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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ANDREW ZUNIGA AND VIVIAN
VELASQUEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC2003219
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: March 30, 2023
Time: 8:30 a.m.
Dept. 1

Reservation #: 000269220787

Complaint filed: August 18, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiffs in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in approximately 125 actions to date, and anticipate receiving
12 final approval in many more of those in the future. I estimate that in cases that I’ve been
13 involved in as lead counsel or co-counsel that my team and I have certified approximately one
14 dozen cases in contested class certification processes.

15 4. As part of these settlements and judgments, I have recovered in excess of
16 \$250 million in damages for my clients and the class members (who often work as nurses,
17 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
18 occupations and countless other trades). My team and I once held the record for the largest
19 known PAGA-only case in California’s history as of the end of 2018 - a \$12.5 million-dollar
20 court approved settlement, which followed extensive litigation, summary adjudication and writs
21 to the CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino
22 Superior Court).

23 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
24 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
25 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
26 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
27 Plaintiff over \$6 million. Both cases were appealed.

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1 6. Over the last few years, I have been consecutively selected by my peers as a
2 “Super Lawyer” in Employment Litigation.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Through a contested but productive mediation, Plaintiffs and Defendant Desert
5 Aids Project (collectively, the “Parties”) entered into a Class Action Settlement Agreement
6 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”).
7 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A** and is
8 incorporated herein by reference.

9 8. The Settlement Agreement seeks to fully release and discharge Defendant from
10 the claims brought against it in this matter in exchange for Defendant’s agreement to pay
11 \$400,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her
12 share of the Net Settlement Amount without having to submit a claim form or taking action,
13 except for those who opt-out).

14 9. Plaintiffs seeks to represent the “Class” or “Class Members” defined as “all
15 current and former non-exempt (hourly paid) employees employed by Defendant in California at
16 any time during the Class Period.” The Class Period is defined as any time during the period of
17 August 18, 2016, through June 8, 2022.

18 10. Under the terms of the Class Action Settlement Agreement and Release of Claims
19 (“Settlement Agreement” or “S.A.”), Defendant will not oppose Plaintiffs’ Counsel’s application
20 for a reasonable award of attorney’s fees not to exceed one-third of the Settlement Amount
21 (\$133,333.33), litigation expenses not to exceed \$15,000, Settlement Administrator costs of
22 \$8,895, PAGA penalties of \$40,000 (with 75% to the LWDA and 25% to the “Aggrieved
23 Employees”), and a Service Payment not to exceed \$10,000 for each Plaintiff. After all these
24 deductions from the Settlement Amount, it is estimated that \$182,771.67 will be available to pay
25 the Individual Settlement Amounts of the Class Members who do not opt-out of the settlement,
26 as follows:

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	Total Amount
<i>Gross Settlement Amount</i>	\$ 400,000.00
Attorneys' Fees (1/3)	\$ 133,333.33
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 8,895
PAGA Penalties	\$ 40,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 182,771.67

11. The Net Settlement Amount will be paid to the Settlement Class Members on a pro rata basis based on their relative number of weeks worked as compared to the Class. And each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of weeks he/she is credited with working during the Class and PAGA Periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection Form and Dispute Form are attached hereto as **Exhibits B, C, D and E**, respectively.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case at mediation. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel believe this settlement to be fair, reasonable, and adequate.

13. On August 14, 2020, Plaintiff Zuniga submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA") and concurrently sent a letter to Defendant requesting the production of her personnel and timekeeping records in order to further evaluate the wage and hour claims. On September 24, 2021, Plaintiff Velasquez submitted a notice letter to the LWDA. A true and correct copy of both LWDA Notice Letters are attached hereto as **Exhibit F**.

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1 14. Then, on August 18, 2020, Plaintiff filed a putative class action complaint in the
2 Court on behalf of the Class Members. The LWDA declined to assert jurisdiction over the
3 PAGA claims, so on January 31, 2021, the operative first amended complaint was filed that
4 added Vivian Velasquez as a named Plaintiff, and alleged Class Claims and representative
5 PAGA Claims, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages,
6 (3) unlawful deduction of wages, (4) failure to provide meal periods, (5) failure to provide rest
7 breaks, (6) failure to pay vested vacation wages upon separation of employment, (7) failure to
8 timely pay final wages, (8) failure to provide accurate itemized wage statements, (9) unfair and
9 unlawful competition, and (10) related claims under PAGA.

10 15. Defendant retained counsel and fully denied the allegations. In the Parties' initial
11 status conference statement, Defendant disagreed with Plaintiffs' version of the facts and claims
12 and further noted "Defendant generally denies the allegations in Plaintiff's Complaint, denies
13 any underpayment to employees due to a rounding up policy, and disputes that this matter is
14 appropriate for class action treatment on a variety of grounds." The Court lifted the stay on
15 discovery, and thereafter, the Parties engaged in a robust formal discovery process, including
16 multiple sets of interrogatories and document requests, and Plaintiff served notices of taking
17 Defendant's PMK deposition and began the process toward obtaining the class list. While
18 debating the merits of the claims and defenses, the Parties ultimately agreed to attend mediation
19 in order to avoid significant costs and fees associated with a class certification hearing.

20 16. In preparation for mediation, the Parties agreed to an informal discovery process
21 where information was exchanged relating to the applicable policies and procedures, payroll and
22 time keeping records, size of the class, and potential value of the case. The exchange included
23 Defendant's policies and procedures relating to the claims at issues, a sampling of timekeeping
24 and payroll records, information relating to the size of the class. The robust exchange allowed
25 Plaintiffs and their expert to take a deep dive into the claims by evaluating nearly 5,000
26 individual shifts and over 1,000 work weeks. As such, Plaintiffs and their counsel were
27 essentially given a roadmap to analyze, research, and investigate the potential claims of all
28 similarly situated employees.

1 17. On April 8, 2022, the Parties participated in a full day mediation with Hon.
2 Jonathan Cannon (ret.), a well-respected mediator who previously served for many years on the
3 Orange County Civil Complex Panel. At the conclusion of mediation, Judge Cannon issued a
4 mediator’s proposal that called for a class-wide settlement for \$400,000. The proposal required
5 Board approval from Defendant, which took several months to secure. Thereafter, the Parties
6 memorialized the terms of the settlement in a long-form Settlement Agreement.

7 **SUMMARY OF THE CLAIMS AND DEFENSES**

8 18. Plaintiffs alleged numerous wage and hour violations on behalf of the Class.
9 However, Defendants vigorously contested and denied each of Plaintiffs’ material allegations on
10 the merits and as to the propriety of a class action or PAGA representative action, as discussed
11 herein.

12 19. First, one of the primary claims in the Action is that Plaintiffs and Class Members
13 received inaccurate and incomplete wage statements that failed to accurately state all necessary
14 items required under Labor Code § 226. Specifically, Defendant had a practice of calculating
15 employees’ time and rates of pay to the 5th decimal point. Despite this, Defendant failed to show
16 the hours and rates to the 5th decimal point on the paystubs making it impossible for employees
17 to calculate whether they were being paid correctly from their paystubs. Moreover, Defendant
18 often failed to report the overtime rate on the paystubs. However, Defendant raised certain
19 defenses to these claims including that Plaintiff would be unable to prove the required “knowing
20 and intentional” and “injury” elements under § 226(e) and, thus, no liability would attach.

21 20. Second, Plaintiffs alleged that they and the Class members were often denied
22 compliant meal periods due to the nature of the work. However, Defendant argued that it
23 provided and made available meal to all employees, and any employee who did not take a meal
24 did so entirely of his or her own volition. In this regard, Defendant produced its written policies
25 and practices, which it argued show compliance with the law. As such, Defendant argued that
26 these claims were without merit because, for each violation, a fact-finder would have to
27 determine why a break was noncompliant/nonexistent, because if it was by the employee’s
28 choice, no liability attaches to the Defendant. Plaintiffs also claimed that Defendant failed to

1 provide all required rest breaks pursuant to Labor Code § 226.7 due to their overwhelming
2 workload and written policies forbidding Plaintiffs and Class Members from leaving the
3 premises for rest breaks.

4 21. Third, Plaintiff also alleged that he and the Class Members were subjected to
5 minimum wage violations due to a variety of allegedly illegal practices. For instance, Plaintiff
6 alleged that Defendants regularly required employees to continue working after clocking out for
7 lunch and to perform certain duties prior to clocking in at the beginning of each shift or after
8 clocking out at the end of a shift. While Plaintiffs' complaint alleges an illegal rounding policy,
9 their consultant was able to determine upon analysis of the records produced in advance of
10 mediation that the rounding policy was neutral.

11 22. Fourth, Plaintiffs alleged that the unpaid wage claims trigger various penalties,
12 including 30-days of pay as a waiting time penalty for each former employee under Labor Code
13 § 203.

14 23. Finally, Plaintiffs alleged that Defendant failed to comply with Labor Code §
15 227.3 by paying out accrued vested vacation as less than the "final rate of pay".

16 24. Despite that each of the claims were disputed, the Parties concluded that further
17 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
18 be fully and finally settled in order to limit further risk, expense and protracted litigation.

19 **CMO COMPLIANCE**

20 25. In accordance with CMO ¶ H, this section of my declaration will specifically
21 identify and address each CMO requirement, which was compiled with the assistance of Misty
22 Lauby, who was responsible for preparing the pre-mediation data and calculations, and primarily
23 assisted in the preparation of the Kullar analysis. As such, the following is based largely on
24 information and belief, as it was largely prepared with Ms. Lauby's assistance.

25 **CMO ¶ H(3)(a)(i)**

26 26. According to data provided by Defendant in advance of mediation, we estimate
27 that there are approximately 342 individuals that fall within the defined Class, along with
28 approximately 57 individuals that are Aggrieved Employees (*i.e.*, Class Members during the

1 PAGA Period).

2 **CMO ¶ H(3)(a)(ii), CMO ¶ H(3)(a)(iii), and CMO ¶ H(9)(b)**

3 27. The following paragraphs provide the total and risk-adjusted values for each
4 claim, including on a class and PAGA basis, as required by the CMO.

5 **Wage Statement Claims**

6 28. Plaintiff's strongest claim was that Defendant failed to provide accurate itemized
7 wage statements in compliance with Labor Code § 226 for its failure to provided wage
8 statements with non-rounded rates of pay and time making it impossible for Plaintiffs and
9 employees to determine whether they were paid correctly. Moreover, Defendant often failed to
10 include the overtime rate of pay in its paystubs. Defendant denied that the wage statements
11 provided were improper.

12 29. At mediation, Defendant denied that the wage statements provided were
13 improper.

14 30. Plaintiff calculated the maximum potential value of this claim as \$350,300 by
15 multiplying one paystub per class member (342) by \$50, then multiplying the remainder of the
16 3,332 paystubs by \$100. Plaintiff assigned a risk adjustment of 5% that the class would not be
17 certified and 30% as to the merits, with a risk-adjusted value of \$232,950.

18 31. Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA
19 penalties to be \$183,700 (3,674 PAGA pay periods x \$100 = \$367,400 reduced by 75%).

20 **Meal and Rest Break Claims**

21 32. Plaintiffs also alleged meal and rest break claims against Defendant. Plaintiffs'
22 consultant analyzed the time records and found 9,540 unique meal period violations amounting
23 to \$177,825 in class damages for meal periods (9,540 x \$18.64 avg. rate of pay). Plaintiffs
24 argued that their rest break claims were the stronger claim given that the written policy required
25 employees to stay on the premises during breaks. However, Defendant provided authorities that
26 suggest an employer is allowed to require employees to stay on the premises during a rest break.
27 Given the total number of shifts at issue, and when incorporating estimated violation rates,
28 Plaintiff calculated the maximum theoretical value at 100% violation rate for 77,436 shifts to be

1 \$1,443,407.

2 33. However, these calculations do not account for various risks and defenses. For
3 instance, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a
4 lack of commonality of the legal claims and injuries. Defendant further argued that it complied
5 with the applicable law and that any purported deviations therefrom were individualized in
6 nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a
7 suitable case for certification, we realize that there is always a significant risk associated with
8 class certification proceedings, which could significantly limit the claims that we could pursue
9 on a class basis. Moreover, Defendant provided certain authorities suggesting that Plaintiff's
10 main argument regarding rest periods, namely that employees were forbidden from leaving the
11 premises during breaks, was not viable.

12 34. Considering the many risks and defenses to these claims, Plaintiff placed a 50%
13 class certification risk and 50% merits risk for a risk-adjusted value of \$360,852 for rest period
14 claims. Adjusting for risk at 50% for class certification and 50% for merits, Plaintiffs assigned
15 an adjusted value of \$44,456 to the meal claims.

16 35. Additionally, based on the same risk factors in addition to potential risk
17 associated with stacking of PAGA penalties and judicial reduction, Plaintiff assigned a 75% risk
18 adjustment to both meal and rest claims and assigned the risk-adjusted value of the related
19 PAGA claims at \$123,550 (1,286 unique meal claims x \$100 = \$126,800 + 3674 rest claims
20 PAGA pay periods x \$100 = \$367,400 totals combined \$494,200 with a 75% reduction for a
21 total of \$123,550).

22 **Failure to Pay Wages Claims**

23 36. Plaintiff alleges that Defendant employed policies and practices that required
24 employees to work off the clock without compensation. Plaintiff estimated that the maximum
25 potential value of this claim was \$104,988 in unpaid wages based on an estimated 30 minutes of
26 unpaid time per the 3,674 pay periods at \$18.64 average rate of pay for a maximum value of
27 \$68,483.

28 ///

1 37. At mediation, Defendant argued that employees were not required to work off-
2 the-clock and that this claim could not be certified due to the individualized nature of the proof.
3 As a result, Plaintiff assigned a 50% class certification discount and a 50% merits discount to
4 these claims for a risk adjusted valuation of \$17,121.

5 38. Plaintiff also pursued PAGA claims based on the same theory of liability and
6 calculated a risk adjusted total is for these claims is \$91,850 ($3674 \times \$100 = \$367,400 - 75\% =$
7 \$91,850).

8 **Failure to Timely Pay Wages Upon Separation of Employment**

9 39. Additionally, Plaintiff alleged that Defendant failed to timely pay all wages owed
10 to the Class Members upon separation of employment. Based on this theory of liability, Plaintiff
11 calculated the maximum waiting time penalties to be \$747,035 based on 183 former employees x
12 7.3 average hours per day x \$18.64 average hourly rate x 30.

13 40. Defendant argued that it would defeat Plaintiff's unpaid wage claims and, because
14 the waiting time penalty claims were derivative of the unpaid wages, Plaintiff's Labor Code §
15 203 would fail.

16 41. Therefore, Plaintiff applied a similar risk adjustment as with the other claims at
17 50% for class certification and 50% form merits to come to a risk adjusted total of \$186,759.
18 Furthermore, because the related PAGA penalties assumes only one violation for each former
19 employee multiplied by \$100, the value of the PAGA penalties was estimated at \$5,700 (57
20 formers during the PAGA period) with a risk adjustment of 75% for a total risk adjusted value of
21 \$1,425.

22 **Failure to Pay Vested Vacation at the Final Rate Claims**

23 42. Plaintiff also alleged that Defendant violated Labor Code § 227.3 each pay period
24 when it failed to pay vested vacation at the final rate. Defendant argued that they did pay vested
25 vacation at the final rate. The maximum value of the PAGA penalties for this claim was
26 estimated at \$5,700 (57 formers during the PAGA period x \$100 penalty) with a risk adjustment
27 of 75% for a total risk adjusted value of \$1,425.

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1 **Collective Totals of Maximum and Risk-Adjusted Class/PAGA Damages and Penalties**

2 43. In sum, the total maximum value of the class damages is \$2,787,050. when
3 factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class
4 recovery as follows:

5	• Wage Statements	\$	232,950
6	• Rest Breaks	\$	360,852
7	• Meal Periods	\$	44,456
8	• Unpaid Wages	\$	17,121
9	• 203	\$	<u>186,759</u>
10	Total	\$	842,137

11 44. The reasonableness of the Settlement is apparent from the fact that the proposed
12 Settlement is 47.5% of the risk-adjusted class damages.

13 45. Similarly, Plaintiff calculated the maximum PAGA penalty for the 3,674 relevant
14 pay periods at \$1,240,400 as follows:

15	• Wage Statements (3,674 x \$100)	\$	367,400
16	• Rest Breaks (3,674 x \$100)	\$	367,400
17	• Meals (1268 pp with violation x \$100)	\$	126,800
18	• Wages (3,674 x \$100)	\$	367,400
19	• 203 (57 former employees x \$100)	\$	5,700
20	• Vacation (57 former employees x \$100)	\$	<u>5,700</u>
21	Total	\$	1,240,400

22 Plaintiffs applied a 75% risk adjustment to each PAGA claim to account for the various
23 defenses and potential judicial reduction for an adjusted value of \$310,100. [CMO ¶ G(9)(iii) and
24 (iv)]

25 **CMO ¶ H(3)(a)(iv)**

26 46. Defendant advises that 426 Class Members collectively worked 61,042
27 workweeks through the end of the Class Period. Based on this information, it is estimated that:
28 (1) the average payment will be \$429.04, (2) the value per work week will be \$2.99, (3) the high

1 payment will be approximately \$905.97 (based on an estimated 303 weeks in the Class Period),
2 and (4) the low payment will be approximately \$12 (based on an estimated 4 weeks worked).

3 **CMO ¶ H(3)(a)(v)**

4 47. Please see paragraph 16, above, regarding the discovery and investigation
5 conducted to determine the size of the class and strength of claims.

6 **CMO ¶ H(3)(a)(vi)**

7 48. After making reasonable inquiry of members of other members of my firm (there
8 are no associated law firms), my team has informed me that there are no other pending cases that
9 asserts claims similar to those asserted in this action on behalf of a putative class of individuals
10 that appear to fall within the defined Class here.

11 **SUPPORT FOR ASSESSMENT OF PAGA PENALTIES**

12 49. The sections above provide most of the information required by CMO ¶ H(9)(b).
13 The following paragraphs provide the remainder.

14 50. The proposed Settlement allocates \$40,000 of the gross settlement amount to
15 PAGA claims, of which 75% (or \$30,000) will be paid to the California LWDA and 25% (or
16 \$10,000) will be allocated to the Aggrieved Employees as payment of the settlement. This
17 allocation is inherently reasonable given similar settlements.

18 51. There are also other facts that tend to suggest that the Court could utilize its
19 discretion to reduce any potential PAGA penalties awarded at trial. During negotiations,
20 Defendants raised arguments that the assessment of significant PAGA penalties would be
21 “unjust, arbitrary and oppressive, or confiscatory” in light of “the facts and circumstances of
22 [this] case.” See Labor Code § 2699(h). Under a potentially-similar “mistake of law” fact
23 pattern, the *Cotter* court approved a 97.5% reduction in PAGA penalties as “appropriate” based
24 on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not
25 “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
26 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
27 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because
28 “there is no straight answer to the question.” *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d

1 1030, 1037.

2 52. Under this same theory, Defendant would likely argue that significant PAGA
3 penalties would be unjust, arbitrary, oppressive, and confiscatory because it believed that its
4 practices are in compliance with all applicable requirements, and also believed that its system
5 correctly paid employees for all hours worked. As such, Defendant would likely argue they did
6 not “deliberately evade” any legal obligations. Furthermore, Defendant would likely argue that
7 it did not “fail to learn about its obligations” because it believed its practices are compliant, and
8 that it also created and implemented policies and practices to ensure compliance.

9 53. Also, while a PAGA claim for violation of Labor Code § 226 does not require a
10 showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th
11 773), Defendant would likely argue that its good faith belief in the legality of its practices shows
12 that it did not evade or fail to learn of its obligations. Additionally, Defendant would likely
13 argue that it would be “unjust” to impose significant penalties for the alleged violations because
14 the class members did not suffer any injury in relation to certain claims (such as wage statement
15 violations).

16 54. Finally, the parties only reached settlement and the agreed-upon PAGA penalties
17 after extensive informal discovery and arms-length negotiation between the parties and through
18 an experienced mediator. Notably, Defendant raised many defenses which, if accepted by the
19 Court, could result in a significant reduction of penalties, or the elimination of penalties
20 altogether through dispositive motions. As such, an assessment of penalties greater than those
21 agreed-upon would be unjust at this stage because this settlement reflects an informed,
22 fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique
23 facts, defenses, and risks in this case.

24 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

25 55. The settlement was the product of extensive arm’s length negotiations, facilitated
26 by an experienced mediator. Though cordial and professional, the settlement negotiations were
27 adversarial and non-collusive in nature. The settlement reached is the product of substantial
28 effort by the parties and their counsel. Although we believed that there was a possibility of

1 certifying the claims, we recognized the potential risk, expense, and complexity posed by
2 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
3 on the damages awarded, and/or on an appeal that can take several more years to litigate.

4 56. The settlement will result in a fair payment to each class member based on the
5 number of Weeks Worked by each Class Member. As set forth hereinabove, we have diligently
6 investigated the claims and defenses on behalf of the class members and worked to achieve a
7 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
8 fees and costs. After evaluating the significant risks attendant with further litigation described
9 above and weighing them against the benefits of a known compromise and settlement as set forth
10 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
11 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

12 57. Based on my experience in other cases, including wage and hour matters, I
13 believe I am qualified to evaluate the class claims and viability of defenses in this class action. In
14 this case, the recovery for each class member is reasonable, fair, and adequate, and a settlement
15 at this time is in the best interests of the class. The settlement provides each class member with
16 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
17 obtaining class certification and proceeding to trial.

18 58. My office, as well as Defendant's counsel, fully endorse the terms and conditions
19 of the settlement as set forth in the abovementioned Settlement Agreement.

20 59. Of course, the settlement amount represents a compromise figure, taking into
21 account the various risks surrounding class certification and the merits of Defendant's asserted
22 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
23 members, with no reversion to Defendants.

24 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENTS**

25 60. We seek an enhancement payment of \$10,000 for each Plaintiff. As further set
26 forth in the concurrently filed declarations. I believe this requested amount is fair and
27 appropriate. Plaintiffs came forward and brought this class action despite risk to themselves and,
28 in doing so, put the interests of the Class ahead of their own. They each assumed significant risk

1 in bringing this litigation—namely, had they lost, they would have been ordered to pay
2 Defendant’s costs.

3 61. Plaintiffs provided invaluable assistance to my office and the Class in this case,
4 including providing factual background for the pleadings; reviewing the litigation documents;
5 providing information and documents about Defendant’s policies and practices; participating in
6 phone calls to discuss litigation and settlement strategy; making themselves available throughout
7 the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for
8 the mediation; making themselves available for a full-day mediation, and reviewing the
9 settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal
10 benefit.

11 62. The Class Representatives also assumed significant risk in bringing this
12 litigation—namely, had they lost, they could have been ordered to pay Defendant’s costs.
13 Moreover, Plaintiffs, in the case in particular, were subject to serious ongoing repercussions in
14 that the Defendant is an organization with extensive ties to the Palm Springs community where
15 the Plaintiffs live and work. By having their names attached to this lawsuit, the Plaintiffs have
16 put themselves at risk of losing out on future employment due to Defendants’ widespread
17 influence with other similar organizations and employers in the area. In fact, Plaintiff Zuniga
18 believes that he has already had trouble obtaining employment because of his involvement in this
19 matter. Moreover, Plaintiffs elected to pursue the class action claims on behalf of other
20 employees while foregoing their potential separate individual claims of wrongful termination.
21 As part of the negotiations, the parties ultimately reached a settlement of the class claims but the
22 requested service award is also reasonable and appropriate given that Plaintiff agreed to put the
23 interests of the class ahead of their interests and performed work on behalf of the class while
24 entering into a general release as part of these settlements.

25 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
26 **REQUESTED FEES AND COSTS**

27 63. As set forth above, I have handled over 250 class and representative actions, have
28 been appointed as class counsel and have successfully resolved approximately half of those class

actions, and many others remain pending and will successfully resolve in the future.

64. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, my firm paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

65. It is my experience that attorney fee awards of one-third of a common fund settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. My firm's costs are reasonably capped at \$15,000 and will be based on the actual amount of costs incurred at the time of final approval.

SETTLEMENT ADMINISTRATOR

66. The parties propose that the Court appoint ILYM Group to serve as the Settlement Administrator. In accordance with **CMO H(3)(d)(i)**, we requested bids from 5 different settlement administrators, which are summarized as follows: 1) ILYM - \$8,895; 2) Phoenix - \$8,988; 3) Rust - \$12,500; 4) CPT - \$13,800; 5) AB Data - \$22,000. Based on these bids, the Parties mutually agreed to retain ILYM Group as the Settlement Administrator based on its low bid. ILYM provided an all-in (fixed) fee of to administer the settlement, as permitted by the CMO. *See Declaration of Sean Hartranft of ILYM ¶ 9, filed concurrently herewith.*

SUBMISSION TO THE LWDA

67. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit G**.

EXHIBITS AND CONCLUSION

68. The signed Settlement Agreement is attached hereto as **Exhibit A**.

69. The proposed Class Notice is attached as **Exhibit B**.

70. The proposed Request for Exclusion Form is attached as **Exhibit C**.

71. The proposed Objection Form is attached as **Exhibit D**.

72. The proposed Dispute Form is attached as **Exhibit E**.

73. A true and correct copy of the notice letters we submitted to the LWDA on behalf of both Plaintiffs is collectively attached as **Exhibit F**.

74. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit G**.

75. Counsel has carefully reviewed both the terms and the terminology of the order and the accompanying forms (notice, objection form, exclusion form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.

76. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representatives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 8, 2023, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant Desert Aids Project

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ANDREW ZUNIGA AND VIVIAN
VELASQUEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC2003219
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiffs Andrew Zuniga and Vivian Velasquez, individually, and on behalf of all
3 others similarly situated, and on behalf of the State of California, and Defendant Desert Aids
4 Project and is approved by their respective counsel of record, subject to the terms and conditions
5 hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Zuniga and Velasquez*
8 *v. Desert Aids Project et al.*, Riverside County Superior Court, Case No. RIC2003219.

9 2. "Aggrieved Employee(s)" means all current and former non-exempt (hourly paid)
10 employees employed by Defendant in California at any time during the PAGA Period.

11 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Second
12 Amended Class Action Settlement Agreement and Release of Claims.

13 4. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
14 Lauby LLP.

15 5. "Class Data" means a complete list that Defendant will diligently and in good
16 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
17 which shall include, for each Settlement Class Member, the individual's full name; last known
18 address; Social Security Number; total Weeks Worked during the PAGA Period and the Class
19 Period.

20 6. "Class Period" is deemed to be any time during the period of August 18, 2016,
21 through June 8, 2022.

22 7. "Class Representatives" or "Plaintiffs" means and refers to Plaintiffs Andrew
23 Zuniga and Vivian Velasquez.

24 8. "Complaint" refers to the class action and representative action complaint filed in
25 the Riverside Superior Court on August 18, 2020, as well as the operative first amended
26 complaint that was filed on January 31, 2021.

27 9. "Court" (or "Judge") means the California Superior Court, County of Riverside.

28 10. "Defendant" means and refers to Desert Aids Project, a California corporation.

1 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Wood, Smith,
2 Henning & Berman LLP.

3 12. “Effective Date” means the latest of the following dates: (i) if no Settlement
4 Class Member timely and properly intervenes, or files a motion to vacate the judgment
5 approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the
6 Court’s Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class
7 Member intervenes, or files a motion to vacate the judgment approving the Settlement
8 Agreement, then sixty-one (61) calendar days following the date the Court enters an order
9 granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date
10 of final resolution of that appeal (including any requests for rehearing and/or petitions for
11 *certiorari*), resulting in final judicial approval of the Settlement.

12 13. “Final Approval” refers to the order of the Court granting final approval of this
13 Settlement Agreement and entering a judgment approving this Agreement on substantially the
14 terms provided herein or as may be modified by subsequent agreement of the Parties.

15 14. “Individual Settlement Payment” shall have the meaning ascribed to it in
16 Paragraph 47(c) below.

17 15. “Maximum Settlement Amount” or “Settlement Amount” shall have the meaning
18 ascribed to it in Paragraph 47(c) below.

19 16. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
20 below.

21 17. “Notice” means the notice of proposed class settlement that will be sent to the
22 Settlement Class Members and which will advise each Settlement Class Member of the
23 settlement and his or her estimated “Individual Settlement Amount” and will further advise of
24 the setting of a Final Approval Hearing.

25 18. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
26 Form and the Dispute Form to be sent to all Settlement Class Members.

27 19. “Notice Response Deadline” is 45 calendar days from the date the Notice is
28 mailed to the Settlement Class Members.

1 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
2 than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement,
3 pursuant to Paragraph 67(c) below.

4 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
5 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
6 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
7 as the individual PAGA payment allocated to each Aggrieved Employee.

8 22. “PAGA Period” is deemed to be any time during the period of August 14, 2019,
9 through June 8, 2022.

10 23. “PAGA Released Claims” means any and all PAGA claims that Plaintiffs alleged
11 against the Released Parties, on behalf of themselves and the State of California, based on the
12 facts stated in the operative Complaint in the Action and in the LWDA notice letter(s), including
13 all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages,
14 (b) failure to pay overtime wages, (c) unlawful deduction of wages, (d) failure to provide meal
15 periods, (e) failure to provide rest breaks, (f) failure to pay vested vacation upon separation of
16 employment, (g) failure to failure to timely pay wages each pay period and upon separation of
17 employment, and (h) failure to provide accurate itemized wage statements. The time period
18 governing the PAGA Released Claims shall be any time during the PAGA Period.

19 24. “Participating Class Member” means any and all Settlement Class Members who
20 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
21 submitting timely valid Requests for Exclusion.

22 25. “Parties” or “Settling Parties” mean Plaintiffs and Defendant, collectively.

23 26. “Preliminary Approval Date” means the date the Court approves the Settlement
24 Agreement and enters the Preliminary Approval Order.

25 27. “Preliminary Approval Order” means the judicial Order to be entered by the
26 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
27 and providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt
28 out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a

1 final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’
2 fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not
3 object to Plaintiffs motion for preliminary approval but will be provided with an opportunity to
4 review and comment upon the motion before it is filed.

5 28. “QSF” means the Qualified Settlement Fund set up by the Settlement
6 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
7 from which the settlement payments shall be made.

8 29. “Released Class Claims” or “Class Claims” by the Participating Class Members
9 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
10 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
11 wages, (b) failure to pay overtime wages, (c) unlawful deduction of wages, (d) failure to provide
12 meal periods, (e) failure to provide rest breaks, (f) failure to pay vested vacation upon separation
13 of employment, (g) failure to failure to timely pay wages upon separation of employment, (h)
14 failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j)
15 all other claims for statutory penalties based on the facts or claims alleged in the operative
16 complaint.

17 30. “Released Parties” means Defendant, and all of its past and present officers,
18 directors, and employees, agents, insurers and reinsurers, vendors, independent contractors,
19 payroll providers, pay stub providers, affiliates, predecessor and successor companies.

20 31. “Release Period” shall be the time period governing the Released Class Claims,
21 which shall be the same as the Class Period.

22 32. “Release” shall mean the release and discharge of the Released Class Claims by
23 Plaintiffs and all Participating Class Members and their assignees.

24 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 67(a)
25 below.

26 34. “Service Payment” or “Service Award” means the amount approved by the Court
27 to be paid to Class Representatives Andrew Zuniga and Vivian Velasquez in addition to their
28 Individual Settlement Payment as a Participating Class Member and individual PAGA payment

as an Aggrieved Employee.

35. “Settlement Administrator” means and refers to ILYM Group the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

36. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

37. “Settlement Class” is defined all current and former non-exempt (hourly paid) employees employed by Defendant in California at any time during the Class Period.

38. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

39. “Work Weeks” or “Weeks Worked” in the context of a Settlement Class Members means any and all work weeks during the Class Period during which the Settlement Class Member worked at least one day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day for Defendant.

B. General Terms

40. On August 18, 2020, Plaintiff Andrew Zuniga filed a class action complaint in the Court. On about January 31, 2021, Plaintiffs filed the operative First Amended Complaint that added Vivian Velasquez as a named Plaintiff, and alleged Class Claims and representative PAGA Claims, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) unlawful deduction of wages, (4) failure to provide meal periods, (5) failure to provide rest

1 breaks, (6) failure to pay vested vacation wages upon separation of employment, (7) failure to
2 timely pay final wages, (8) failure to provide accurate itemized wage statements, (9) unfair and
3 unlawful competition, and (10) related claims under PAGA.

4 41. Defendant denies Plaintiffs' claims and allegations and contends that the Action is
5 not suitable for class certification.

6 42. The Class Representatives believe they can proceed with the representative and
7 class claims, that the Action is meritorious, and that class certification is appropriate.

8 43. The Parties have conducted a thorough investigation into the facts of the Action.
9 This includes conducting an extensive exchange of informal discovery, including a sampling of
10 payroll and timekeeping records for Settlement Class Members. Class Counsel is both
11 knowledgeable about and has done extensive research with respect to the applicable law and
12 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
13 investigation of the Class Members' claims against Defendant. Based on the foregoing data and
14 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
15 settlement with Defendant for the consideration and on the terms set forth in this Settlement
16 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
17 light of all known facts and circumstances, including the risk of significant delay and uncertainty
18 associated with litigation, various defenses asserted by Defendant, and numerous potential
19 appellate issues.

20 44. On April 8, 2022, Plaintiffs and Defendant participated in a full-day mediation
21 with Hon. Jonathan Cannon (ret.), a well-respected mediator who previously served for many
22 years on the Orange County Civil Complex Panel. At the conclusion of mediation and extensive
23 arms-length negotiations, Judge Cannon issued a mediator's proposal. Defendant was required
24 to obtain board approval, and several months later, the Parties accepted the proposal and entered
25 into a Memorandum of Understanding.

26 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
27 to be performed or judgment to be entered pursuant to the terms of the Settlement and
28 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of

any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserves their rights and declares that they will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Maximum Settlement Amount: The Parties agree to settle this Action for four hundred thousand dollars and zero cents (\$400,000.00) (the "Settlement Amount"). The Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Amounts, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives, all Settlement Administration Costs, and PAGA Penalties. Defendant will separately pay its share of payroll taxes on the portion of the Individual Settlement Amounts allocated to wages.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the

1 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to
2 the Settlement Class.

3 (c) Individual Settlement Amounts for the Settlement Class: The Individual
4 Settlement Amount for each Settlement Class Member will be calculated by the Settlement
5 Administrator using the Class Data provided by Defendant as follows. Compensable workweeks
6 will be all Weeks Worked by the Settlement Class Members during the Class Period. The
7 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
8 Settlement Class Members into the Net Settlement Amount to determine a per work week value
9 (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks
10 Worked by a Participating Class Member during the Class Period to determine the distribution
11 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
12 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for
13 each Participating Class Member so that the amount actually distributed to Participating Class
14 Members equals 100% of the Net Settlement Amount.

15 (d) Allocation of Individual Settlement Amounts: The Individual Settlement
16 Payments to Participating Class Members will be allocated as follows: 15% will be allocated as
17 wages subject to withholding of all applicable local, state and federal taxes; and 85% will be
18 allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections
19 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to
20 each Participating Class Member an Internal Revenue Service Form W-2 and comparable state
21 forms with respect to the wage allocation and a Form 1099 with respect to the penalties and
22 interest allocations.

23 (e) Service Payment to Class Representative: The amount, if any, awarded to
24 the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
25 exceed \$10,000 each to Andrew Zuniga and Vivian Velasquez, in exchange for the service that
26 Plaintiffs performed on behalf of the Class. Defendant agrees not to oppose this request. The
27 Service Payment to Plaintiffs will be paid out of the Settlement Amount. The Class
28 Representatives will be issued an IRS Form 1099 in connection with this payment. Plaintiffs

1 shall be solely and legally responsible to pay any and all applicable taxes on this payment. The
2 Parties agree that any amount awarded as the Service Payment to Plaintiffs less than the
3 requested amount shall not be a basis for Class Counsel to void this Settlement Agreement.
4 Should the Court approve a lesser amount for the Service Payment, the difference shall be added
5 to the Net Settlement Amount to be distributed to the Participating Class Members.

6 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
7 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
8 Settlement Amount (\$133,333.33), plus reasonable litigation costs not to exceed \$15,000
9 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class
10 Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee
11 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
12 Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
13 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
14 difference shall be added to the Net Settlement Amount to be distributed to the Participating
15 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
16 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
17 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
18 of attorneys' fees and costs awarded by the Court.

19 (g) Settlement Administration Costs: The fees and other charges of the
20 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$8,895 unless
21 approved by all Parties and the Court.

22 (h) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
23 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
24 amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
25 Private Attorney General Act of 2004 ("PAGA") and \$10,000 (25%) will be paid to the
26 Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
27 and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice
28 to the LWDA of the Settlement.

1 (i) Tax Liability: Class Counsel and Defendant make no representations as to
2 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the
3 Settlement Class Members are not relying on any statement or representation by Class Counsel
4 or Defendant in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees
5 understand and agree that they will be solely responsible for the payment of any taxes and
6 penalties assessed on their respective Settlement Amounts described herein. Forms 1099 will be
7 distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
8 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
9 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
10 Section may be modified in a manner to bring Defendant into compliance with any such changes.
11 Plaintiffs, Participating Class Members, and Aggrieved Employees understand and agree that
12 they will be solely responsible for the payment of any taxes and penalties assessed on their
13 respective payments described herein.

14 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
15 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
16 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
17 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
18 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
19 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
20 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
21 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
22 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
23 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
24 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
25 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
26 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
27 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
28 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT

1 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
3 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
4 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
5 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
6 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
7 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
8 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
9 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
11 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
12 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
13 receive an Individual Settlement Amount or a portion of the PAGA Penalties. Distributions, in
14 the form of Individual Settlement Amounts and the portion of the PAGA Penalties payable to the
15 Aggrieved Employees, will be made directly to each Participating Class Member and Aggrieved
16 Employee. The Settlement Administrator shall be responsible for accurately and timely
17 reporting and remittance obligations with respect to unclaimed funds as a result of a Participating
18 Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the
19 Settlement by the check cashing deadline, as set forth herein.

20 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
21 reasonable and will so represent same to the Court.

22 **D. Release by the Participating Class Members**

23 48. Upon entry of the Final Approval Order and Defendant funding of the Settlement
24 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiffs
25 and the Participating Class Members will forever completely release and discharge the Released
26 Parties from the Released Class Claims for the Release Period.

27 49. Each Participating Class Member will be deemed to have made the foregoing
28 Release as if by manually signing it.

1 50. Class Representatives, on behalf of themselves and the Settlement Class,
2 acknowledge and agree that the claims for unpaid wages and untimely payment of wages in the
3 Action are disputed, and that the payments set forth herein constitute payment of all sums
4 allegedly due to them. Class Representatives, on behalf of themselves and the Settlement Class,
5 acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties
6 or Settlement. Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not
7 require the execution of any release of any claim or right on account of wages due, or to become
8 due, or made as an advance on wages to be earned, unless payment of those wages has been
9 made.”

10 **E. Release of PAGA Claims**

11 51. Upon entry of the Final Approval Order and Defendant’s funding of the
12 Settlement Amount, Plaintiffs – in their individual capacity and on behalf of the State of
13 California and LWDA – shall completely release and discharge the Released Parties from the
14 PAGA Released Claims for the PAGA Period.

15 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
16 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
17 releasing the PAGA Released Claims.

18 53. It is the intent of the Parties that the Final Approval Order shall have full
19 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

20 **F. Release by Plaintiffs and Class Representatives**

21 54. Class Representatives do hereby, for themselves and for their respective spouses,
22 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
23 conservators, guardians, personal representatives, and assigns forever and completely release and
24 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
25 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
26 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
27 civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of
28 any nature whatsoever, from the beginning of time through the execution of this Stipulation,

whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representatives' employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representatives' Claims").

55. Without limiting the generality of the foregoing, this general release by Plaintiffs includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code.

56. Plaintiffs agree that there is a risk that any injury that they may have suffered by reason of the Released Parties' relationship with them might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Plaintiffs with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

57. Plaintiffs expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representatives expressly
10 acknowledge that this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims that Class Representatives knew of, as well as all claims that she does not
12 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
13 period from the beginning of time to the execution of this Settlement Agreement, and that this
14 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
15 claims. Notwithstanding the above, the general release by Class Representatives shall not extend
16 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
17 that may not be released by law.

18 **G. Interim Stay of Proceedings**

19 58. Pending completion of all of the prerequisites necessary to effectuate this
20 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
21 except such as are necessary to effectuate the Settlement.

22 **H. Notice Process**

23 59. Appointment of Settlement Administrator. The Parties have agreed to the
24 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
25 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
26 independently reviewing and verifying documentation associated with any claims or opt-out
27 requests, resolving any disputes regarding the calculation or application of the formula for
28 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and
performing such other tasks as set forth herein or as the Parties mutually agree or that the Court

orders.

60. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

62. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. For all Settlement Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection Form and a Dispute Form. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

1 63. Returned Notice Packets. The Settlement Administrator will take steps to ensure
2 that the Notice Packet is received by all Settlement Class Members, including utilization of the
3 National Change of Address Database maintained by the United States Postal Service to review
4 the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
5 Member for whom an updated address is located within ten (10) calendar days following both
6 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
7 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
8 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
9 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

10 64. Presumption Regarding Receipt of Notice Packet. It will be conclusively
11 presumed that if an envelope has not been returned to Settlement Administrator by the Notice
12 Response Deadline that the Settlement Class Member received the Notice Packet.

13 65. Disputes Regarding Class Data. Class Members are deemed to participate in the
14 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA
15 Released Claims. The Notice will inform Class Members of his/her estimated Individual
16 Settlement Amount and the number of weeks he/she worked during the Class Period and the
17 PAGA Period. Class Members may dispute their Weeks Worked if they disagree they worked
18 more weeks in the Class Period and/or PAGA Period in California than Defendant's records
19 show by timely submitting evidence to the Settlement Administrator. Defendant's records will
20 be presumed determinative absent reliable evidence to rebut Defendant's records, but the
21 Settlement Administrator will evaluate the evidence submitted by the Class Member and provide
22 the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in
23 good faith about the evidence to determine the Class Member's actual number of Work Weeks
24 and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable
25 to agree, they agree to submit the dispute to the Court to render a final decision. Class Members
26 and Aggrieved Employees will have until the Notice Response Deadline to dispute Weeks
27 Worked, object or opt out, unless extended by the Court.

1 66. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
3 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

4 67. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
6 request exclusion from the Class Claims portion of the Settlement. The Notice Packet will
7 inform the Settlement Class Members of the Court-established deadlines for filing objections or
8 requesting exclusion from the Settlement in accordance with the following guidelines:

9 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
10 Member, other than Plaintiffs, may request to be excluded from the Settlement Class by
11 completing the Request for Exclusion Form provided within the Notice Packet. The Request for
12 Exclusion Form must be mailed to the Settlement Administrator and postmarked on or before the
13 Notice Response Deadline in order to be timely, unless the Parties otherwise agree in writing.
14 Any such Request must be made in accordance with the terms set forth in the Notice Packet.
15 The Settlement Administrator shall attach each Request for Exclusion to its declaration of due
16 diligence and file with the Court prior to the Final Approval Hearing. Any Settlement Class
17 Member who timely requests exclusion in compliance with these requirements: (i) will not have
18 any rights under this Agreement, including the right to object, appeal or comment on the
19 Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will
20 not be bound by this Agreement, or the Judgment. Any Settlement Class Member who is an
21 Aggrieved Employee who requests timely exclusion will still be subject to the PAGA Released
22 Claims to the fullest extent permitted by law and receive a share of PAGA Penalties. All Parties
23 and their counsel, including Defendant's respective members, member managers, owners,
24 officers, and directors, shall not encourage or solicit opt-outs or objections, directly or indirectly,
25 through any means.

26 (b) Binding Effect on Participating Class Members. All Participating Class
27 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
28 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have

1 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
2 Settlement.

3 (c) Objections to Settlement. Any Settlement Class Member, other than
4 Plaintiffs, who does not submit a valid and timely Request for Exclusion may object to the terms
5 of this Agreement by completing the Objection Form provided within the Notice Packet. Any
6 Settlement Class Member that intends to object must mail the Objection Form to the Settlement
7 Administrator. The Objection Form must be postmarked on or before the Notice Response
8 Deadline in order to be timely, unless the Parties otherwise agree in writing. Additionally, any
9 objection must be made in accordance with the terms set forth in the Notice Packet. The
10 Settlement Administrator shall provide any objections to Class Counsel and Defense Counsel
11 within three (3) days of receipt, and the Settlement Administrator shall attach the same to its
12 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
13 Participating Class Member who files an objection remains eligible to receive monetary
14 compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any
15 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
16 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
17 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
18 and properly intervening or filing a motion to vacate the judgment under Code of Civil
19 Procedure § 663.

20 (d) Failure to Object. Any Settlement Class Member who does not timely and
21 properly become a party of record by intervening or filing a motion to vacate the judgment
22 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
24 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to
26 any objections submitted by Objecting Settlement Class Members at least five (5) court days
27 before the date of the Final Approval Hearing.

28 (f) Settlement Class Members will have until the Notice Response Deadline

1 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
2 Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what
3 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
4 request of Class Counsel or Defense Counsel.

5 68. Funding of the Settlement Amount. Defendant shall deposit the Maximum
6 Settlement Amount with the Settlement Administrator within thirty (30) days after the Effective
7 Date.

8 69. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
9 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual
10 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
11 Attorneys' Fees and Costs Award, any Service Payment to the Class Representatives, the
12 payment to the LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of
13 the PAGA Penalties, and will pay itself the Settlement Administration Costs.

14 70. Deadline for Cashing Settlement Checks. Participating Class Members and
15 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
16 Administrator to cash their settlement checks. The release will be binding upon all Participating
17 Class Members who do not cash their checks within the 180-day period. In the event that any
18 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
19 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
20 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
21 Counsel of the results. If a new address is located by these means, the Administrator will have
22 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
23 Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen
24 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
25 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
26 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
27 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
28 payment on such check. If the check in question has not been negotiated prior to the stop

1 payment order, the Settlement Administrator will issue a replacement check.

2 a. If any Participating Class Member's check is not cashed within the time
3 periods noted above, the check will be void and a stop-payment will be issued,
4 and the Settlement Administrator shall issue the unclaimed funds to the California
5 State Controller's Office in the name of the Class Member.

6 b. If any Aggrieved Employee's check is not cashed within the time periods
7 noted above, the check will be void and a stop-payment will be issued, and the
8 Settlement Administrator shall issue the unclaimed funds to the California State
9 Controller's Office in the name of the Class Member.

10 **I. Duties of the Parties Prior to the Court's Approval**

11 71. Promptly after execution of this Agreement, Plaintiffs will move the Court for
12 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
13 accomplishing the following:

14 (a) Scheduling the Final Approval Hearing on the issue of whether this
15 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
16 and a hearing on fees, costs and the Service Payments;

17 (b) Approving as to form and content the proposed Notice Packet;

18 (c) Directing the mailing of the Notice Packet by first class mail to the
19 Settlement Class Members;

20 (d) Preliminarily approving this Settlement;

21 (e) Preliminarily certifying the class for purposes of this Settlement; and

22 (f) Advising the LWDA of the proposed Settlement.

23 **J. Duties of the Parties Following Court's Final Approval**

24 72. In connection with the Final Approval Hearing provided for in this Agreement,
25 Class Counsel shall submit a proposed Final Approval Order:

26 (a) Approving the Settlement, adjudging the terms thereof to be fair,
27 reasonable and adequate, and directing consummation of its terms and provisions;

28 (b) Approving Class Counsel's application for an award of attorneys' fees and

reimbursement of litigation costs and expenses, the Service Payment to the Class Representatives, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

73. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

74. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

75. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

L. Other Terms

76. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

77. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

78. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and

1 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
2 preliminary and final approval of the settlement, and the final entry of judgment.

3 79. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Agreement.

7 80. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
8 Settlement Class Member and/or Aggrieved Employee in this Action, as to any and all causes of
9 action that were asserted or that might have been asserted in this Action. Nonetheless,
10 Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further
11 substantial expense and the inconvenience and distraction of protracted and burdensome
12 litigation. Defendant has taken into account the uncertainty and risks inherent in litigation, and
13 without conceding any infirmity in the defenses that it has asserted or could assert against
14 Plaintiffs, have determined that it is desirable and beneficial that Plaintiffs' claims be settled in
15 the manner and upon the terms and conditions set forth in this Agreement.

16 81. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
18 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
19 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Agreement with the intention of avoiding further disputes and litigation with the attendant
21 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
22 related documents such as the notices, and motions for preliminary and final approval, shall,
23 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
24 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
25 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
26 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
27 approved, the stipulation will be of no force or effect.
28

1 82. No Publicity. The Parties will not publicize the Settlement or disclose it to third
2 parties prior to the Court granting Preliminary Approval, except as required or necessary to
3 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
4 Class Representatives agree that they will not discuss the Settlement with the media, any
5 settlement and verdict reporting service, any social media postings or other Internet postings.
6 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
7 other case materials in the Action related to seeking and obtaining Court approval of this
8 Settlement and the related awards of attorneys' fees and costs, or to communications with
9 Settlement Class Members or their representatives about this Settlement, including through the
10 posting of Court-filed documents on Class Counsel's websites for access solely by the
11 Settlement Class Members, or to prevent the Parties or their representatives from communicating
12 with financial or legal advisors regarding the Settlement. In response to any media inquiry,
13 Class Counsel may state only that the Action has been settled on terms mutually agreeable to the
14 Parties.

15 83. Notices. Unless otherwise specifically provided herein, all notices, demands or
16 other communications given hereunder shall be in writing and shall be deemed to have been duly
17 given as of the third business day after mailing by United States registered or certified mail,
18 return receipt requested, addressed:

19 *To the Settlement Class:*

20 Brian J. Mankin
21 **brian@lmlfirm.com**
22 Lauby, Mankin & Lauby LLP
23 5198 Arlington Avenue, PMB 513
24 Riverside, CA 92504
25 Tel: (951) 320-1444 | Fax: (951) 320-1445
26
27
28

1 *To Defendant:*

2 Keith E. Smith
3 *KESmith@wshblaw.com*
4 WOOD, SMITH, HENNING, & BERMAN LLP
5 21804 Cactus Avenue, Suite 200
6 Riverside, CA 92518
7 Tel: (951) 779-5000 | Fax: (951) 755-1650

8 84. Construction. The Parties hereto agree that the terms and conditions of this
9 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
10 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
11 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
12 and Defendant expressly waive the common-law and statutory rule of construction that
13 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
14 and represent that the language in all parts of this Agreement shall be in all cases construed as a
15 whole, according to its fair meaning.

16 85. Captions and Interpretations. Paragraph titles or captions contained herein are
17 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
18 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
19 contractual and not merely a recital.

20 86. Modification. This Agreement may not be changed, altered, or modified, except
21 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
22 Agreement may not be discharged except by performance in accordance with its terms or by a
23 writing signed by all of the Parties hereto.

24 87. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
25 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
26 provide written notice to the other Party and allow an opportunity to cure the alleged
27 deficiencies, and Plaintiffs and Defendant may agree to seek the help of the Mediator to resolve
28 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
own attorneys' fees and costs. This provision shall not apply to any legal action or other
proceeding instituted by any person or entity other than Plaintiffs or Defendant.

1 88. Choice of Law. This Settlement Agreement shall be governed by and construed,
2 enforced and administered in accordance with the laws of the State of California, without regard
3 to its conflicts-of-law rules.

4 89. Integration Clause. This Settlement Agreement contains the entire agreement
5 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
6 or contemporaneous agreements, understandings, representations, and statements, whether oral
7 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
8 hereunder may be waived except in writing.

9 90. Binding On Assigns. This Agreement shall be binding upon and inure to the
10 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
11 successors and assigns.

12 91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
13 because the members of the Settlement Class are numerous, it is impossible or impractical to
14 have each Class Member execute this Agreement. The Notice Packet will advise all Settlement
15 Class Members of the binding nature of the release provided herein and such shall have the same
16 force and effect as if this Agreement were executed by each Settlement Class Member.

17 92. Counterparts. This Agreement may be executed in counterparts, and when each
18 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
19 original, and, when taken together with other signed counterparts, shall constitute one fully
20 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
21 signatures shall have the same force and effect as an original.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

March 1, 2023
Dated: February __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Andrew A. Zuniga
Andrew A. Zuniga (Mar 1, 2023 17:53 PST)

Andrew Zuniga

Dated: February __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Vivian Velasquez

Dated: February __, 2023

DEFENDANT DESERT AIDS PROJECT

By: _____

APPROVED AS TO FORM:

Dated: February __, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiffs

Dated: February __, 2023

DEFENSE COUNSEL:
WOOD, SMITH, HENNING & BERMAN LLP

Keith E. Smith, Esq.
Attorneys for Defendant

END OF DOCUMENT

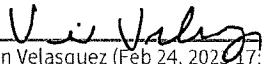
1 Dated: February __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 _____
Andrew Zuniga

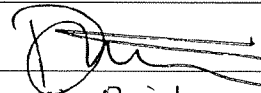
5 Dated: February 24, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

6 
7 _____
Vivian Velasquez (Feb 24, 2023 17:50 PST)
8
9 Vivian Velasquez

10 March 5, 2023
11 Dated: ~~February~~ __, 2023

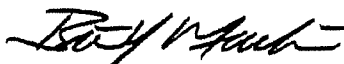
DEFENDANT DESERT AIDS PROJECT

12
13 By: 
14 _____
David Brinkman, CEO

15 **APPROVED AS TO FORM:**

16
17 Dated: February 24, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

18 
19 _____
20 Brian J. Mankin
Attorneys for Plaintiffs

21 March 6
22 Dated: ~~February~~ March 6, 2023

DEFENSE COUNSEL:
WOOD, SMITH, HENNING & BERMAN LLP

23 
24 _____
25 Keith E. Smith, Esq.
26 Attorneys for Defendant

27 **END OF DOCUMENT**

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION

Andrew Zuniga and Vivian Velasquez v. Desert Aids Project
Superior Court of the State of California, County of Riverside
Case No. RIC2003219

To: All current and former non-exempt (hourly paid) employees employed by Desert Aids Project in California at any time from August 18, 2016, and June 8, 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on **INSERT DATE** to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Amended Class Action Settlement Agreement and Release of Claims (“Settlement Agreement”).

IDENTIFYING INFORMATION

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of weeks during which you worked for Defendant Desert Aids Project (“Desert Aids Project” or “Defendant”) in California between August 18, 2016, and June 8, 2022 (the “Class Period”), as discussed in more detail in Section IV. Your eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by INSERT DATE , 2022 (see Section VI for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section IV, and (2) be barred from filing an objection to the settlement. You may still receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties in exchange for such payment.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by INSERT DATE , 2022 (see Section VI for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working below is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Settlement Administrator (see Section IV for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Andrew Zuniga and Vivian Velasquez v. Desert Aids Project* Superior Court of the State California, County of Riverside, Case No. RIC2003219 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Desert Aids Project’s records show that you were employed in California as an hourly paid employee at some time during the Class Period. The Court ordered this Notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Desert Aids Project as an hourly employee in California at some time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On August 18, 2020, Plaintiff and Class Representative Andrew Zuniga, through his attorneys (“Class Counsel”), filed a class and representative action lawsuit against Defendant for alleged wage and hour violations on behalf of Class Members. The about January 31, 2021, the action was amended to include Vivian Velasquez as a Plaintiff and Class Representative and additional claims were added. The Lawsuit alleges that Defendant violated various California Labor Code provisions, California Business and Professions Code Section 17200, and the applicable Industrial Welfare Commission (“IWC”) Wage Order. In summary, Plaintiffs allege that Defendant failed to pay proper minimum wages, failed to pay proper overtime wages, failed to provide meal periods, failed to provide rest breaks, failed to pay all unused vacation wages upon termination, failed to timely pay wages each period and upon separation of employment, and failed to provide accurate itemized wage statements. All of these claims are called the “Class Claims.” The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”). The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is August 14, 2019, through June 8, 2022 (the “PAGA Period”).

Desert Aids Project has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Desert Aids Project is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Rather, Desert Aids Project has agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiffs have concluded that it is in their respective best interests and the interests of the Class to settle the Lawsuit on the terms summarized in this Notice. After extensive investigation and review of information provided by Defendant to Class Counsel, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Defendant, the risk the Court may not certify this case to proceed as a class action, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still performing services for Defendant, this Settlement will not affect your status. California law strictly prohibits unlawful retaliation. Further, Defendant will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who represents the Class?

The Court has designated Plaintiffs Andrew Zuniga and Vivian Velasquez to serve as Class Representatives in this lawsuit. The attorneys and law firm that serve as Class Counsel are identified and can be reached as follows:

Attorneys for the Class Members

Brian Mankin, Esq.
brian@lmlfirm.com
Misty Lauby, Esq.
misty@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court granted preliminary approval of the Settlement. Class Members who do not opt out of the Settlement (the “Settlement Class”), pursuant to the procedures set forth in this Notice, will be mailed a settlement check, and in exchange, will be bound by the terms of the Settlement and release of certain wage and penalty claims against Defendant.

Without admitting any wrongdoing, Defendant have agreed to pay \$400,000 (the “Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved ILYM Group to act as the “Settlement Administrator,” who is sending this Notice Packet to you and will perform many other duties relating to the Settlement. Under the Settlement, \$8,895 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency and Aggrieved Employees. The Labor Code Private Attorneys General Act of 2004 (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved

Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$40,000 of the Settlement Amount will be allocated to Plaintiff's claim under the PAGA. Of this amount, \$30,000 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$10,000 will be divided between all Aggrieved Employees on a Weeks Worked basis. "Aggrieved Employees" is defined to include all current and former non-exempt (hourly paid) employees employed by Defendant in California during PAGA Period. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$10,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	SINSERT

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the lawsuit on behalf of the Class Members on a contingency fee basis (meaning that Class Counsel has not been paid any money to date and would only receive its attorneys' fees if the case succeeded) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will collectively ask for fees of one-third of the Settlement Amount (\$133,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the lawsuit.

Service Payments to Class Representative. Class Counsel will ask the Court to award Class Representative Andrew Zuniga and Vivian Velasquez a service payment in the amount of \$10,000 each to compensate them for their service, risks undertaken, and extra work provided on behalf of the Class Members.

Calculation of Individual Settlement Amounts to Class Members. After deducting the amounts above, the balance of the Settlement Amount will form the Net Settlement Amount (or "NSA") for distribution to the "Participating Class Members" (i.e., those who did not timely request to be excluded). The Settlement Administrator will calculate each Class Members' pro-rata share of the NSA based on the number of weeks worked by each Class Member during the Class Period. The dollars per compensable Work Week will be calculated by dividing the total Weeks Worked by Settlement Class Members into the Net Settlement Amount to determine a per pay period value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member during the Class Period to determine the Individual Settlement Amount for each Participating Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100 percent of the Net Settlement Amount. While the range of recovery will differ for Class Members, it is estimated that the average payment will be \$xxx.xx, the high payment will be \$x,xxx.xx, and the low payment will be \$xx.xx. Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	SINSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Workweeks Worked (i.e., meaning you worked at least one hour during a workweek) during the Class Period and PAGA Period will be calculated from Defendant's records. If you disagree with the numbers reported above, you may submit the enclosed Dispute Form to the Settlement Administrator on or before **INSERT DATE 45 Days After Mailing**, with documentation to establish the number of weeks you claim to have worked for Defendant in California between August 18, 2016, through June 8, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member. If the Parties are unable to agree, the Court will render a final decision.

Timing of Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Class Members who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share (if any) of PAGA civil penalties for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. The anticipated payment date (assuming the Settlement receives final approval and there are no objections or appeals, which may delay the payments) is approximately **INSERT DATE 30 Days After Final Approval**. Participating Class Members and/or Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. If a Participating Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date. If an Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and his/her share will be reissued to the California Labor Workforce Development Agency, pursuant to Order of the Court.

Allocation and Taxes. 15% of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining 85% will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments

for PAGA Claims. The Settlement Administrator, Desert Aids Project and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon Final Approval of the Settlement, all Participating Class Members will release and discharge, for the time period from August 18, 2016, through June 8, 2022, Defendant, and all of its past and present officers, directors, and employees, agents, insurers and reinsurers, vendors, independent contractors, payroll providers, pay stub providers, affiliates, predecessor and successor companies. (collectively, the “Released Parties”) from all claims stated in the operative Complaint and those solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) unlawful deduction of wages, (d) failure to provide meal periods, (e) failure to provide rest breaks, (f) failure to pay vested vacation upon separation of employment, (g) failure to failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims for statutory penalties based on the facts or claims alleged in the operative complaint. The release of Class Claims will be subject to Court Approval.

Release of PAGA Claims. Upon Final Approval of the Settlement, Plaintiffs, on behalf of themselves, the State of California and the LWDA shall release the Released Parties from all claims based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter(s), including all PAGA claims seeking civil penalties that were premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) unlawful deduction of wages, (d) failure to provide meal periods, (e) failure to provide rest breaks, (f) failure to pay vested vacation upon separation of employment, (g) failure to failure to timely pay wages each pay period and upon separation of employment, and (h) failure to provide accurate itemized wage statements (“PAGA Released Claims”). The time period governing the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released Claims will be subject to Court approval.

Waiver of Labor Code Sections 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Amounts constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Amounts. These sections provide in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. How do I receive a payment?

You are automatically included as a Settlement Class Member to receive an Individual Settlement Amount, provided that you do not exercise your right to opt-out as explained below. You do not need to take any further action to receive a payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What are my rights and options?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by completing, signing, and mailing the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before **INSERT DATE**. Any person who files a timely Request for Exclusion from the from the Class Claims in the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments from the Net Settlement Amount; (3) will preserve the right to pursue the Released Claims subject to applicable statutes of limitations, and (4) will not be bound by this Settlement, or the Judgment. However, all Aggrieved Employees will receive their respective share of PAGA Penalties regardless of whether they file a Request for Exclusion as a Class Member.
- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations), to the Settlement Administrator. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed on the Objection Form, **postmarked** on or before **INSERT DATE**. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. **Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate. To do so, you should submit the Dispute Form with any supporting evidence. Do not submit the Exclusion or Objection Form if you merely want to dispute the Work Weeks credited.

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you are a Class Member and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. When is the court hearing and what is it for?

On **INSERT FINAL APPROVAL HEARING DATE**, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs' request for the service awards. This hearing may be continued or rescheduled by the Court without further notice to the Class. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

IX. Where can I get more information?

If you have questions about this Notice, the enclosed Request for Exclusion Form and Objection Form, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Settlement Administrator for more information or to request that a copy of this Notice and request for Exclusion Form and Objection Form be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted above in Section III. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on **DATE, 2022** and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (RIC2003219) where requested, and click "Search."

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Andrew Zuniga and Vivian Velasquez v. Desert Aids Project
Superior Court of the State of California, County of Riverside
Case No. RIC2003219

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing and completing the below, I agree to the following:

I do NOT want to participate in the settlement in *Andrew Zuniga and Vivian Velasquez v. Desert Aids Project* (Riverside Superior Court Case No. RIC2003219). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than my share of PAGA Penalties if I qualify as an Aggrieved Employee (with further detail provided in the attached Notice of Settlement of Class Action).

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “D”

OBJECTION FORM

Andrew Zuniga and Vivian Velasquez v. Desert Aids Project
Superior Court of the State of California, County of Riverside
Case No. RIC2003219

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

**YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING
THE REASONS WHY YOU OBJECT TO THE SETTLEMENT.**

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Andrew Zuniga and Vivian Velasquez v. Desert Aids Project* on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “E”

DISPUTE FORM

Andrew Zuniga and Vivian Velasquez v. Desert Aids Project
Superior Court of the State of California, County of Riverside
Case No. RIC2003219

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

According to the records of Desert Aids Project:

- (a) You worked for Desert Aids Project for __ workweeks as a Class Member from August 18, 2016, through June 8, 2022 (the “Class Period”); and
- (b) You worked for Desert Aids Project for __ workweeks as an Aggrieved Employee from August 14, 2019, through June 8, 2022 (the “PAGA Period”).

DO YOU DISAGREE WITH ITEMS (a)-(b) AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING THE REASONS WHY YOU BELIEVE YOU SHOULD BE CREDITED WITH ADDITIONAL WORKWEEKS WORKED AND INCLUDE COPIES (NOT ORIGINALS) OF SUPPORTING DOCUMENTATION.

Please state why you believe that you should be credited with more Workweeks Worked than stated on the Notice and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination if you are entitled to additional Workweeks:

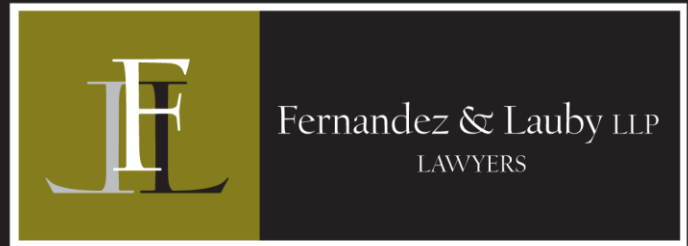
Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO
LATER THAN [INSERT DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “F”



August 14, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Desert AIDS Project
1695 North Sunrise Way
Palm Springs, CA 92262

**Re: PAGA Civil Penalty Claim
Andrew Zuniga v. Desert AIDS Project.**

To the Labor and Workforce Development Agency and Desert AIDS Project:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Andrew Zuniga (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Desert AIDS Project and/or any affiliated entities, for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 227.3, 256, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2012 through March 2020. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately compensate for all hours worked. Also, at all relevant times, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week during the pay period, the Company failed to properly calculate Claimant’s overtime rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week. In addition, Plaintiff alleges that Defendants utilized a rounding policy and practice that routinely undercompensated the Represented Employees and resulted in a net benefit to Defendants. In other words, Defendants’ rounding policy is not neutral and systematically undercompensates Plaintiff and the Represented Employees, leading to a failure to pay proper minimum, regular, and overtime wages.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages at the “final rate” as required by Labor Code § 227.3. To illustrate, at the time of (and leading up to) Claimant’s termination, he was paid a base hourly rate of \$24.49. However, the Company paid Claimant’s accrued and unused vacation at something less than Claimant’s final rate. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours at the “final rate” – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during her employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately compensate for all hours worked as well as the failure properly calculate the overtime pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, minimum and overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of

wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “‘California’s strong public policy favoring the protection of employees’ wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT
(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES
(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code §

202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Misty M. Lauby, Esq.
E-mail: MML@fernandezlauby.com
www.California-EmploymentLawyers.com



September 24, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Desert AIDS Project
1695 North Sunrise Way
Palm Springs, CA 92262

**Re: PAGA Civil Penalty Claim
Vivian Velasquez v. Desert AIDS Project.**

To the Labor and Workforce Development Agency and Desert AIDS Project:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Vivian Velasquez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), Desert AIDS Project and/or any affiliated entities, for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 227.3, 256, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately September 2017 through March 2020. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately compensate for all hours worked. Also, at all relevant times, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week during the pay period, the Company failed to properly calculate Claimant’s overtime rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week. In addition, Plaintiff alleges that Defendants utilized a rounding policy and practice that routinely undercompensated the Represented Employees and resulted in a net benefit to Defendants. In other words, Defendants’ rounding policy is not neutral and systematically undercompensates Plaintiff and the Represented Employees, leading to a failure to pay proper minimum, regular, and overtime wages.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break. Additionally, the Company failed to maintain any mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that the meal period and rest break premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in shift differential pay and other forms of nondiscretionary compensation).

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. To illustrate, at the time of (and leading up to) Claimant's termination, he was paid a base hourly rate of \$17.00. However, the Company paid Claimant's accrued and unused vacation at something less than Claimant's final rate. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours at the "final rate" – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during her employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:



**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately compensate for all hours worked as well as the failure properly calculate the overtime pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, minimum and overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount



sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “California’s strong public policy favoring the protection of employees’ wages.” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT
(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”



As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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(Labor Code § 1199)

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CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



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IMI

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EXHIBIT “G”