf of the Kingsley & Kingsley firm, I have negotiated numerous
25 contingency fee agreements with plaintiffs, both as individuals and as representatives in class
26 action suits. Many of those agreements provide that counsel will receive a fee that is between 33%
27 and 40% of any recovery that is obtained, and, in addition, that counsel be reimbursed for the costs
28 they incurred out of the recovery amount. The named Plaintiff in this action signed a contingency

1 fee agreement that stated that counsel would be able to make a fee of up to 40% of any recovery
2 if the case settles. These are typical and standard percentages in employment-related contingency
3 agreements throughout California. Indeed, in my opinion, the Settlement Class Members in this
4 complex wage and hour case could not have retained competent counsel in California, particularly
5 with the considerable skill and expertise of my firm, for any amount significantly less than the
6 contingency fee percentage provided in this retainer agreement. Class Counsel has never been paid
7 any money for attorneys' fees in this case and has advanced all costs.

8 87. There are always risks attendant to billing cases on a contingency basis. Those
9 risks are even higher in the current economic climate. Kingsley & Kingsley bills the vast majority
10 of its cases on contingency, and has been affected by recent bankruptcy filings. In three separate
11 cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange Super. Ct.
12 filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No. CIVRS1207797 (San
13 Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for bankruptcy protection
14 in June 2011 and January 2015 after years of litigation. My firm advanced costs and incurred
15 thousands of dollars in fees that will never be recovered.

16 88. Additionally, there are cases where Class Counsel takes on the extreme risk of
17 attempting to certify a class case, often turning down class or individual settlement offers that
18 Class Counsel feels are not in the best interest of the class, only to lose class certification and the
19 costs and fees associated with the litigation. *See e.g., Prosad v. Del Taco Restaurant Services,*
20 *Inc.*, No. BC426538 (L.A. Super. Ct. filed Nov. 2009); *Perez v. Safelite Group, Inc.*, CV-10-8653-
21 RGK(FFMx) (C.D. Cal. filed October 5, 2010).

22 89. When Class Counsel's motions for class certification are denied, Class Counsel
23 often appeals the orders. Sometimes, these denials are overturned (*Perez v. Safelite Group, Inc.*,
24 553 Fed.Appx. 667 (9th Cir. 2015); *Anderson v. Total Renal Care, Inc.*, No. B236207 (Cal. Ct.
25 App. 2012)) and other times Class Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
26 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

27 90. In addition to appealing class certification denials, Kingsley & Kingsley has been
28 involved in numerous lengthy and protracted appeals before the California Court of Appeal, the

1 California Supreme Court, the Ninth Circuit, the Seventh Circuit, and the United States Supreme
2 Court. Our firm specifically has taken and lost some issues on appeal that required the write-off
3 of significant legal fees. Also, our firm has been successful on appeal and overturned unfavorable
4 lower court rulings or successfully fought to have successful rulings affirmed. Below is just a
5 sample of some of these appeals:

- 6 a. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that
7 pharmaceutical sales representatives are exempt employees affirmed);
- 8 b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009) (lower
9 court ruling in employer's favor that certain employees can share in mandatory tip
10 pool affirmed);
- 11 c. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court
12 ruling in employer's favor that certain employees can share in mandatory tip pool
13 affirmed);
- 14 d. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in
15 employer's favor approving employer's commission pay plan affirmed);
- 16 e. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153
17 (2012) (lower court ruling that pharmaceutical sales representatives are exempt
18 employees affirmed);
- 19 f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court ruling
20 that pharmaceutical sales representatives are exempt employees affirmed);
- 21 g. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26,
22 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores*
23 *California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court
24 granted employer's motion to compel arbitration, Court of Appeal reversed, U.S.
25 Supreme Court affirmed lower court);
- 26 h. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App.
27 Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L.
28 Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel

arbitration affirmed);

- i. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration affirmed);
- j. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1 (reversing in part and affirming in part trial courts order compelling arbitration);
- k. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing summary judgement in favor of employer on wage statement claim);
- l. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8, 2018) (affirming judgement for employees after bench trial);
- m. *Kim v. Reins International California*, Case No. S246911. Oral argument was held before the California Supreme Court on January 6, 2020 and a decision was published in March 2020.

91. Unlike plaintiffs' firms, which bear the risk of loss on contingency cases, defense firms are able to bill their clients for time spent on a case. As verified by a survey conducted by the National Law Journal nearly a decade ago, six California firms provided their hourly billing rates and of the six firms, five regularly charged in excess of \$500 for their partners. In fact, four of these firms charged as high as \$600, \$620, \$650 and up to \$850 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County, and San Diego County. This survey is attached hereto as **Exhibit 2**.

92. While plaintiffs' firms strive to take on cases that are meritorious (for ethical as well as monetary reasons), as this Court knows, many of these cases hinge on the decision of class certification. Recently, there has been a renewed effort by defense counsel and/or their clients to challenge these cases and to push back, especially on certification motions. In addition, many novel legal issues have gone up on appeal, which has complicated the landscape for settlement.

CLASS COUNSEL'S HOURS AND HOURLY RATES ARE REASONABLE

93. Class Counsel's aggregate lodestar amounts to \$71,530.00, which represents 102.2 hours of attorney work on this litigation incurred from its inception through the filing of Plaintiff's

1 Motion for Final Approval plus a reasonable estimate for future time (8 hours for Eric Kingsley
2 and 15 hours for myself).

3 94. As such, Class Counsel is asking for a multiplier of 2.21.

4 95. The amount of time spent on this case (over 102 hours), which culminated in a very
5 favorable proposed Settlement for the Settlement Class Members, is reasonable given the
6 complexity and novelty of the issues involved, the vigorous defense, the length and intensity of
7 the litigation, and the exceptional results obtained.

8 96. Class Counsel litigated this action with great efficiency in light of the amount of
9 work required to achieve the Settlement.

10 97. The requested hourly rates in this case range from \$375.00 per hour to \$900.00.

11 98. Class Counsel's hourly rates are fully supported by their experience and reputation
12 in handling complex employment litigation, including wage and hour class actions.

13 99. Mr. Kingsley is a 26-year attorney with expertise in wage and hour class action
14 lawsuits.

15 100. He has litigated several hundred such cases, including at the appellate level at the
16 U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of
17 Appeal.

18 101. He is also a prolific speaker at various seminars on employment law and has
19 contributed to legal publications on employment topics.

20 102. In light of the increase of experienced lawyers in specialized practice, I believe that
21 the hourly rates charged by my firm are fair and reasonable and are comparable to or less than
22 those charged by my colleagues in California and the national market for prosecuting or defending
23 class actions.

24 103. My office billed for the following five attorneys for work performed on this case:
25 Eric B. Kingsley, Liane Katzenstein Ly, Zachary D. Greenberg, David Penner, and me.

26 104. Liane Katzenstein Ly, a partner at Kingsley & Kingsley, APC, has a billing rate of
27 \$650 per hour. She is an honors graduate of Florida State University, and received her JD from
28 University of California Davis School of Law in 2008, where she was an editor of the

1 Environmental Law Journal and a board member of the King Hall Negotiations Team.

2 105. I am a senior associate at Kingsley & Kingsley, APC, with a billing rate of \$565
3 per hour. I am a 9-year attorney whose practice focuses on employment litigation, including wage
4 and hour class actions, discrimination, harassment, and wrongful termination claims. I graduated
5 Phi Beta Kappa with a B.A. from Colorado College in 2006 and received my J.D. from University
6 of Colorado School of Law in 2013, where I was an associate editor of the law review and president
7 of my class. I formerly practiced on the motions and appeals team at a prominent Los Angeles
8 law firm and served as a judicial fellow to Judge Paul Watford in the U.S. Court of Appeals for
9 the Ninth Circuit.

10 106. Zachary D. Greenberg is a former associate of Kingsley & Kingsley, APC. He
11 received his B.A. from Western Washington University and received his law degree from Loyola
12 Law School in 2019. Up until his departure from the firm, Mr. Greenberg was billed at \$350 per
13 hour.

14 107. David Penner is a former associate of Kingsley & Kingsley, APC. He received his
15 B.A. from University of Michigan and received his law degree from UC Irvine School of Law in
16 2018. He left the firm in 2021 and was billed at \$375 per hour.

17 108. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross*
18 *New Mark: \$1,500 an Hour* states that “a review of filings over the past three months in about two
19 dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an
20 hour, with top rates at several large law firms exceeding \$1,400.” The article also explains that
21 “despite low inflation and weak demand for legal services, rates at large corporate law firms have
22 risen by 3% to 4% a year since the economic downturn.” Finally, the article notes that “the average
23 highest rate paid for law-firm partners was \$875 an hour in 2015.” This article is attached hereto
24 as **Exhibit 3**.

25 109. I have litigated a number of cases in San Bernardino, including in this department.
26 Class Counsel’s charged rate are commensurate with the prevailing market rates in San Bernardino
27 County for attorneys of comparable experience and skill handling complex litigation, and have
28 been approved by this Court to support a common-fund fee award in other class action cases.

110. Class Counsel made all reasonable attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing rates.

111. Finally, Class Counsel's rates are in line with the 2021-2022 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr. Kingsley, is \$919, a reasonable rate for an attorney with 14 years of experience, such as Ms. Ly, is \$764, a reasonable rate for an attorney with 9 years of experience, such as Mr. Stiller, is \$676, a reasonable rate for an attorney with 3 or less years of experience, such as Mr. Penner and Mr. Greenberg is \$381. A true and correct copy of the 2021-2022 Adjusted Laffey Matrix is attached hereto as **Exhibit 4**.

112. Kingsley & Kingsley's attorneys' fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>FUTURE HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	5.90	8.0	\$900.00	\$12,510.00
Liane Katzenstein Ly	1.00		\$650.00	\$650.00
Ari J. Stiller	74.50	15.0	\$565.00	\$50,567.50
David Penner	0.10		\$400.00	\$40.00
Zachary D. Greenberg	20.70		\$375.00	\$7,762.50
TOTAL	102.2	23.0		\$71,530.00

113. Kingsley & Kingsley has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiff and witnesses and flushing out facts and issues;
- b. researching employer and related causes of action;
- c. researching other pending and former matters against Defendant;
- d. fact development and investigating Defendant's ownership structure

- e. researching and analyzing relevant claims under B&P 17200;
- f. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- g. regular meetings and or communicating with the named Plaintiff;
- h. regular meetings and or communicating with Co-Counsel;
- i. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, Motion for Final Approval, various documents related to Final approval, etc.);
- j. researching private right of action and various impact on class actions;
- k. interviewing and obtaining declarations from Settlement Class Members;
- l. preparing for and attending mediation;
- m. discussing issues related to damage model calculations;
- n. preparing and analyzing damage models;
- o. negotiating the terms of the settlement;
- p. reviewing and making changes to the Settlement Agreement;
- q. drafting and editing all documents for Preliminary and Final Approval;
- r. monitoring Notice and settlement administration procedures;
- s. coordinating and overseeing all aspects of the administration of the Settlement (review documentation, approve form and content, etc.); and
- t. multiple communications with defense counsel.

114. Based on the aggregate lodestar, Class Counsel is requesting a multiplier of 2.21.

115. I believe the request for attorneys' fees in the amount of \$158,333.33 is fair and reasonable given the complexity and novelty of the issues involved, the vigorous defense, and the exceptional results obtained. As explained above, Class Counsel's diligent litigation efforts and experience led to an outstanding settlement.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

116. As discussed in detail in the extensive risk analysis section in Plaintiff's Motion for Final Approval, were this case to proceed, Defendant would have a strong incentive to litigate

1 tenaciously. There are genuine issues in dispute.

2 117. Class Counsel are skilled wage and hour practitioners with decades of experience
3 who diligently prepared and litigated this matter as discussed.

4 118. To achieve the ultimate result in this case, Co-lead Class Counsel had to incur
5 substantial risk and expense, and were precluded from taking other fee generating employment for
6 over 102 hours of attorney time.

7 119. This matter had been handled purely on a contingency fee basis and Class Counsel
8 have advanced many thousands of dollars in costs while deferring all payment of fees, with no
9 guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting
10 significant firm resources to prosecution of this matter.

11 120. Class Counsel believe this is an exceptional result that has been well received by
12 Settlement Class Members.

13 ATTORNEY COSTS

14 121. In addition to their request for fees, Class Counsel further request reimbursement
15 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with
16 this litigation, in the amount of \$10,760.34.

17 122. To date, Kingsley and Kingsley has incurred \$10,440.59 in costs.

18 123. Class Counsel anticipates incurring an additional \$319.75 to file and serve this
19 motion and to attend the hearing. This includes a \$60 filing fee for each motion (\$120 total); \$94.00
20 Courtcall expense; and \$105.75 to our filing service, One Legal, for completing the electronic
21 filing and delivering a courtesy copy to the department, based on my review of One Legal's
22 standard rates.

23 124. As such, Class Counsel is requesting a cost reimbursement of \$10,760.34.

24 125. All of the requested costs are reasonable in amount and were necessarily incurred
25 by Class Counsel in prosecuting this litigation. A true and correct copy of Kingsley's cost ledger
26 is attached hereto as **Exhibit 5**.

27 126. All of these costs have been incurred in the course of this litigation, and all costs
28 advanced have already been paid by Class Counsel.

1 **THE NAMED PLAINTIFF’S ENHANCEMENT SHOULD BE APPROVED**

2 127. Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Named Plaintiff
3 Vicki Flores for her work on behalf of the settlement class.

4 128. The time spent by Ms. Flores is significant and includes researching and retaining
5 competent counsel; providing information to Class Counsel regarding the nature of her work for
6 Defendant; compiling relevant documents; working closely with Class Counsel to develop the
7 theories of liability and martial relevant evidence; regularly discussing the status of the case with
8 Class Counsel; participating by telephone during mediation; and responding promptly to Class
9 Counsel’s communications regarding settlement.

10 129. As set forth in the Settlement, Plaintiff will also be entering into a general release
11 of liability pursuant to Civil Code Section 1542.

12 130. Class Counsel considers this to be a fair and reasonable enhancement.

13 131. The enhancement takes into consideration the time, effort, and expense incurred by
14 Ms. Flores in coming forward to litigate this matter on behalf of all Settlement Class Members.

15 132. Additionally, the Named Plaintiff was at risk for paying for Defendant’s legal fees
16 and costs in the event that Defendant prevailed at trial.

17 133. The Class has benefited from Ms. Flores’ action in stepping forward on their behalf
18 to bring this lawsuit.

19 134. Further, the Class Notice disclosed the enhancement award.

20 135. As of today, no Settlement Class Member has objected to the proposed
21 enhancement.

22 136. Under the circumstances, a representative payment of \$5,000.00 is justified and the
23 Court should award this payment to Ms. Flores from the Gross Settlement Fund as provided in the
24 Settlement Agreement.

25 **PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**

26 **AGENCY**

27 137. As indicated on the Proof of Service, Plaintiff’s accompanying Motion for Final
28 Approval of Class Action Settlement and Motion for Final Approval of Attorneys’ Fees and Costs

1 (“Motions”) were uploaded to the Labor and Workforce Development Agency’s (“LWDA”)
2 website on the date these Motions were filed. Proof of submission of Plaintiff’s Motions, all
3 related documents, and copy of the email from the LWDA confirming receipt is attached hereto as
4 Exhibit “6”.

5 **EXHIBITS**

6 138. Attached hereto as Exhibit “1” is a true and correct copy of the fully-executed Joint
7 Stipulation of Class Action Settlement and Release of Claims that was preliminary approved by
8 this Court on March 23, 2022.

9 139. Attached hereto as Exhibit “2” is a true and correct copy of the ALM Research
10 2007 NLJ Billing Survey.

11 140. Attached hereto as Exhibit “3” is a true and correct copy of Wall Street Journal on
12 February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour*.

13 141. Attached hereto as Exhibit “4” is a true and correct copy of the 2021-2022 Adjusted
14 Laffey Matrix.

15 142. Attached hereto as Exhibit “5” is a true and correct copy of the Kingsley &
16 Kingsley, APC costs ledger reflecting costs incurred in this matter.

17 143. Attached hereto as Exhibit “6” is a true and correct copy of the proof of submission
18 to the LWDA as referenced above.

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

21 This declaration was executed this 7th day of July, 2022, in Tarzana, California.

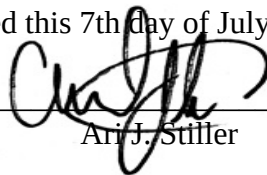
22 
23 Ari J. Stiller

EXHIBIT "1"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICKI FLORES an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

[Case Assigned for All Purposes to Hon.
David Cohn in Dept. 2-26]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiff VICKI FLORES, individually and on behalf of the Settlement Class, the
3 PAGA Settlement Group, and the State of California, as a private attorney general, on the one
4 hand, and Defendant HERITAGE BAG COMPANY on the other hand. This Joint Stipulation of
5 Class Action Settlement and Release of Claims shall be binding on Plaintiff, the current and former
6 employees s/he seeks to represent, the Settlement Class and PAGA Settlement Group, and on
7 Defendant, subject to the definitions, recitals, and terms set forth herein and the approval of the
8 Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
12 California for the County of San Bernardino, entitled *Flores v. Heritage Bag Company*, Case No.
13 CIVDS2023373, filed on October 20, 2020.

14 **2. Class Counsel**

15 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
16 act as counsel for the Settlement Class.

17 **3. Class Counsel Award**

18 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
19 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
20 Lawsuit.

21 **4. Class Information**

22 “Class Information” or “Class Data” means information regarding Settlement Class
23 Members that Defendant will in good faith compile from its records and provide to the Settlement
24 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each
25 Settlement Class Member’s full name; last known address; last known home telephone number;
26 social security number; dates of employment, and Eligible Pay Periods, or data that will allow the
27 Settlement Administrator to reasonably determine Eligible Pay Periods.

28 **5. Class Members or Settlement Class Members**

1 “Class Members” or “Settlement Class Members” means all hourly paid, non-exempt
2 persons employed by Defendant in the State of California during the Settlement Period.

3 **6. Eligible Pay Periods**

4 “Eligible Pay Periods” means an estimate of the number of pay periods in which Settlement
5 Class Member(s) performed work for Defendant in the State of California, excluding vacation,
6 leaves of absence, or any gaps in employment, during the Settlement Period based on Defendant’s
7 records.

8 **7. Complaint**

9 “Complaint” means the operative complaint, filed in the Action.

10 **8. Court**

11 “Court” means the Superior Court for the County of San Bernardino, State of California.

12 **9. Defendant**

13 “Defendant” means Defendant Heritage Bag Company.

14 **10. Effective Date**

15 “Effective Date” of the Settlement means the date on which the Court’s order granting
16 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
17 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
18 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
19 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written
20 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
21 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
22 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
23 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
24 last date for filing a request for further review of the Court of Appeal’s decision passes and no
25 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
26 dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s
27 decision is requested, the day after the request for review is denied with prejudice and/or no further
28 review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of

the State of California affirms the Settlement.

11. Final Approval Hearing

“Final Approval Hearing” means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

12. Final Approval Order

“Final Approval Order” means the proposed order granting final approval of the Parties’ settlement, in a form substantially similar to the order attached hereto as Exhibit C.

13. Final Judgment

“Final Judgment” means a judgment issued by the Court approving this Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

14. Gross Settlement Fund

“Gross Settlement Fund” means the agreed upon settlement amount totaling \$475,000.00 to be paid by Defendant in full settlement of the Released Claims, and includes without limitation the Class Counsel Award, Incentive Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs.

15. Incentive Award

“Incentive Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for executing a general release with Defendant.

16. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Fund to a Participating Class Member or PAGA Settlement Group member based upon his/her Eligible Pay Periods.

17. LWDA

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

18. Named Plaintiff

“Named Plaintiff” or “Plaintiff” means Plaintiff Vicki Flores.

19. Net Settlement Fund

“Net Settlement Fund” means the Gross Settlement Fund, less Court-approved Class Counsel Award, Incentive Award, payment to the LWDA, and Settlement Administrator Costs.

20. Notice of Class Action Settlement

“Notice of Class Action Settlement” means the Notice of Pendency of Class Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated Individual Settlement Payment. It is the notice approved by the Parties and subject to Court approval explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

21. PAGA

“PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2699 et seq.

22. PAGA Payment

“PAGA Payment” means the payment made hereunder to the LWDA pursuant to PAGA.

23. PAGA Settlement Group

“PAGA Settlement Group” means all hourly paid, non-exempt persons employed by Defendant in the State of California during the PAGA Settlement Period.

24. PAGA Settlement Period

“PAGA Settlement Period” means August 12, 2020 through December 31, 2021.

25. Participating Class Members

“Participating Class Members” means those Class Members who did not file a valid and timely Request for Exclusion pursuant to section III, paragraph 13 of this Agreement.

26. Parties

“Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either

1 Plaintiff or Defendant, individually.

2 **27. Payment Ratio**

3 “Payment Ratio” means the proportion of an individual Participating Class Member’s
4 Eligible Pay Periods compared to the aggregate number of Eligible Pay Periods worked by all
5 Participating Class Members.

6 **28. Preliminary Approval Date**

7 “Preliminary Approval Date” means the date on which the Court issues an order granting
8 preliminary approval of the proposed settlement in a form substantially similar to the order
9 attached hereto as Exhibit B.

10 **29. Released Class Settlement Claims**

11 “Released Class Settlement Claims” means, for the Settlement Period, all wage and hour
12 claims against the Released Parties brought or that could have been brought in the Action based
13 on the facts and theories alleged therein, including but not limited to claims under California Labor
14 Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197,
15 1197.1, 1198, and 2802 as well as California Business and Professions Code Section 17200.

16 **30. Released PAGA Claims**

17 “Released PAGA Claims” means, for the PAGA Settlement Period, all wage and hour
18 claims for civil penalties brought or that could have been brought against Defendant in the Action
19 based on the facts and theories alleged therein, including but not limited to claims under California
20 Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197,
21 1197.1, 1198, and 2802. The PAGA Settlement Group may not opt out of this release.

22 **31. Released Parties**

23 “Released Parties” means Defendant and any of its former and present parents,
24 subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents,
25 successors, assigns, or legal representatives.

26 **32. Request for Exclusion**

27 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
28 address, and a simple statement electing to be excluded from the Settlement.

1
2 **33. Response Deadline**

3 “Response Deadline” means the date sixty (60) days after the Settlement Administrator
4 mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date
5 on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) file and serve
6 objections to the settlement; or (c) dispute the information contained in the Notice of Class Action
7 Settlement.

8 **34. Settlement**

9 “Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to
10 this Joint Stipulation of Class Action Settlement and Release of Claims.

11 **35. Settlement Administrator**

12 “Settlement Administrator” means the third-party company that the Parties have jointly
13 selected to be responsible for administering the Settlement. This Settlement Administrator is
14 ILYM Group, Inc.

15 **36. Settlement Administrator Costs**

16 “Settlement Administrator Costs” means the amount to be paid to the Settlement
17 Administrator from the Gross Settlement Fund for administration of this Settlement.

18 **37. Settlement Period**

19 “Settlement Period” means the period from October 20, 2016 through December 31, 2021.

20 **II. RECITALS**

21 **1. Class Certification.**

22 The Parties stipulate to class certification for purposes of settlement only. If the Court does
23 not grant either preliminary or final approval of this Settlement, the Parties agree that this
24 stipulation regarding class certification will be revoked and the Parties will return to a point in
25 litigation prior to the execution of this Agreement.

26 **2. Procedural History.**

27 On October 20, 2020, Plaintiff filed a Class Action Complaint against Defendant in San
28 Bernardino County. On August 12, 2021, Plaintiff filed a notice with California’s Labor and

1 Workforce Development Agency (“LWDA”) regarding her intent to file an action seeking civil
2 penalties under PAGA.

3 The operative Complaint alleges claims for: (1) Failure to Pay all Wages and/or Overtime
4 Under Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor
5 Code §§ 226.7 and 512; (3) Penalties Pursuant to Labor Code § 203; and (4) Violation of Business
6 & Professions Code § 17200.

7 Plaintiff anticipates amending her complaint to add additional claims for failure to
8 reimburse business expenses and failure to provide accurate itemized wage statements in violation
9 of Labor Code § 226(a) and penalties pursuant to Labor Code § 2699, et seq.

10 After the matter was at issue, the Parties began to engage in informal and formal discovery
11 to understand the nature of the allegations and the scope of potential liability. Defendant provided
12 Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could fully-
13 investigate the claims at issue and understand their strengths and weaknesses.

14 On July 30, 2021, the Parties attended a full-day mediation with experienced mediator
15 Kelly A. Knight. Although the parties did not resolve the matter that day, they continued their
16 settlement efforts in the following months with the assistance of the mediator and, in September
17 2021, reached a settlement, as provided herein, to settle Plaintiff’s claims on a class-wide and
18 representative basis.

19 Defendant denies any liability or wrongdoing associated with the claims asserted in
20 Plaintiff’s Complaint, disputes the damages and penalties claimed by Plaintiff, and further
21 contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class
22 or representative action treatment. This Stipulation is a compromise of disputed claims. Nothing
23 contained in this Stipulation, no documents referred to herein, and no action taken to carry out this
24 Stipulation, shall be construed or used as an admission by or against Defendant as to the merits or
25 lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other things, that,
26 at all times, it has complied with all applicable state, federal and local laws related to the Settlement
27 Class Members’ employment.

28 The Named Plaintiff is represented by Class Counsel. Class Counsel conducted an

1 investigation into the facts relevant to the Lawsuit, including reviewing documents and
2 information provided by Defendant. Based on their own independent investigation and evaluation,
3 Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate,
4 and in the best interest of the Settlement Class in light of all known facts and circumstances,
5 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
6 class and representative action trial on the merits, and numerous potential appellate issues.
7 Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid
8 the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
9 forever settle, compromise and discharge all disputes and claims arising from or relating to the
10 Actions on the terms set forth herein.

11 **3. Benefits of Settlement to Class Members and PAGA Group.**

12 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
13 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
14 also taken into account the uncertainty and risk of the outcome of further litigation, and the
15 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
16 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
17 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
18 damages for the Settlement Class Members and PAGA Settlement Group members. Plaintiff and
19 Class Counsel have also taken into account Defendant's agreement to enter into a settlement that
20 confers substantial relief upon the members of the Settlement Class and PAGA Settlement Group
21 members. Based on the foregoing, Class Counsel have concluded that settlement for the
22 consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and
23 adequate and is in the best interest of the putative class in light of all known facts and
24 circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's
25 financial condition, numerous potential appellate issues, and other risks inherent in litigation.

26 **4. Defendant's Reasons for Settlement.**

27 Defendant has concluded that any further defense of this litigation would be protracted and
28 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have

1 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
2 claims asserted by Plaintiff and Settlement Class Members. Defendant has also taken into account
3 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
4 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in
5 this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
6 forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has
7 complied with all applicable state, federal, and local laws.

8 **5. Settlement of Disputed Claims.**

9 This Agreement is a compromise of disputed claims. Defendant has claimed and continues
10 to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class
11 Members have claimed and continue to claim that the Released Claims have merit and give rise to
12 liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing
13 contained in this Agreement, no documents referred to herein, and no action taken to carry out this
14 Agreement, may be construed or used as an admission by or against the Settlement Class Members
15 or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

16 **III. TERMS OF AGREEMENT**

17 **1. Release as To All Participating Class Members.**

18 As of the Effective Date, each Participating Class Member, including Plaintiff, releases the
19 Released Parties from the Released Claims for the Settlement Period.

20 **2. Release as To All PAGA Settlement Group Members.**

21 As of the Effective Date, each member of the PAGA Settlement Group, including Plaintiff,
22 releases the Released Parties from the Released PAGA Claims for the PAGA Settlement Period.

23 **3. Release of Claims by Plaintiff.**

24 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released
25 Claims during the Settlement Period and PAGA Settlement Period. Plaintiff, for herself and her
26 heirs, successors and assigns, further waives, releases, acquits and forever discharges the Released
27 Parties from any and all claims, actions, charges, complaints, grievances and causes of action, of
28 whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of

1 the date of this Agreement, including, but not limited to, any and all tort claims, contract claims,
2 wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims,
3 retaliation claims, harassment claims, statutory claims, personal injury claims, emotional distress
4 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and
5 any and all claims arising under any federal, state or other governmental statute, law, regulation or
6 ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act
7 (including the Equal Pay Act), the California Labor Code, specifically including but not limited to
8 the Private Attorney General Act pursuant to Labor Code 2699, the Wage Orders of California's
9 Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities
10 Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
11 Security Act, Title VII of the Civil Rights Act of 1964, 1866, and 1991, the California Fair
12 Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
13 California's Whistleblower Protection Act, California Business & Professions Code §§17200 et
14 seq., Section 503 of the Rehabilitation Act of 1973, the California Constitution, the California
15 Government Code, the Employee Retirement Income Security Act, the California Pregnancy
16 Discrimination Act, the Immigration Reform and Control Act, the National Labor Relations Act,
17 California's Occupational Safety and Health Act, or the Federal equivalent, the Families First
18 Coronavirus Response Act, the California Supplemental paid sick leave law or any other federal,
19 state, or local paid sick leave law, and any and all claims arising under any federal, state or other
20 governmental statute, law, regulation or ordinance.

21 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
22 Code §1542, which provides:

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
24 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
25 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
26 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
THE DEBTOR OR RELEASED PARTY.

27 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
28 which she now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever

1 settle and release any and all claims against the Released Parties, known or unknown, suspected
2 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
3 of this Agreement, including, but not limited to, any and all claims relating to or arising from
4 Plaintiff's employment with Defendant.

5 This Release is intended to resolve any claims that can be validly released. This Release
6 does not release claims that cannot be released by Plaintiff as a matter of law, including but not
7 limited to Plaintiff's right to file a charge with or participate in a charge by the Department of Fair
8 Employment and Housing or any other federal, state, or local administrative body or government
9 agency authorized to enforce laws related to employment, claims for Workers' Compensation,
10 unemployment compensation, or state disability insurance benefits pursuant to the terms of
11 applicable state law.

12 **4. Confirmation of No Parallel Actions.**

13 Defendant confirms that there are no currently pending class or representative claims
14 against Released Parties for the violations subject to the releases in Paragraphs 1 and 2.

15 **5. Tax Liability and Medicare.**

16 The Parties make no representations as to the tax treatment or legal effect of the payments
17 called for hereunder, and Settlement Class Members are not relying on any statement or
18 representation by the Parties in this regard. Participating Class Members understand and agree
19 that they will be responsible for the payment of taxes and penalties assessed on the payments
20 described herein and will hold the Parties free and harmless from and against any claims resulting
21 from treatment of such payments as non-taxable damages, including the treatment of such payment
22 as not subject to withholding or deduction for payroll and employment taxes. Moreover, this
23 Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The
24 Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42
25 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved
26 this matter in compliance with both state and federal law. The Parties made every effort to
27 adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff
28 warrants that she is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff

1 is not a Medicare recipient as of the date of this Agreement, no conditional payments have been
2 made by Medicare.

3 **6. Circular 230 Disclaimer.**

4 Each Party to this Agreement (for purposes of this section, the “acknowledging party” and
5 each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges
6 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
7 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
8 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
9 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
10 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
11 independent legal and tax counsel for advice (including tax advice) in connection with this
12 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
13 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
14 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
15 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
16 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
17 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
18 acknowledging party of the tax treatment or tax structure of any transaction, including any
19 transaction contemplated by this Agreement.

20 **7. Preliminary Approval of Settlement.**

21 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
22 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
23 All Parties agree to work diligently and cooperatively to have this Settlement presented to the
24 Court for preliminary approval. The proposed preliminary approval order shall provide for the
25 Notice of Class Action Settlement to be sent to Settlement Class Members as specified herein.

26 **8. Settlement Administrator.**

27 Within fourteen (14) calendar days of the Court granting preliminary approval of this
28 Agreement, Defendant shall provide the Settlement Administrator with the Class Information for

1 purposes of mailing the Notice of Class Action Settlement to the Settlement Class Members.
2 Within three (3) calendar days after receipt of the Class Information, the Settlement Administrator
3 shall notify counsel for the Parties that the list has been received and state the number of Settlement
4 Class Members and pay periods contained therein.

5 **9. Notice by First Class U.S. Mail.**

6 Upon receipt of the Class Information, the Settlement Administrator will perform a search
7 based on the National Change of Address Database to update and correct any known or identifiable
8 address changes. Within fourteen (14) calendar days of receipt of the Class Information from
9 Defendant, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement
10 to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement Administrator
11 shall exercise its best judgment to determine the current mailing address for each Settlement Class
12 Member, including performing a skip-trace to identify any updated addresses. The address
13 identified by the Settlement Administrator as the current mailing address shall be presumed to be
14 the best mailing address for each Settlement Class Member.

15 **10. Undeliverable Notices.**

16 Any Notice of Class Action Settlement returned to the Settlement Administrator as
17 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
18 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
19 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
20 name, address and/or social security number of the Settlement Class Member whose notice was
21 undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of
22 receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-
23 mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty
24 (20) days from the original Response Deadline.

25 **11. Disputes Regarding Individual Settlement Payments.**

26 Settlement Class Members will have the opportunity, should they disagree with
27 Defendant's records regarding the dates of employment stated on their Notice of Class Action
28 Settlement, to provide documentation and/or an explanation to show contrary information by the

1 Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties
2 to determine whether an adjustment is warranted. The Settlement Administrator shall determine
3 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
4 Agreement. The Settlement Administrator's determination of the eligibility for and amount of any
5 Individual Settlement Payment shall be binding upon the Settlement Class Members and the
6 Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's
7 records will be given a rebuttable presumption of accuracy.

8 **12. Disputes Regarding Administration of Settlement.**

9 Any disputes not resolved by the Settlement Administrator concerning the administration
10 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
11 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
12 disputes without the necessity of involving the Court.

13 **13. Exclusions.**

14 The Notice of Class Action Settlement shall state that Settlement Class Members who wish
15 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response
16 Deadline. The Request for Exclusion must: (1) contain the name, address, and telephone number
17 of the Settlement Class Member requesting exclusion; (2) contain a statement expressing that the
18 Settlement Class Member elects to be excluded from the Settlement; (3) be signed by the
19 Settlement Class Member; and (4) be postmarked or fax stamped by the Response Deadline and
20 returned to the Settlement Administrator at the specified address, email address, or fax number.
21 The Request for Exclusion will be deemed invalid if it does not contain a Settlement Class
22 Member's name, address, telephone number, and signature. The date of the postmark on the return
23 mailing envelope, email, or fax stamp on the Request for Exclusion shall be the exclusive means
24 used to determine whether a Request for Exclusion has been timely submitted. Any Settlement
25 Class Member who requests to be excluded from the Settlement Class will not be entitled to any
26 recovery under the Settlement and will not be bound by the terms of the Settlement or have any
27 right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid
28 and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms

of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Settlement Class who have timely submitted a Request for Exclusion.

14. Objections.

The Notice of Class Action Settlement shall state that Settlement Class Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the objection; and (4) if the Settlement Class Member intends to appear at the final approval hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties may file a responsive document to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Period Deadline. Class Counsel shall not represent any Settlement Class Members with respect to any such objections.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

15. No Solicitation of Settlement Objections or Exclusions.

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written objections to the Settlement or requests for exclusion from the Settlement, or to appeal from the Court’s Final Judgment.

1 **16. Funding and Allocation of Gross Settlement Fund.**

2 No later than thirty (30) twenty-one (21) days after the Effective Date, Defendant shall
3 provide the Gross Settlement Fund to the Settlement Administrator to fund the Settlement, as set
4 forth in this Agreement. Defendant will not be obligated to make any payments contemplated by
5 this Agreement unless and until the Court enters the Final Approval Order and Final Judgment,
6 and after the Effective Date of the Agreement.

7 **17. Net Settlement Fund.**

8 The Net Settlement Fund will be determined by the Settlement Administrator by
9 subtracting the Class Counsel Award, Incentive Award, PAGA Payment, and Settlement
10 Administrator Costs from the Gross Settlement Fund. The anticipated Net Settlement Fund is
11 \$262,166.67. The Parties estimate the amount of the Net Settlement Fund as follows:

12	Gross Settlement Fund:	\$	475,000.00
13	Incentive Award:	\$	5,000.00
14	Class Counsel Fees:	\$	158,333.33
15	Class Counsel Costs:	\$	12,000.00
16	PAGA Payment	\$	30,000.00
			<i>(\$22,500.00 to the LWDA and \$7,500.00</i>
			<i>to remain in Net Settlement Fund for</i>
			<i>distribution to PAGA Settlement Group)</i>
17	Settlement Administrator Costs:	\$	15,000.00
18	Net Settlement Fund	\$	262,166.67

19 This is a non-reversionary Settlement in which Defendant is required to pay the entire
20 Gross Settlement Fund, which includes, the Class Counsel Award, Incentive Award, Individual
21 Settlement Payments, PAGA Payment, and Settlement Administrator Costs. No portion of the
22 Gross Settlement Fund will revert to Defendant. Defendant's share of payroll taxes and other
23 required withholdings from Individual Settlement Payments, including but not limited to
24 Defendant's FICA and FUTA contributions, shall be paid separately from, and in addition to, the
25 Gross Settlement Fund.

26 **18. Individual Settlement Payments.**

27 Individual Settlement Payments will be paid from the Net Settlement Fund and shall be
28 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be

1 mailed by regular First-Class U.S. Mail to each Participating Class Member or PAGA Settlement
2 Group member's last known mailing address within ten (10) calendar days after Defendant funds
3 the settlement. All Individual Settlement Payments to Participating Class Members will be
4 allocated as follows: twenty percent (20%) as wages, and eighty percent (80%) as interest and
5 penalties. All Individual Settlement Payments to PAGA Settlement Group Members shall be
6 allocated as 100% non-wage payment for civil penalties.

7 **19. Class Member Payment Ratio.**

8 Participating Class Members will be paid on a pro-rata basis. A Participating Class
9 Member's Individual Settlement Payment will be based on the number of Eligible Pay Periods
10 worked during the Settlement Period in proportion to the aggregate number of Eligible Pay Periods
11 worked by all Settlement Class Members during the Settlement Period.

12 **20. PAGA Settlement Group Payment Ratio.**

13 After payment of 75% of the PAGA Payment to the LWDA, the remaining 25% shall be
14 allocated among members of the PAGA Settlement Group on a pro-rata basis. A PAGA Settlement
15 Group Member's distribution from the employees' share of the PAGA Payment will be based on
16 the number of Eligible Pay Periods worked during the PAGA Settlement Period in proportion to
17 the aggregate number of Eligible Pay Periods worked by all PAGA Settlement Group Members
18 during the PAGA Settlement Period.

19 **21. Form of Payment to Class/PAGA Members.**

20 The Individual Settlement Payment amount due to each Participating Class Member and
21 PAGA Settlement Group Member shall be paid in the form of a check in that person's name.

22 **22. Unclaimed Settlement Payment(s).**

23 After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment
24 checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment
25 checks will be transmitted pursuant to California Code of Civil Procedure section 384 to Bet
26 Tzedek Legal Services. The parties agree that this non-profit organization satisfies the
27 requirements of Code of Civil Procedure section 384(b)(3)(C).

28 **23. Incentive Award.**

1 Plaintiff will request that the Court approve an Incentive Award of up to \$5,000.00. Subject
2 to Court approval, in exchange for the release of all Released Claims and for her time and effort
3 in bringing and prosecuting this matter, Plaintiff shall be paid an Incentive Award of \$5,000.00.
4 The Incentive Award shall be paid to Plaintiff from the Gross Settlement Fund within ten (10)
5 calendar days after Defendant funds the settlement. The Settlement Administrator shall issue an
6 IRS Form 1099 – MISC to Plaintiff for her respective Incentive Award. Plaintiff shall be solely
7 and legally responsible to pay any and all applicable taxes on her Incentive Award and shall hold
8 harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest
9 arising as a result of the Incentive Award. The Incentive Award shall be in addition to the
10 Plaintiff's Individual Settlement Payment as a Settlement Class Member/PAGA Settlement Group
11 Member. Any amount requested by Plaintiff for the Incentive Award and not granted by the Court
12 shall return to the Net Settlement Fund and be distributed to Participating Class Members as
13 provided in this Agreement.

14 **24. Class Counsel Award.**

15 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
16 thirty-three and one-third percent (33.33%) (\$158,333.33) of the Gross Settlement Fund
17 (\$475,000.00). Class Counsel will request that the Court approve the reimbursement of any
18 litigation costs or expenses associated with Class Counsel's prosecution of this matter from the
19 Gross Settlement Fund not to exceed \$12,000.00. So long as there are no objections, Class Counsel
20 shall be paid any Court-approved fees and costs no later than ten (10) calendar days after Defendant
21 funds the settlement. Class Counsel shall be solely and legally responsible to pay all applicable
22 taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue
23 an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph.
24 This Settlement is not contingent upon the Court awarding Class Counsel any particular amount
25 in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award
26 and not granted by the Court shall return to the Net Settlement Fund and be distributed to
27 Participating Class Members as provided in this Agreement.

28 **25. Settlement Administrator Costs.**

1 The Parties agree to allocate up to \$15,000.00 of the Gross Settlement Fund for Settlement
2 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
3 payments, credits and disbursements to Settlement Class Members and PAGA Settlement Group
4 members in the manner set forth herein, calculated in accordance with the methodology set out in
5 this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement
6 administration process and to make all reasonable efforts to control and minimize the cost and
7 expenses incurred in administration of the Settlement.

8 **26. Responsibilities of the Settlement Administrator.**

9 The Settlement Administrator shall be responsible for the following: processing and
10 mailing payments to Plaintiff, Class Counsel, the LWDA, and Participating Class Members/
11 PAGA Settlement Group members; printing, and mailing the Notice of Class Action Settlement
12 and tax forms to the Settlement Class Members as directed by the Court; receiving and reporting
13 the requests for exclusion and objections submitted by Settlement Class Members; providing
14 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
15 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to
16 perform. The Settlement Administrator shall keep the Parties timely apprised of the performance
17 of all Settlement Administrator responsibilities.

18 **27. Settlement Administrator Fees.**

19 The Settlement Administrator shall be paid the Settlement Administrator Costs within ten
20 (10) calendar days after Defendant funds the settlement.

21 **28. Payment to the LWDA.**

22 A total payment of \$30,000.00 from the Gross Settlement Fund will be allocated as the
23 PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
24 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA
25 and the remaining twenty-five (25%) shall be included in the Net Settlement Fund and distributed
26 to PAGA Settlement Group members.

27 **29. Final Approval Hearing and Entry of Final Judgment.**

28 Upon expiration of the Response Deadline, with the Court's permission, a final approval

1 hearing shall be conducted to determine final approval of the Settlement along with the amount
2 properly payable for: (i) the Class Counsel Award; (ii) the Incentive Award; (iii) Individual
3 Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA Payment.

4 **30. Final Approval Order.**

5 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after
6 the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit C.
7 Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this
8 Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to
9 carry out the provisions of this Agreement.

10 **31. Nullification of Settlement Agreement.**

11 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
12 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
13 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
14 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
15 of this Settlement shall be treated as void from the beginning. To the extent the total number of
16 opt outs exceed 10%, Defendant has the option to nullify this settlement within ten (10) court days
17 of the last day of the Response Period via a written notice to Plaintiff's counsel. If one or more of
18 such events occur causing the Settlement Agreement to become null and void, the Parties shall
19 proceed in all respects as if this Agreement had not been executed, except that any fees already
20 incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or
21 Defendant will be solely responsible for the costs incurred for the settlement administration should
22 it exercise its' option to nullify this agreement. In the event an appeal is filed from the Court's
23 Final Judgment, or any other appellate review is sought, administration of the Settlement shall be
24 stayed pending final resolution of the appeal or other appellate review.

25 **32. Increase in Class Members.**

26 It was represented to Class Counsel that the Settlement Class is estimated to consist of 459
27 people and 25,647 pay periods worked by Settlement Class Members during the Class Period.
28 Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiff's Counsel

1 the number of Class Members and pay periods. To the extent the number of pay periods increases
2 beyond 25,647 by more than 10%, Defendant shall have the option to increase the Gross Settlement
3 Fund by a proportionate amount. For example, if the number of pay periods increases by 11%,
4 Defendant shall increase the Gross Settlement Fund by 1%. If the increase causes an increase of
5 the cost of Settlement Administration beyond the amount that has been approved by the Court,
6 Defendant shall separately bear the increased cost of Settlement Administration outside of the
7 Gross Settlement Fund. If Defendant fails to increase the Gross Settlement Fund or remit payment
8 of the increased cost of Settlement Administration, Plaintiff shall have the right to terminate this
9 Agreement and the Parties will be restored to their positions prior to the Settlement and the
10 Settlement shall be null and void.

11 **33. No Effect on Employee Benefits.**

12 Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement
13 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
14 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
15 of Plaintiff or Settlement Class Members.

16 **34. No Admission by Defendant.**

17 Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing
18 whatsoever. This Agreement is not a concession or admission and shall not be used against
19 Defendant as an admission or indication with respect to any claim of any fault, concession, or
20 omission by Defendant.

21 **35. Exhibits and Headings.**

22 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
23 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
24 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
25 Agreement are inserted for convenience of reference only and do not constitute a part of this
26 Agreement.

27 **36. Interim Stay of Proceedings.**

28 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil

1 Procedure §583.310 (“the 5-year rule”), the Lawsuit shall be stayed in its entirety except for the
2 proceedings necessary to implement and complete the Settlement.

3 **37. Amendment or Modification.**

4 This Agreement may be amended or modified only by a written instrument signed by
5 counsel for all Parties or their successors-in-interest.

6 **38. Entire Agreement.**

7 Apart from the fully executed Memorandum of Understanding, which the Parties
8 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
9 entire Agreement among these Parties, and no oral or written representations, warranties, or
10 inducements have been made to any Party concerning this Agreement or its Exhibits other than
11 the representations, warranties, and covenants contained and memorialized in the Agreement and
12 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
13 warranties herein and not based on any promises, representation, and/or warranties not found
14 herein.

15 **39. Authorization to Enter into Settlement Agreement.**

16 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
17 whom they represent to negotiate this Agreement and to take all appropriate actions required or
18 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
19 execute any other documents required to effectuate the terms of this Agreement. The Parties and
20 their counsel will cooperate with each other and use their best efforts to affect the implementation
21 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
22 any document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
24 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
25 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
26 Defendant. Plaintiff represents and warrants that she is authorized to sign this Agreement and that
27 she does have not assigned any claim, or part of a claim, covered by this Settlement to a third-
28 party.

1 **40. Binding on Successors and Assigns.**

2 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
3 of the Parties hereto, as previously defined.

4 **41. California Law Governs.**

5 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
6 according to the laws of the State of California.

7 **42. Counterparts.**

8 This Agreement may be executed in one or more counterparts. All executed counterparts
9 and each of them shall be deemed to be one and the same instrument.

10
11 **43. Jurisdiction of the Court.**

12 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
13 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
14 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
15 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
16 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
17 connection therewith. All terms of this Agreement are subject to approval by the Court.

18 **44. Invalidity of Any Provision.**

19 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
20 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
21 as to define all provisions of this Agreement valid and enforceable.

IT IS SO AGREED:

DocuSigned by:
By:  _____
F6969338EB4241D...
VICKI FLORES

By: _____
HERITAGE BAG COMPANY

KINGSLEY & KINGSLEY APC

FISHER & PHILLIPS LLP

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

1 **45. Voluntary.** This Agreement is executed voluntarily and without any duress or
2 undue influence on the part or behalf of the Parties hereto. The Parties acknowledge that they have
3 had ample opportunity to have this Agreement reviewed by counsel of their choice.

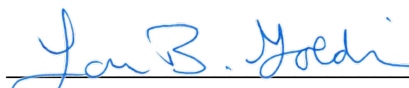
4 WHEREFORE, Plaintiff, on behalf of herself and the Settlement Class Members, and
5 Defendant has executed this Agreement as of the dates set forth below.

6
7
8 **IT IS SO AGREED:**

9
10
11 Dated: _____

By: _____
VICKI FLORES

12
13
14 Dated: December 1, 2021

By: 
HERITAGE BAG COMPANY

15
16
17
18
19 **APPROVED AS TO FORM AND CONTENT:**

20 Dated: _____

KINGSLEY & KINGSLEY APC

21
22 By: _____
Eric B. Kingsley
Ari J. Stiller
Attorneys for Plaintiff Vicki Flores and the
24 Proposed Class

25
26 Dated: _____

FISHER & PHILLIPS LLP

27 By: 
28

Lonnie D. Giamela
Anet Drapalski
Attorneys for Defendant Heritage Bag Company

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EXHIBIT “A”

[CLASS MEMBER NAME]

VICKI FLORES v. HERITAGE BAG COMPANY

**Superior Court of the State of California, County of San Bernardino
Case No.: CIVDS2023373**

If you are a current or former employee of Heritage Bag Company (“Heritage Bag” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as:

“all hourly paid, non-exempt persons employed by Defendant in the State of California during the Settlement Period.”
- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff in this class action alleges that Defendant failed to pay all wages and/or overtime, provide lawful meal periods, provide reimbursement for expenses, provide accurate itemized wage statements, pay lawful wages upon termination or resignation, engaged in unfair business practices, and is liable for penalties under California’s Private Attorneys General Act or “PAGA.” Heritage Bag denies Plaintiff’s claims and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Heritage Bag’s defenses.
- You will not be penalized or retaliated against by Heritage Bag for participating in this class action settlement. If you are currently employed by Heritage Bag, your employment will not be affected in any way. Current employees of Heritage Bag who choose to participate in the settlement will not be required to resign and can continue to work for Heritage Bag.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for claims brought or that could have been brought based on the facts and theories alleged in the Action, including but not limited to claims for unpaid wages and overtime, failure to reimburse expenses, failure to
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	provide lawful meal periods, failure to pay lawful wages upon termination or resignation, and unfair business practices from October 20, 2016 through December 31, 2021.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Heritage Bag. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Heritage Bag for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Heritage Bag's employees. You have received this notice because Heritage Bag's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 20, 2020, on behalf of all persons who are employed or have been employed as an hourly employee by Heritage Bag Company in the State of California. The operative complaint alleges class-wide causes of action against Heritage Bag for failure to provide all wages and/or overtime under Labor Code §§ 204, 210, 510, 1194, 1174.5, 1182.12, 1197, 1197.1, 1198, and 1199; failure to provide lawful meal periods under Labor Code §§ 226.7, 558, and 512; failure to reimburse for expenses under Labor Code § 2802; failure to provide accurate itemized wage statements under Labor Code § 226(a) and 226.3; failure to pay lawful wages upon termination or resignation under Labor Code §§ 201–203; unfair business practices under Business & Professions Code § 17200 et seq.; and penalties under the Labor Code Private Attorneys General Act, Labor Code § 2698 et seq.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and her attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Fund is \$475,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$158,333.33
- Litigation Costs: \$12,000.00
- Claims Administration Costs: \$15,000.00
- Incentive Award to Named Plaintiff: \$5,000.00
- Penalties to the Labor & Workforce Development Agency: \$30,000.00

After these deductions, \$262,166.67 will be available for payment to the Settlement Class Members receiving this notice ("Net Settlement Fund").

Each Participating Class Member's Individual Settlement Payments shall be determined on a pro rata basis based upon the number of pay periods during which the employee worked in proportion to the aggregate number of pay periods worked by all Settlement Class Members during the relevant time period.

All Individual Settlement Payments will be allocated as follows: 1/3 (33%) to settlement of wage claims, 1/3 (33%) to settlement of claims for interest, and 1/3 (33%) to settlement of claims for statutory penalties.

According to 's records, the total number of pay periods that you worked as an employee *during the relevant time period* is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support. You must mail your letter to:

Settlement Administrator
c/o ILYM Group

You must submit such information by XXXX. The Parties and the Settlement Administrator will do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator will review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all wage and hour claims against Heritage Bag Company or and any of its former and present parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents, successors, assigns, or legal representatives brought or that could have been brought in the Action based on the facts and theories alleged therein, including but not limited to claims under California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, and 2802 as well as California Business and Professions Code Section 17200, during the period of October 20, 2016 through December 31, 2021.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, by XXXX.

Settlement Administrator
c/o ILYM Group

If your Request for Exclusion is postmarked after XXXX, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Heritage Bag separately about the claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than XXXX.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____. The Final Approval and Fairness Hearing will be held in Dept. S-26 of the San Bernardino County Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415 on _____, 2021, at XX (a.m./p.m.) (Pacific Time).

Class Counsel:	Counsel for Heritage Bag Company:
Eric B. Kingsley, Esq. Liane Katzenstein Ly, Esq. Ari J. Stiller, Esq. Kingsley & Kingsley, APC 16133 Ventura Blvd., Suite 1200 Encino, CA 91436	Lonnie D. Giamela, Esq. Anet Drapalski, Esq. Fisher & Phillips LLP 444 South Flower Street, Suite 1500 Los Angeles, California 90071 Telephone: (213) 330-4500

Telephone: (818) 990-8300	
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11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. S-26 of the San Bernardino County Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415 on _____, 2021, at **XX** (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Incentive Award, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the *Flores v. Heritage Bag Company* Settlement Administrator, **ILYM Group** (listed above), or Class Counsel (listed above).

Please do not telephone the Court, the Office of the Clerk, or Heritage Bag Company's counsel for information regarding this settlement.

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
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LIANE KATZENSTEIN LY, Esq., (SBN 259230)
liane@kingsleykingsley.com
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Attorneys for Plaintiff and the Proposed Class

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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICKI FLORES an individual, on behalf of
herself and others similarly situated

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

[Case Assigned for All Purposes to Hon. David
Cohn in Dept. 2-26]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: XX
Time: XX
Dept.: S-26

Complaint Filed: October 20, 2020
Trial Date: None Scheduled

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement
2 and Release of Claims (“Settlement” or “Settlement Agreement”) came before this Court on
3 XXXX. The Court, having considered the papers submitted in support of the motion of the parties,

4 **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval of the Settlement Agreement and the
6 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
7 Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement
8 resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
9 notice of the Settlement to persons in the Settlement Class and a full hearing on the final approval
10 of the Settlement.

11 2. “Settlement Class Members” means all hourly paid, non-exempt persons employed
12 by Defendant in the State of California during the Settlement Period.

13 3. “PAGA Settlement Group” means all hourly paid, non-exempt persons employed
14 by Defendant in the State of California during the PAGA Settlement Period.

15 4. The Settlement falls within the range of reasonableness and appears to be
16 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
17 and final approval by this Court.

18 5. The Court makes the following preliminary findings for settlement purposes
19 only:

- 20 A. The Settlement Class, which consists of approximately 459 persons, is so
numerous that joinder of all members is impracticable;
- 21 B. There appear to be questions of law or fact common to the Settlement
22 Class for purposes of determining whether this Settlement should be
approved;
- 23 C. Plaintiff’s claims appear to be typical of the claims being resolved through
24 the proposed settlement;
- 25 D. Plaintiff appears to be capable of fairly and adequately protecting the
26 interests of the Settlement Class Members in connection with the proposed
settlement;
- 27 E. Common questions of law and fact appear to predominate over questions
28 affecting only individual persons in the Settlement Class. Accordingly,
the Settlement Class appears to be sufficiently cohesive to warrant
settlement by representation; and

F. Certification of the Settlement Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

6. The Court approves, as to form and content, the Notice to Class Members in substantially the form attached to the Settlement Agreement as Exhibit A (Class Notice).

7. The Court approves the procedure for Class Members to object to the Settlement as set forth in the Settlement Agreement and Class Notice.

8. The Court approves the procedure for Class Members to become Participating Class Members as set forth in the Class Notice.

9. The Court directs the mailing of the Class Notice by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

10. The Court confirms Eric B. Kingsley and Ari J. Stiller of Kingsley & Kingsley, APC as Class Counsel.

11. The Court confirms Vicki Flores as the Named Plaintiff.

12. The Court approves ILYM Group as the Settlement Administrator.

13. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

14. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator	14 calendar days from Preliminary Approval
c.	Mail Notice to Class Members	14 calendar days from Settlement Administrator's receipt of Class Data

d.	Deadline for Class Members to Postmark Any Request for Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
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eric@kingsleykingsley.com
LIANE KATZENSTEIN LY, Esq., (SBN 259230)
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Tel: (213) 330-4500, Fax: (213) 330-4501

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICKI FLORES, an individual, on behalf of
the State of California, as a private attorney
general,

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

[Case Assigned for All Purposes to Hon.
David Cohn in Dept. 2-26]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX
Time: XX
Dept.: S-26

Complaint Filed: October 20, 2020
Trial Date: None Scheduled

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class action lawsuit brought by Plaintiff VICKI FLORES
3 (“Plaintiff”) against Defendant HERITAGE BAG COMPANY (“Defendant”). The Motion for
4 Final Approval of Class Action Settlement came before this Court on XXXX.

5 **WHEREAS**, the Court granted preliminary approval of the Joint Stipulation of Class
6 Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”) on XX.

7 **WHEREAS**, Plaintiff VICKI FLORES has applied to the Court for an order granting final
8 approval of the Settlement Agreement.

9 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed
10 Settlement and for entry of an order of final approval and entry of final judgment thereon. The
11 Court has read and considered Plaintiff’s Motion for Final Approval of Class Action Settlement;
12 Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of Ari J. Stiller,
13 Vicki Flores, and XXXX of ILYM Group; and the supporting documents annexed thereto.

14 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED,**
15 **ADJUDGED, AND DECREED:**

16 1. The Court has personal jurisdiction over all Settlement Class Members and that the
17 Court has subject matter jurisdiction to approve the Settlement;

18 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
19 in compliance with California Code of Civil Procedure, the California and United States
20 Constitutions (including the due process clauses), the California Rules of Court and any other
21 applicable law, and in the best interest of each of the Parties and the Class members and is hereby
22 finally approved in all respects.

23 3. The Parties are hereby directed to perform the terms of the Settlement as described
24 in the Settlement Agreement according to its terms and provisions.

25 4. The Settlement Agreement is binding on Plaintiff and all other Settlement Class
26 Members, except those who timely and properly filed Requests for Exclusions, as well as their
27 heirs, executors, and administrators, successors, and assigns.

28 5. There are XX (XX) valid requests for exclusion.

1 6. It is ordered that the Settlement Class is certified for settlement purposes only. The
2 Court finds that an ascertainable class exists and a well-defined community of interest exists in the
3 questions of law and fact involved because in the context of the Settlement: (i) there are questions
4 of law and fact common to the Class Members which, as to the Settlement and all related matters,
5 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
6 the Class members; and (iii) in negotiating, entering into and implementing the Settlement,
7 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
8 of the Class Members.

9 7. The Court finds that the Notice and notice methodology implemented pursuant to
10 this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
11 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
12 Action, their right to object to or exclude themselves from the proposed Settlement and their right
13 to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and
14 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements
15 of the California Code of Civil Procedure, the California and United States Constitution (including
16 the Due Process Clause), the California Rules of Court and any other applicable law.

17 8. The Settlement Class is hereby made final. The Settlement Class is defined as: "all
18 hourly paid, non-exempt persons employed by Defendant in the State of California during the
19 Settlement Period."

20 9. The PAGA Settlement Group is hereby made final. The PAGA Settlement Group
21 is defined as: "all hourly paid, non-exempt persons employed by Defendant in the State of
22 California during the PAGA Settlement Period."

23 10. The "Settlement Period" is October 20, 2016 through December 31, 2021.

24 11. The "PAGA Settlement Period" is August 12, 2020 through December 31, 2021.

25 12. Pursuant to the Settlement Agreement, upon the Effective Date of the settlement,
26 Plaintiff and the Participating Settlement Class Members shall release Defendant and any of
27 its former and present parents, subsidiaries, affiliates, officers, directors, employees, partners,
28 shareholders, attorneys, agents, successors, assigns, or legal representatives of all claims brought

1 or that could have been brought in the Action based on the facts and theories alleged therein,
2 including but not limited to claims under California Labor Code sections 201-204, 210, 226, 226.3,
3 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, and 2802 as well as California
4 Business and Professions Code Section 17200, for the Settlement Period.

5 13. Pursuant to the Settlement Agreement, upon the Effective Date of the settlement,
6 Plaintiff and the PAGA Settlement Group shall release, for the PAGA Settlement Period, all wage
7 and hour claims for civil penalties brought or that could have been brought against Defendant in
8 the Action based on the facts and theories alleged therein, including but not limited to claims under
9 California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12,
10 1194, 1197, 1197.1, 1198, and 2802. The PAGA Settlement Group may not opt out of this release.

11 14. The Gross Settlement Fund is four hundred seventy-five thousand dollars and zero
12 cents (\$475,000.00). The Net Settlement Fund shall be determined according to the terms of the
13 Settlement Agreement.

14 15. The Court orders the calculations and the payments to be made and administered in
15 accordance with the terms of the Settlement Agreement.

16 16. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
17 Settlement Class for purposes of entering into and implementing the settlement. The Court hereby
18 confirms Kingsley & Kingsley, APC as Class Counsel in the Action.

19 17. The Court hereby finds the unopposed application of Class Counsel for a costs and
20 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
21 of all the circumstances, and is hereby granted. Of the Gross Settlement Fund, \$158,333.33 shall
22 be paid for attorney fees and \$12,000.00 shall be paid for litigation costs.

23 18. The unopposed application of Class Counsel for an Incentive Award is hereby
24 granted. Of the Gross Settlement Fund, a \$5,000.00 Incentive Award shall be allocated to Named
25 Plaintiff Vicki Flores.

26 19. The unopposed application of Class Counsel for claims administration fees to
27 ILYM Group is hereby granted. Of the Gross Settlement Fund, \$15,000.00 shall be paid for
28 settlement administration fees.

1 20. The Court approves the PAGA Penalties in the amount of \$30,000.00. The Court
2 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$22,500.00.
3 The Court further directs that the remaining 25% of the PAGA Penalties, in the amount of \$7,500.00
4 shall be allocated to the PAGA Settlement Group according to the terms of the Settlement
5 Agreement.

6 21. If a Settlement Class Member does not cash his or her settlement check within 180
7 days, the uncashed funds shall be transmitted by the Settlement Administrator to the non-profit
8 Bet Tzedek Legal Services pursuant to Cal. Code Civ. Proc. section 384(b)(3)(C). The Court finds
9 there is a nexus between the mission of Bet Tzedek and the interests of the Settlement Class
10 Members.

11 22. Defendant shall have no further liability for costs, expenses, interest, attorneys'
12 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
13 Agreement.

14 23. The Parties are authorized, without further approval from the Court, to agree to and
15 to adopt such amendments, modifications and expansions of this Stipulation and all exhibits
16 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of
17 Settlement Class Members under the Stipulation.

18 24. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
19 shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well
20 as the administration and enforcement of the terms of the Settlement of this action to enforce the
21 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
22 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the
23 administration and enforcement of the Settlement. Any disputes or controversies arising with
24 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
25 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict
26 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
27 of the Settlement Agreement.

28 25. This Final Order shall constitute a final judgment.

1 26. The Court hereby dismisses the action (including all individual claims and Released
2 Claims presented thereby) with prejudice, without fees or costs to any party except as provided in
3 the Settlement Agreement.
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5 **DATED:** _____
6 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT "2"

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6	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
7	Adams and Reese	\$500	\$225	\$255	\$165	\$198	\$305	\$278	\$197	\$300	\$275
8	Andrews Kurth	\$795	\$400	\$460	\$210						
9	Arent Fox	\$675	\$395	\$440	\$240						
10	Armstrong Teasdale	\$450	\$295	\$295	\$165						
11	Baker, Donelson, Bearman, Caldwell & Berkowitz	\$525	\$230	\$315	\$160	\$205	\$325	\$280	\$200	\$320	\$270
12	Barnes & Thornburg	\$485	\$265	\$295	\$180	\$225	\$350	\$302	\$220	\$355	\$310
13	Bass, Berry & Sims PLC	\$575	\$300	\$285	\$180						
14	Best Best & Krieger	\$495	\$290	\$350	\$160	\$203	\$275	\$212	\$235	\$390	\$265
15	Bond, Schoeneck & King	\$435	\$200	\$250	\$140	\$179	\$294	\$253	\$175	\$295	\$300
16	Bradley Arant Rose & White	\$520	\$240	\$280	\$180	\$211	\$335	\$258	\$205	\$330	\$260
17	Briggs and Morgan	\$500	\$250	\$325	\$195	\$233	\$391	\$344	\$230	\$395	\$350
18	Brinks Hofer Gilson & Lione	\$650	\$300	\$410	\$180	\$273	\$479	\$365	\$250	\$485	\$350
19	Broad and Cassel	\$450	\$250	\$310	\$165	\$232	\$361	\$294	\$225	\$360	\$275
20	Brownstein Hyatt Farber Schreck	\$675	\$260	\$270	\$170	\$219	\$373	\$308	\$218	\$390	\$325
21	Bryan Cave	\$695	\$320	\$495	\$165	\$295	\$493	\$394	\$295	\$490	\$375
22	Buchanan Ingersoll & Rooney	\$750	\$320	\$460	\$150						
23	Bullivant Houser Bailey	\$500	\$225	\$350	\$150	\$240	\$285	\$260	\$220	\$275	\$250
24	Burr & Forman	\$470	\$250	\$305	\$175	\$235	\$340				
25	Butzel Long	\$575	\$210	\$350	\$155						
26	Carlton Fields	\$600	\$280	\$375	\$190	\$243	\$406	\$312	\$245	\$405	\$300
27	Cooley Godward Kronish	\$875	\$470	\$555	\$250						
28	Covington & Burling	\$800	\$510	\$525	\$240						
29	Cozen O'Connor	\$750	\$230	\$530	\$155	\$283	\$420	\$350	\$280	\$425	\$340
30	Curtis, Mallet-Prevost, Colt & Mosle	\$735	\$635	\$560	\$280	\$361	\$666	\$396	\$360	\$685	\$480
31	Davis Wright Tremaine	\$695	\$300	\$390	\$170	\$257	\$430	\$375	\$250	\$423	\$375
32	Day Pitney	\$650	\$350	\$525	\$210	\$306	\$472	\$374	\$310	\$465	\$375
33	Dickinson Wright	\$530	\$260	\$275	\$170						
34	Dickstein Shapiro Morin & Oshinsky	\$825	\$425	\$440	\$225	\$336	\$552	\$438	\$360	\$550	\$425
35	Dinsmore & Shohl	\$475	\$235	\$285	\$155	\$199	\$342	\$275	\$190	\$340	\$250
36	Dorsey & Whitney	\$750	\$220	\$470	\$145	\$274	\$463	\$375	\$260	\$463	\$365
37	Duane Morris	\$705	\$315	\$465	\$150	\$310	\$475	\$416	\$305	\$470	\$415
38	Dykema Gossett	\$625	\$245	\$390	\$185	\$272	\$403				
39	Edwards Angell Palmer & Dodge	\$700	\$350	\$450	\$170	\$293	\$515	\$407	\$280	\$513	\$400
40	Epstein Becker & Green	\$675	\$280	\$440	\$155	\$290	\$471	\$380	\$280	\$475	\$395
41	Fenwick & West	\$775	\$500	\$500	\$245	\$360	\$590	\$395	\$370	\$600	\$410
42	Foley & Lardner	\$855			\$185	\$387	\$550	\$476	\$375	\$550	\$475
43	Ford & Harrison	\$560	\$325	\$395	\$210						
44	Fowler White Boggs Banker	\$500	\$230	\$325	\$150	\$217	\$345	\$303	\$210	\$340	\$300
45	Fox Rothschild	\$595	\$240	\$440	\$190						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
46											
47	Frost Brown Todd	\$455	\$225	\$255	\$145	\$180	\$303	\$256	\$170	\$295	\$255
48	Gardere Wynne Sewell	\$715	\$350	\$425	\$220	\$292	\$472	\$405	\$265	\$475	\$405
49	GrayRobinson, PA	\$500	\$175	\$250	\$250	\$198	\$319	\$224			
50	Greenberg Traurig, PA	\$850	\$300	\$505	\$175	\$311	\$490	\$407	\$310	\$500	\$415
51	Harris Beach	\$475	\$250	\$275	\$140						
52	Hiscock & Barclay LLP	\$375	\$220	\$250	\$160	\$185	\$278	\$245	\$180	\$280	\$250
53	Hodgson Russ	\$645	\$215	\$395	\$155	\$219	\$337	\$254	\$205	\$350	\$250
54	Hogan & Hartson	\$850	\$300	\$525	\$150	\$385	\$600	\$490	\$370	\$590	
55	Holland & Hart	\$585	\$275	\$345	\$165	\$269	\$388	\$335	\$275	\$385	\$335
56	Holme Roberts & Owen	\$635	\$285	\$420	\$195	\$284	\$412	\$353	\$265	\$410	\$345
57	Howard, Rice, Nemerovski, Canady, Falk & Rabkin	\$775	\$495	\$485	\$275						
58	Hughes Hubbard & Reed	\$825	\$595	\$560	\$240						
59	Husch & Eppenberger	\$425	\$190	\$260	\$130	\$179	\$297	\$248	\$175	\$295	\$245
60	Jackson Lewis	\$575	\$235	\$450	\$210						
61	Jenner & Block LLP	\$900	\$450	\$425	\$275	\$327	\$562		\$325	\$525	
62	Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$600	\$210	\$225	\$150						
63	Kelley Drye & Warren	\$800	\$400	\$500	\$255						
64	Knobbe, Martens, Olson & Bear	\$645	\$340	\$420	\$215						
65	Lane Powell Moss & Miller	\$515	\$300	\$300	\$205	\$255	\$370	\$345	\$255	\$370	\$345
66	Lathrop & Gage	\$450	\$225	\$300	\$140	\$185	\$300	\$215	\$185	\$300	\$260
67	Leonard, Street and Deinard	\$500	\$300	\$300	\$185						
68	Lewis, Rice & Fingersh	\$425	\$240	\$295	\$130						
69	Lindquist & Vennum	\$500	\$260	\$260	\$165						
70	Locke, Lord, Bissell & Liddell	\$900	\$375	\$390	\$190	\$281	\$488	\$399	\$280	\$490	\$425
71	Loeb & Loeb	\$875	\$425	\$500	\$240	\$384	\$606	\$505	\$400	\$600	\$500
72	Lord, Bissell & Brook	\$690	\$335	\$410	\$200	\$299	\$473	\$410	\$300	\$475	\$415
73	Lowenstein Sandler	\$725	\$380	\$395	\$205						
74	Luce, Forward, Hamilton & Scripps	\$725	\$325	\$450	\$220	\$281	\$465	\$381	\$280	\$475	\$395
75	Manatt, Phelps & Phillips	\$785	\$520	\$480	\$265	\$395	\$600	\$518	\$415	\$590	\$550
76	Marshall, Dennehey, Warner, Coleman & Goggin	\$400	\$135	\$300	\$120						
77	McCarter & English LLP	\$650	\$325	\$395	\$205						
78	McElroy Deutsch, Mulvaney & Carpenter	\$450	\$295	\$225	\$135	\$180	\$250	\$195	\$165	\$235	\$215
79	McKee Nelson	\$920	\$635	\$595	\$375	\$446	\$760	\$489	\$455	\$755	\$475
80	Michael Best & Friedrich	\$550	\$225	\$300	\$185	\$234	\$363	\$321	\$235	\$350	\$325
81	Miles & Stockbridge	\$535	\$315	\$405	\$205	\$260	\$397				
82	Miller & Martin	\$580	\$230	\$295	\$160	\$201	\$338	\$306	\$195	\$340	\$320
83	Miller, Canfield, Paddock and Stone, PLC	\$595	\$265	\$340	\$160	\$225	\$400	\$285	\$220	\$400	\$335
84	Montgomery, McCracken, Walker & Rhoads	\$575	\$320	\$320	\$195	\$260	\$419	\$360			
85	Moore & Van Allen	\$765	\$265	\$330	\$175						
86	Morgan, Lewis & Bockius	\$850	\$375	\$575	\$200						
87	Morris, Manning & Martin	\$625	\$350	\$400	\$180	\$285	\$436	\$380	\$310	\$395	\$440
88	Nexsen Pruet Jacobs & Pollard	\$420	\$220	\$250	\$150						
89	Ogletree, Deakins, Nash, Smoak & Stewart	\$575	\$270	\$360	\$200	\$256	\$348	\$312			
90	Patton Boggs	\$920	\$320	\$520	\$205	\$375	\$536	\$456	\$385	\$525	\$455
91	Pepper Hamilton	\$750	\$335	\$425	\$200						
92	Perkins Coie	\$805	\$205	\$500	\$145						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
93											
94	Phelps Dunbar	\$450	\$170	\$205	\$130	\$174	\$243	\$184	\$175		
95	Phillips Lytle	\$435	\$245	\$300	\$140	\$205	\$309	\$223	\$205	\$300	\$215
96	Polsinelli Shalton Welte Suelthaus	\$600	\$250	\$250	\$175						
97	Quarles & Brady	\$575	\$260	\$335	\$185	\$233	\$377	\$319	\$235	\$375	\$325
98	Reed Smith	\$825	\$350	\$510	\$200	\$374	\$558	\$395	\$350	\$525	\$385
99	Robinson & Cole	\$575	\$340	\$325	\$200	\$295	\$424	\$328	\$280	\$420	\$330
100	Roetzel & Andress	\$460	\$210	\$275	\$110	\$198	\$302	\$264	\$200	\$300	\$260
101	Rutan & Tucker	\$600	\$335	\$350	\$210						
102	Saul Ewing	\$750	\$315	\$485	\$180	\$273	\$426	\$357	\$255	\$415	\$365
103	Schnader Harrison Segal & Lewis	\$750	\$240	\$385	\$175						
104	Schulte Roth & Zabel	\$850	\$650	\$585	\$235	\$435	\$724		\$440	\$745	
105	Sheppard, Mullin, Richter & Hampton	\$795	\$425	\$550	\$260						
106	Shughart Thomson & Kilroy	\$475	\$235	\$225	\$160						
107	Shumaker, Loop & Kendrick	\$465	\$200	\$360	\$180	\$221	\$311	\$289	\$220	\$305	\$300
108	Sills Cummis Epstein & Gross	\$650	\$350	\$375	\$195						
109	Smith, Gambrell & Russell	\$575	\$250	\$345	\$175						
110	Snell & Wilmer	\$675	\$275	\$390	\$170	\$248	\$390				
111	Steptoe & Johnson PLLC	\$325	\$200	\$250	\$170						
112	Stinson Morrison Hecker	\$600	\$230	\$250	\$175	\$207	\$333	\$295	\$225	\$365	\$285
113	Stoel Rives	\$500	\$275	\$350	\$160	\$231	\$379	\$324	\$230	\$375	\$330
114	Strasburger & Price	\$560	\$225	\$395	\$200	\$234	\$367	\$326	\$223	\$363	\$322
115	Sullivan & Worcester	\$700	\$415	\$420	\$245	\$309	\$550	\$438	\$290	\$540	\$440
116	Sutherland Asbill & Brennan	\$715	\$375	\$415	\$215	\$292	\$511	\$335	\$280	\$500	\$305
117	Thacher Proffitt & Wood	\$785	\$525	\$495	\$275	\$353	\$674	\$428	\$365	\$700	\$395
118	Thompson & Knight	\$730	\$370	\$370	\$205	\$295	\$496	\$415	\$310	\$485	\$400
119	Thompson Coburn	\$580	\$265	\$370	\$170						
120	Ulmer & Berne	\$470	\$240	\$290	\$165	\$212	\$343	\$280			
121	Vedder, Price, Kaufman & Kammholz	\$650	\$335	\$410	\$205	\$281	\$430	\$372	\$370	\$425	\$365
122	Wiggin and Dana	\$590	\$295	\$350	\$195						
123	Williams Mullen	\$600	\$300	\$425	\$205						
124	Wilmer Cutler Pickering Hale and Dorr	\$1,000	\$475	\$495	\$215						
125	Winstead Sechrest & Minick	\$620	\$345	\$360	\$180						
126	Winston & Strawn	\$845	\$400	\$590	\$200	\$365	\$608	\$455	\$395	\$640	\$523
127	Womble Carlyle Sandridge & Rice	\$575	\$290	\$370	\$195	\$268	\$426	\$355	\$265	\$425	\$360

EXHIBIT "3"

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>

BUSINESS | LAW

Legal Fees Cross New Mark: \$1,500 an Hour

Billing rates for partners at elite corporate law firms keep rising, despite low inflation, weak demand



Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at the mounting hourly fees of law partners at elite corporate law firms. Above, the U.S. Bankruptcy Court in New York. *PHOTO: BRENDAN MCDERMID/REUTERS*

By **SARA RANDAZZO** and **JACQUELINE PALANK**

Updated Feb. 9, 2016 10:11 a.m. ET

The day of the \$1,500-an-hour lawyer has arrived.

Partners at some of the nation's top law firms are approaching—and, in a few cases, surpassing—that watershed billing rate, making the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison.

Despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn, according to Citi Private Bank's Law Firm Group.

“We just raise them every year,” said John Altorelli, a finance lawyer at DLA Piper LLP in New York, who says the firm has set his rate at more than \$1,500 an hour. Mr. Altorelli, who filed for personal bankruptcy in 2014 to halt a legal battle with the estate of his former law firm, Dewey & LeBoeuf LLP, cracked the \$1,000-an-hour mark a decade ago. His fees have risen steadily ever since.

To soften the blow to clients, Mr. Altorelli does more than half his work on some kind of fixed-fee basis. “Using hourly rates is really anachronistic, but we still do it,” he said.

Raising rates ensures that law firms keep up with the competition and helps them wrest more money from clients, who routinely demand discounts for all but the most sensitive work.

“If you think of the rules of supply and demand, how in the world can they keep raising their rates?” said Jeff Carr, a former general counsel of oil-and-gas services and equipment company FMC Technologies who for years has been an outspoken opponent of hourly legal rates.

The rate creep has boosted law firms’ revenue at a time when many of them are under pressure from lower-cost legal-service providers and corporate clients that are keeping more legal work in-house. Revenue at law firms rose 4% last year, according to Wells Fargo Private Bank’s Legal Specialty Group, though demand rose just 0.5%.

“Lots of law firms will charge whatever the market can bear,” said the head of one of the nation’s 200 largest law firms.

Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at mounting fees. These court filings show the rates of partners specializing in corporate restructuring, as well as those with specialties like tax, litigation and corporate law.

A review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.

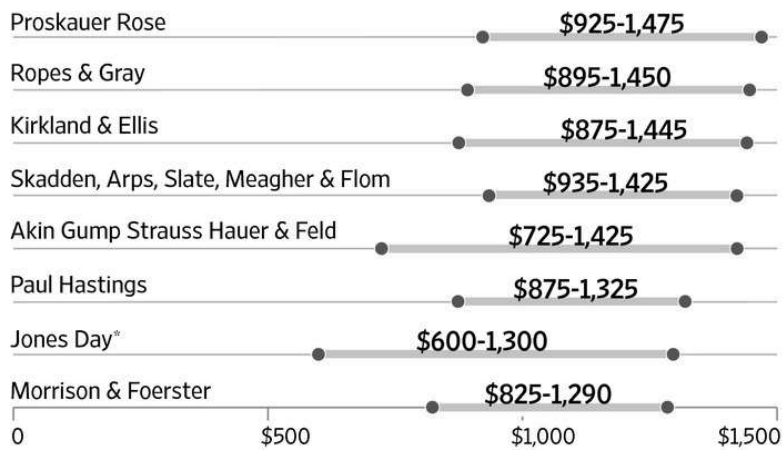
Proskauer Rose LLP’s hourly partner billing rate has climbed as high as \$1,475, while Ropes & Gray LLP’s tops out at \$1,450, court papers show.

Kirkland & Ellis LLP’s top hourly billing rate is now \$1,445. And rates at two firms—Akin Gump Strauss Hauer & Feld LLP and Skadden, Arps, Slate, Meagher & Flom LLP—peak at \$1,425 an hour.

Representatives of the law firms declined to comment.

Top Billers

Hourly rates of partners at top U.S. law firms now approach \$1,500.



*Includes partners and of counsel

Source: Bankruptcy court filings

THE WALL STREET JOURNAL.

Martin Bienenstock, who leads Proskauer's restructuring practice, called the \$1,225 an hour he billed clients last year "a market rate similar to my peers at other firms," and said he charges the same rate for nonbankruptcy work.

"The clients have kept coming back and growing during my 38-year career," he

said in an email, adding that clients generally prefer dealing directly with senior lawyers versus younger associates with lower rates.

In disclosing their firmwide rate increases, many firms tell the courts it is a standard way of keeping pace with "economic and other conditions." These include rising fixed costs, such as real estate and salaries.

In theory, a law-firm partner's pay rises and falls with the success of the firm. But, as competition for top talent increases, many firms feel the need to guarantee salaries or ensure a partner's pay doesn't fall, even in down years.

Still, only elite lawyers can charge \$1,400 an hour or more. Such rates are found almost exclusively in New York and other major markets, and only in the least price-sensitive fields like mergers and acquisitions, restructuring, tax, antitrust and high-stakes litigation and appeals.

For lawyers at the very top of those fields, hourly rates can hit \$1,800 or even \$1,950.

"You have a very few people at the very top where price is almost no object," said legal consultant Bruce MacEwen, who likens it to the way celebrities, sports stars and best-selling authors are paid. "It is a talent market."

Most lawyers in the U.S. fall well below those high marks. In a survey of in-house legal departments by BTI Consulting Group, the average highest rate paid for

law-firm partners was \$875 an hour in 2015, up more than 27% from three years earlier. Of the respondents, 38% had paid more than \$1,000 an hour for a lawyer, and the highest rate those in the survey paid was \$1,600 an hour.

For many firms, the stated rate is simply a starting point in discussions with corporate law departments. As a result, said legal consultant Ward Bower of Altman Weil, “sophisticated” law firms tend to implement annual rate increases to offset clients’ requests for discounts.

Such discounts are becoming more commonplace. A decade ago, law firms could typically get clients to pay around 92% of their stated rates, according to Thomson Reuters Peer Monitor. Last year, that fell to less than 83%.

Smaller companies can get squeezed the most on fees, because they don’t send enough work to any one law firm to get the best deals.

Companies with \$4 billion or more in annual revenue were twice as likely as those with less than \$100 million in revenue to use some form of alternative fee, according to a survey from industry trade group the Association of Corporate Counsel.

Some industry watchers view the raise-and-discount approach with skepticism.

“If clients are pushing back on rates, the answer isn’t to raise them” and then ask for a discount, Mr. MacEwen said. “The answer is to provide better total value.”

Write to Sara Randazzo at sara.randazzo@wsj.com and Jacqueline Palank at jacqueline.palank@wsj.com

EXHIBIT "4"

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT "5"

List of Historic Cost Items - 7/6/2022

Date Incurred	Payee	Amount	Expense Type	Description	Notes
3/24/2022	Courtcall	\$ 94.00	Court Cost	Home Page -	HD: 3/23/22
3/24/2022	SB Online	\$ 2.50	Court Cost	HPS.BillerDirect.WebPayments	
2/10/2022	Courtcall	\$ 94.00	Court Cost	Courtcall	HD: 2/9/22
8/10/2021	Courtcall	\$ 94.00	Court Cost	Courtcall	HD:8/9/21
2/10/2021	LASC-online	\$ 20.00	Court Cost	doc retrieval fee	doc retrieval fee on docs re Novolex
9/14/2021	EconOne	\$ 2,072.68	Expert	EconOneINV#20527 Heritage Bag	
5/19/2022	One Legal	\$ 310.89	Filing Fee	OLINV#04087042 HB 5.19.22	
5/5/2022	OnCall	\$ 65.99	Filing Fee	OCINV#256118 HB 5.5.22	
3/24/2022	One Legal	\$ 181.19	Filing Fee	OLINV#03953035 HB 3.24.22	
3/21/2022	OnCall	\$ 188.19	Filing Fee	OCINV#256118Z HB 3.21.22	
2/15/2022	One Legal	\$ 112.99	Filing Fee	OLINV#03860307 HB 2.15.22	
1/26/2022	One Legal	\$ 113.25	Filing Fee	OLINV#03814282 HBC 1.26.22	
10/29/2021	One Legal	\$ 108.87	Filing Fee	OLINV#03633566 H 10.29.21	
8/6/2021	One Legal	\$ 113.25	Filing Fee	OLINV#03460070 HB 8.6.21	
				State of California - Department of Industrial Relations Customer Receipt _ Purchase Confirmation receipt	
8/12/2021	LWDA	\$ 75.00	Filing Fee	receipt	
7/6/2021	One Legal	\$ 134.09	Filing Fee	OLINV#13066235 HB 7.6.21	
2/23/2021	One Legal	\$ 110.50	Filing Fee	OLINV#03126750 Heritage 2.23.21	
2/19/2021	One Legal	\$ 1,592.36	Filing Fee	OLINV#03120366 Heritage 2.19.21	
2/14/2021	One Legal	\$ 90.00	Filing Fee	OLINV#03108034 Heriatge 2.14.21	
1/8/2021	One Legal	\$ 90.00	Filing Fee	OLINV#03042489 Heritage 1.8.21	
				PWKAPP_275707 JW Heritage Bag paid 3.12.21	
3/12/2021	Judicate West	\$ 4,650.00	Mediation Cost		
6/27/2022	DocuSign	\$ 5.80	Postage Cost		
1/3/2022		\$ 7.33	Postage Cost		Amended PAGA Letter
	Docusign	\$ 5.80	Postage Cost		
		\$ 6.96	Postage Cost		
				OCINV#188218 Heritage paid	
12/17/2020	OnCall	\$ 93.95	Process Server Fee	12.17.20	
1/3/2022	Paper Cut	\$ 0.30			amended paga letter
8/24/2020	postage	\$ 6.70	Postage Cost		
Subtotal		\$ 10,440.59			
Future Costs for MFA Filing and Courtcall		\$ 319.75			
TOTAL		\$ 10,760.34			

EXHIBIT "6"

(Proof of LWDA Submission)

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 7, 2022, I served all interested parties in this action the following documents described as: **DECLARATION OF ARI J. STILLER IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Lonnie D. Giamela
Anet Drapalski
lgiamela@fisherphillips.com
adrapalski@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071

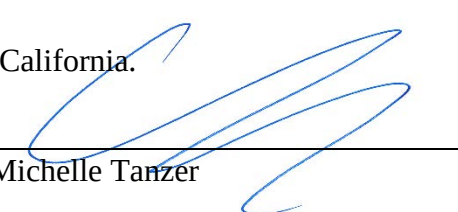
[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2022, at Woodland Hills, California.



Michelle Tanzer