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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHERIF FATHY, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

JAY NOLAN COMMUNITY SERVICES, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV38798

[Assigned to the Hon. Elaine Lu, Dept. 9]

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF H. SCOTT LEVIANT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: January 16, 2025
Time: 10:00 a.m.
Courtroom: 9
Judge: Hon. Elaine Lu

Action Filed: October 20, 2021
Trial Date: Not Set

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

3. This Declaration is submitted in support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement.

4. Plaintiff worked for Defendant as a support staff member, assisting clients with disabilities.¹ On October 20, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: Failure to Pay Minimum Wages, Failure to Pay Overtime Compensation, Failure to Provide Meal Periods, Failure to Authorize and Permit Rest Breaks, Failure to Indemnify Necessary Business Expenses, Failure to Timely Pay Final Wages at Termination, Failure to Provide Accurate Itemized Wage Statements, and Unfair Business Practices.

¹ Defendant is a community services business that assists individuals with disabilities, including individuals who are deaf and autistic, among other disabilities. In its own words, “The mission of Jay Nolan Community Services, Inc. (JNCS) is to enable individuals with Autism Spectrum Disorder and other Developmental Disabilities to live fulfilling lives as members of the community by providing support services customized to their individual needs.”

1 5. Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”),
2 pursuant to California Labor Code § 2699.3, providing notice of her intent to seek civil penalties under
3 the Private Attorneys General Act, California Labor Code § 2698, et seq. (“PAGA Letter”). The LWDA
4 did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-
5 day time period permitted for the LWDA to provide such a notification expired. On February 7, 2022,
6 Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for
7 violation of the Private Attorneys General Act (“PAGA”). On April 19, 2024, Plaintiff, by stipulation,
8 filed a Second Amended Complaint, adding an additional cause of action under the Fair Labor Standards
9 Act (“FLSA”). The Second Amended Complaint is the operative complaint in the Action (the
10 “Operative Complaint”).

11 6. The Parties conducted informal and formal discovery and investigation of the facts and
12 law. Such investigation included, inter alia, the exchange of extensive data and discoverable information
13 in preparation for the mediation sessions. The Parties have analyzed time clock, pay and other data
14 pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the
15 numbers of former and current members of the Class, average workweeks and pay periods, and average
16 rate of hourly pay. In addition, Defendant also provided documents reflecting wage and hour policies
17 and practices during the Settlement Period and information regarding the total number of current and
18 former employees in the Class. Sampling was used, and data for approximately 70 class members was
19 provided to control costs. The margin of error calculation for the sample of the Class in this case is as
20 follows:

$$1.645 \sqrt{\frac{0.5(1-0.5)}{70}} \sqrt{\frac{337-70}{337-1}} = \text{margin of error}^2 = 8.74\%$$

23 With a sample of 70 employees, Class Counsel calculated that the margin of error, using the population
24
25

26 ² The term “1.645” is derived from a standard deviation table for a 90% confidence interval, known
27 as a “z-table.” It is not affected by sample or population size. The margin of error is an “overestimate” of
28 because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the
variance equation of (p*q)/n.

1 adjustment factor, was no more than 8.74 percent.³ Given the smaller final Class size, the margin of
2 error is lower than 8.74%. In addition, Defendant also provided documents reflecting its wage and hour
3 policies and practices during the Settlement Period and information regarding the total number of current
4 and former employees in the Class.

5 7. After reviewing documents regarding Defendant's wage and hour policies and practices
6 and other information obtained during the exchange of discovery, Class Counsel were able to evaluate
7 the probability of class certification, success on the merits, and the reasonably obtainable maximum
8 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
9 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
10 asserted in the litigation.

11 8. On February 8, 2023, the Parties participated in an all-day mediation presided over by
12 Eve Wagher, Esq., which led to this Agreement to settle the Action. The Parties discussed, at length, the
13 burdens and risks of continuing with the litigation as well as the merits of claims and defenses. After the
14 mediation, the Parties signed a long form settlement agreement (the "Agreement").

15 9. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
16 liability for the claims asserted in the Action, both generally and in response to Defendant's defenses
17 thereto. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
18 Settlement that confers substantial relief upon the Class, as well as Defendant's status as a community
19 services organization.

20 10. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
21 set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
22 Class. Solely for the purpose of settling this case, the Parties agree that the requirements for establishing
23

24 ³ The margin of error formula does not require an adjustment factor for extremely large populations.
25 A poll of all potential voters in the United States, for example, does not require an adjustment for the
26 population size, since the second radicand in the equation (the fraction in the second radical sign) is
27 effectively equal to 1. This is because the square root of a fraction that is very close to 1 is even closer to
28 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The
second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. That is
equal to 0.999995. The square root is 0.99999975, which is indistinguishable from 1 when talking about a
margin of error percentage even to the nearest tenth of a percent. But when the population size is much
smaller, the population size has a major impact on the margin of error for a given sample size.

1 class action certification with respect to this class have been met and are met. If this Settlement is not
2 approved by the Court for any reason, Defendant reserves its right to contest class certification. This
3 Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment
4 and the release of all Released Claims for all Class Members, including all within the class definition
5 who have not elected to exclude themselves from the Class.

6 7 SUMMARY OF THE SETTLEMENT TERMS

8 11. Key provisions of the proposed settlement include the following:

- 9 (a) Defendant agrees not to oppose certification for purposes of Settlement.
10 (Settlement, ¶ 12.1);
- 11 (b) Class: All individuals who have worked for Defendant in California as hourly
12 employees during the Class Period (the “Class Period” is the period from October
13 20, 2017, through the date that a preliminary approval order is entered in the
14 Action). Excluded from the Class are those individuals who have entered into (i)
15 arbitration agreements or (ii) agreements releasing the claims alleged by Plaintiff.
16 “Participating Class Member” means a Class Member who does not submit a
17 valid and timely Request for Exclusion from the Class portion of the Settlement.
18 (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.);
- 19 (c) Settlement Amount: Defendant will pay a maximum of **\$275,000.00**, referred to
20 as the Gross Settlement Amount (or GSA herein), resulting in an estimated
21 average workweek value of **\$368.34**. (Settlement, ¶ 1.21; 3.1; Leviant Decl., ¶ 17;
22 Lee Decl., ¶ 14);
- 23 (d) Funding of Gross Settlement Amount: Defendant shall fully fund the Gross
24 Settlement Amount, and also fund the amounts necessary to fully pay
25 Defendant’s share of payroll taxes by transmitting the funds to the Administrator
26 no later than 75 days after the Effective Date. If an appeal is filed, Defendant
27 shall fund the settlement no later than 30 days after the date the judgment is
28 affirmed, in whole or in material part, and the action is no longer subject to

further appeal. (Settlement, ¶ 4.3);

(e) Class Size: **319** individuals who worked **9,246** workweeks.⁴ (Settlement, ¶ 4.1);

(f) Class Period: October 20, 2017 to July 18, 2024. (Settlement, ¶ 1.12; Lee Decl., ¶ 2);

(g) PAGA Group Size: **880** individuals who worked **44,743** Pay Periods.⁵ (Settlement, ¶ 4.1);

(h) PAGA Period: October 20, 2020 to June 19, 2023. (Settlement, ¶ 1.30; Lee Decl., ¶ 2);

(i) Escalator Clause: If it is determined that the total number of Class Members who worked from October 20, 2017 through February 8, 2023 is more than 10% greater than 337⁶, then Defendant will have the option to either (i) allow the Gross Settlement Amount to increase on a pro rata basis above 10% to the extent the threshold is exceeded (e.g., if the threshold referenced herein is exceeded by 11%, the GSA will increase by 1%), or (ii) shorten the Class Period such that the threshold is not exceeded – i.e., such that there is not an increase in the number of Class Members of more than 10%. In addition, if it is determined that the total number of Aggrieved Employees who worked from October 20, 2020 through February 8, 2023 is more than 10% greater than 813, then Defendant will have the option to either (i) allow the Gross Settlement Amount to increase on a pro rata basis above 10% to the extent the threshold is exceeded (e.g., if the threshold referenced herein is exceeded by 11%, the GSA will increase by 1%), or (ii)

⁴ At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who worked during the Class Period. However, the finalized class list included only 319 Class Members. (Lee Decl., ¶ 3).

⁵ At the time of Preliminary Approval, Defendant estimated that there were 813 Aggrieved Employees who worked during the PAGA Period. However, the finalized list of Aggrieved Employees included 880 Aggrieved Employees. (Lee Decl., ¶ 3).

⁶ At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who worked during the period from October 20, 2017 through February 8, 2023. However, Defendant's class list included only 319 Class Members.

1 shorten the PAGA Period such that the threshold is not exceeded – i.e., such that
2 there is not an increase in the number of Aggrieved Employees of more than
3 10%. (Settlement, ¶ 8). **The Escalator Clause was not triggered.** (Lee Decl.,
4 ¶12);

5 (j) Kullar/Munoz Analysis: Plaintiff addresses the claims analysis in the Motion, at
6 Part V.B.3, and below, at Paragraph 18;

7 (k) No Reversion: The Settlement is a *non-reversionary* settlement. (Settlement, ¶
8 3.1);

9 (l) Certification: Plaintiff addresses certification requisites in the Motion, at Part
10 VI.A. Certification was addressed in much greater detail in the Motion for
11 Preliminary Approval;

12 (m) No Claim Form: No claim form is required. (Settlement, ¶ 3.1);

13 (n) Class Release: All Participating Class Members release the Released Parties
14 from all claims that were alleged, or reasonably could have been alleged, based
15 on the Operative Complaint. (Settlement, ¶ 5.2);

16 (o) PAGA Release: All Class Members who are Aggrieved Employees release the
17 Released Parties from all claims for PAGA penalties that were alleged, or
18 reasonably could have been alleged, based on the PAGA Period facts stated in the
19 Operative Complaint and the PAGA Notice. (Settlement, ¶ 5.3);

20 (p) Net Settlement Amount Available to the Class: After deducting Class Counsel's
21 attorneys' fees and costs, service payment to Plaintiff, administration costs, and
22 the PAGA penalty, the remainder will be available for distribution to Class
23 Members who do not opt out, with each Class Member receiving a share based
24 on the number of Workweeks each Class Member worked for Defendant within
25 the Class Period. (Settlement, ¶ 1.27). The Net Settlement Amount is estimated
26 to be **\$112,757.90**, resulting in an average **net** payment per Class Member of at
27 least **\$340.66**, before any tax withholdings, assuming all award are issued as
28 requested. The Net Settlement Amount will be higher if any requested awards

are reduced.

- (q) Tax Allocation: The amounts distributed to Class Members will be characterized as 25% alleged unpaid wages, 10% to interest, and 65% to penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5);
- (r) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA. (Settlement, ¶ 3.1);
- (s) Settlement Administrator: The notice portion of the Settlement was administered by a third-party Administrator, Phoenix Settlement Administrators. The administrator's actual costs for settlement administration are in the amount of **\$11,832.79**, which is below the Court's preliminarily approved amount of \$15,000.00. (Settlement, ¶ 3.2.3; Lee Decl., ¶ 17, Exh. B);
- (t) Notice: The Notice described how to dispute workweeks, submit an objection attorney, or request exclusion. (Settlement, ¶¶ 7.5 – 7.7; Lee Decl., Exh. A);
- (u) Notice Language: Notice was issued in English and Spanish. (Settlement, ¶¶ 1.11, 7.4.2; Lee Decl., ¶ 5);
- (v) PAGA Allocation: From the GSA, **\$29,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et. seq.* ("PAGA"), and seventy-five percent (75%), or **\$21,750.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);
- (w) Notice to LWDA: Notice of the Settlement was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration, Exh. 3;
- (x) Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA. (Settlement, ¶ 3.2.1);

- (y) Fees and Costs: Class Counsel is fees not to exceed 33.33% of the GSA (\$91,666.67), and actual costs, in the amount of \$19,075.43, to be paid out of the GSA.⁷ (Settlement, ¶ 3.2.2);
- (z) Check Void Period: Settlement checks will be valid for 180 days. (Settlement, ¶ 4.4.1);
- (aa) Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller's Office, Unclaimed Property Division in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (Settlement, ¶ 4.4.3);
- (bb) Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry. (Settlement, ¶ 7.8.1);
- (cc) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Settlement ¶ 12.2).

12. A true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit "1."**

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

13. Plaintiff and counsel have diligently investigated the claims of the Class Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of certification and possible summary judgment efforts, the limited financial resources available to Defendant, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair and reasonable. Plaintiff's counsel brought

⁷ Defendant retains the right to object to costs to the extent they exceed \$17,500.00.

1 to bear a great deal of experience with class actions in negotiating the settlement of this case.

2 14. One fundamental purpose of the class action device is to promote efficiency.
3 Resolution at this time will forestall the need for additional expensive and time-consuming litigation
4 that could very well result in an outcome less satisfactory than that proposed under this settlement. But,
5 before any other consideration, we have agreed to this settlement because it is objectively reasonable.
6 The potential for resolution benefits the class members, since they do not have to wait additional years
7 for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel.
8 A class-wide resolution is the most realistic method for addressing the claims raised in this matter.

9 15. We have engaged in the necessary investigation in this case that made it possible for us
10 to exercise informed judgment in those aspects of the settlement process in which we were involved.
11 The exchange of time and wage data, wage and hour policy documents, and data about the composition
12 of the Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more
13 than enough information upon which to evaluate a fair and reasonable settlement amount.

14 16. In addition to disputing the merits of Plaintiff's claims at trial, Defendant intended to
15 aggressively challenge the case at the certification stage. Defendant contends that Plaintiff could not
16 prevail on a certification motion. We believe that the case was viable through to a trial. However,
17 while Plaintiff asserts a belief that this is a viable case through to a trial, we realize that there are always
18 very significant risks associated with certification and trials, and those risks cannot be eliminated in this
19 case. Continued litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks
20 and costs that were (and continue to be) difficult to assess. The risks in this matter include:

- 21 • the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time
22 or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014)
23 ("Duran"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014)
24 (dismissing certified off-the-clock claims based on proof at trial);
- 25 • the risk that Defendant's challenged employment policies might not ultimately support class
26 certification or a class-wide liability finding, *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing
27 Court of Appeal decisions favorable on class certification issue without expressing opinion
28 as to ultimate viability of proposition);

- the risk that uncertainties pertaining to the legality of Defendant's policies and practices could preclude class-wide awards of penalties under Labor Code §§ 203 and 226(e);
- the risk that individual differences between Class Members could be construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1);
- the risk that Defendant's status as a small community services organization placed it at high risk for solvency issues;
- the risk that lengthy trial or appellate litigation could ensue; and,
- the risk violation rate estimates could prove lower than expected.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

17. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation, the financial limitations placed on Defendant's funds, and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the 319 members of the Class, the average recovery for each Class Member is approximately **\$340.66**. Given that Defendant could potentially defeat certification, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of pay periods for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period.

1 18. After analyzing the claims in this matter, Plaintiff has concluded that the value of this
2 Settlement is fair, adequate, and reasonable. The Class Settlement Amount of **\$275,000.00** is about 87%
3 of the **\$315,817.60** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation.
4 On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a
5 carefully constructed model of the current fair value of the case, using estimated risks, average wage
6 rates, numbers of employees, and the amount of time covered by the class period. While Plaintiff would
7 certainly have preferred to recover more (and Defendant would have preferred to pay less), this outcome
8 is in line with a carefully constructed estimate of the current fair value of the case. On that basis, it
9 would be unwise to pass up this settlement opportunity. The risk-adjusted value of each claim, on a
10 claim-by-claim basis, is as follows:

- 11 • A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the
12 assistance of an expert, to be approximately **\$58,260.20**. However, with the risk factor
13 discounts for certification and liability proof, the value of that claim is estimated by
14 Plaintiff's counsel to be approximately **\$6,991.22**, assuming certification probability of
15 40% and merits success at 30%. The off-the-clock time resulted from (1) alleged pre-
16 and post-shift report preparation and (2) alleged time shaving by the use of scheduled
17 time. Both of these theories of recovery have a high degree of risk because they depend
18 on Class Member estimates of the frequency and are testimony dependent.
- 19 • A reasonably estimated exposure for unpaid wages due to regular rate errors was
20 calculated, with the assistance of an expert, to be approximately **\$1,142.00**. However,
21 with the risk factor discounts for certification and liability proof, the value of that claim is
22 estimated by Plaintiff's counsel to be approximately **\$479.64**, assuming certification
23 probability of 70% and merits success at 60%. While regular rate issues are usually
24 potent claims due to the associated penalties, this issue impacted less than 10% of the
25 Class, rendering the impact negligible.
- 26 • A reasonably estimated exposure for rest break violations over the class period was
27 calculated at **\$191,624.60**, but with chances of certification and proof of liability (20%
28 and 20% respectively) for a risk-adjusted exposure of **\$7,644.98**. Plaintiff assumes that
100% of the Class missed one rest break per week due to the demands of work
assignments, an aggressive assumption.
- A reasonably calculated exposure for meal break violations over the class period was
calculated at **\$145,753.75**, with chances of certification and liability risks (40% and 40%
respectively) resulting in a risk-adjusted exposure of **\$23,320.60**. This exposure is based
upon facial violations, offset by premiums. The use of facial violations is subject to
challenge because Defendant could potentially show that many Class Members made
decisions about when and how to take meal periods that created the appearance of
violations in the face of free choice.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties
were estimated to be approximately **\$22,275.00** and **\$30,206.16**, respectively, on
maximum exposures of **\$185,625.00** and **\$251,718.00**, respectively (with certification
and merits success chances of 40% and 30% respectively, based on the off-the-clock

theory of unpaid wages).

- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$90,937.61**, excluding PAGA.⁸
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,124,500.00**, but a risk adjusted value of **\$224,900.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

19. The \$275,000.00 settlement here is fully supportable. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are lower than conventional wisdom holds. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification or as part of a classwide settlement agreement.” See, Second Interim Report, at 5 (emphasis added).⁹ That “*or*” is significant. The certification rates identified in the study of less than 25% includes **both** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. (Leviant Decl., ¶ 19.) The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. (Leviant Decl., ¶ 19.) If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is zero dollars. (*Id.*) The recovery is

⁸ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

⁹ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last viewed March 12, 2024).

roughly **14%** of the maximum plausible recovery (estimated to be approximately **\$1,958,623.55**, including PAGA), which falls within the expected outcome under the likelihood of success metric.¹⁰ (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$396,780.55, with no risk reduction), excluding penalties and interest; the settlement is about 69% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.¹¹

20. To the best of my knowledge there are no other like claims asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or otherwise, and who thus might be prejudiced by dismissal of the Action.

THE EXPERIENCE OF CLASS COUNSEL

21. Moon Law Group, PC (former named Moon & Yang, APC), has been engaged in the practice of employment and labor law for almost a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have handled many hundreds of wage-related class actions between them. The firm and its lawyers have successfully settled more than 300 class action matters during that time span. The firm and its lawyers have also tried both bench and jury trials (representing both plaintiffs and defendants) relating to employment matters. Moon Law Group, PC, is routinely appointed lead or co-lead class counsel (or counsel for representative plaintiffs in FLSA

¹⁰ See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

¹¹ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 representative actions) in federal and state courts in California and elsewhere, by way of motion for
2 class certification or motion for settlement approval. I personally participated in the litigation of more
3 than 500 class actions since 1999, and more than 90 percent of those cases were wage and hour matters.
4 While I have not maintained a comprehensive list, I have been appointed as lead or co-lead counsel in
5 many hundreds of class actions.

6 22. Mr. Moon received a B.A. in History in 1998 from UCLA. He received his J.D. from
7 Loyola Marymount Law School in 2006. He became an Active Member of the State Bar of California in
8 June 2007 and has been an Active Member in good standing continuously since then. Mr. Moon's
9 billing rate is \$950 per hour.

10 23. Mr. Moon co-founded Moon & Yang, APC, now Moon Law Group, PC, in March
11 2010. Since that time, Mr. Moon built his practice to have an emphasis on employment and related
12 civil litigation cases. In fact, the practice is focused almost exclusively on advocating for the rights of
13 employees in wage-and-hour litigation through class and representative actions. Moon Law Group, PC
14 is presently class counsel for many dozens of other putative wage-and-hour class and representative
15 action lawsuits pending in various state and federal jurisdictions throughout California. Moon Law
16 Group, PC has also successfully settled hundreds of wage-and-hour cases; tried both bench and jury
17 trials in employment-related matters, representing both plaintiffs and defendants; and been appointed
18 lead or co-lead class counsel in numerous federal and state courts in California. The following is a list
19 of some of the firm's class action settlements that have received preliminary and final approval: *Mark*
20 *Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20, 2018) No. CV 17-6433 JVS(JCGx),
21 2018 WL 6616659 (class size approx. 2,650; lead counsel) (In approving my \$650 hourly rate, the
22 Court found: "Class Counsel's declarations show that the attorneys are experienced and successful
23 litigators. Other courts have approved the attorneys' current rates for the Moon & Yang, APC
24 attorneys." (*Id.* at *10.); *Sison v. Cha Hollywood Medical Center, L.P.*, LASC BC6441 29 (class size
25 approx. 2,100; co-counsel); *Jones v. Fitness Alliance, LLC*, Riverside Superior Court PSC1404079
26 (class size approx. 1,000; lead counsel); *Gomez v. H Mart Companies, Inc.*, LASC BC671525 (class
27 size approx. 2,500; co-counsel); *Montoya v. Golden 1 Credit Union*, Sacramento Superior Court 34-
28 2018-00228252 (class size approx. 1,900; lead counsel); *Campa v. Bloomingdeals, Inc.*, LASC

BC700366 (class size approx. 1,500; lead counsel); *Black v. Mission Healthcare Services, Inc.*, LASC 19STCV04602 (class size approx. 1,000; lead counsel); *Onofre v. Caitac Garment Processing, Inc.*, LASC BC702283 (class size approx. 750; lead counsel); *Martinez v. Bail Hotline Bail Bonds, Inc.*, LASC BC700131 (class size approx. 173; lead counsel); *Jones v. Citiguard, Inc.*, LASC BC664890 (class size approx. 587; lead counsel); *Slaughter v. ACA Security Stems, LP*, LASC BC699137 (class size approx. 300; lead counsel); *Taylor v. Sherman's Delicatessen & Bakery, LLC*, LASC BC722765 (class size approx. 515; lead counsel); *Vertti v. Bagcraft Papercon III, LLC*, LASC 19STCV12729 (class size approx. 260; lead counsel); *Rodriguez v. Rossmoyne, Inc.*, LASC BC699137 (class size approx. 220; lead counsel); *Vargas v. AMS Paving, Inc.*, LASC BC722767 (case size approx. 260; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.*, LASC BC709630 (class size approx. 210; lead counsel); *Lagos v. ThyssenKrupp Elevator Corporation*, LASC BC682972 (\$750,000 for 79 Class Members; lead counsel); *Aparicio v. Lineage Logistics, LLC*, LASC BC722764 (class size approx. 155; lead counsel). Mr. Moon's experience is and has been invaluable in assessing the reasonableness of settlements such as the one at issue here.

24. Aside from myself and supervising Partner Kane Moon, attorneys who worked on this matter include Mariam Ghazaryan and Sandy Pham:

(a) Mariam Ghazaryan:

- 1) Mariam Ghazaryan is an associate at Moon Law Group, PC. Ms. Ghazaryan's practice is focused on labor and employment class action lawsuits involving various violations of California and federal labor laws.
- 2) Ms. Ghazaryan received her law degree from the Southwestern School of Law.
- 3) Ms. Ghazaryan was admitted to the California bar in December 2021.
- 4) Ms. Ghazaryan's billing rate is \$700 per hour.

(b) Sandy Pham

- 1) Sandy Pham is an associate at Moon Law Group, PC. Ms. Pham's practice is focused on labor and employment class action lawsuits involving various violations of California and federal labor laws.

- 2) Ms. Pham received her law degree from the Southwestern School of Law.
- 3) Ms. Pham was admitted to the California bar in December 2023.
- 4) Ms. Pham's billing rate was \$500 per hour.

25. I received my undergraduate degree from Occidental College. Graduating cum laude, I majored in economics and received a "minor" emphasis in mathematics. Along with my study of economics and mathematics, I also had an emphasis in physics. This combination of scientific and economic education has been of assistance during my litigation of complex civil actions. I received my Juris Doctor degree from the University of Southern California Law Center.

26. My experience relevant to class action litigation includes the following:

- (a) I have been involved in the litigation of class actions since 1997, working as a law clerk on a number of class action matters. Since 1999, I have participated as an attorney in the litigation of hundreds of class actions, in California Superior Courts and in federal courts in California, Illinois, and Louisiana. I emphasized litigation of wage and hour class actions beginning in 2005, but I have focused on complex litigation of different types at all times since 1999.
- (b) Dating back to 1999, some of the earliest cases in which I contributed to my then-firm's efforts as co-lead/liaison counsel include:
 - i. *In re Paradise Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC130375; and,
 - ii. *In re Lincoln Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC133643.
- (c) I have litigated contested class certification motions multiple times, prevailing on many. Examples include the following:
 - 1) In 2023, I certified a rest break claim against SMS Transportation, in the matter of *Beard v. SMS Transportation*. Rest break claims are notably difficult to certify.

- 1 2) In 2023, I certified a regular rate claim against Downtown Women’s
2 Center, in the matter of *Evans v. Downtown Women’s Center*.
- 3 3) In 2018, I certified wage and hour claims against Home Depot, in the
4 matter of *Utne v. Home Depot*, in the United States District Court,
5 Northern District of California. The contested certification resulted in a
6 certified class of roughly 140,000 individuals.
- 7 4) In 2019, I certified a Fair Credit Reporting Act claim related to
8 employment background checks against Wal-Mart Stores, Inc., in the
9 matter of *Pitre v. Wal-Mart Stores, Inc.*, in the United States District
10 Court, Central District of California. The contested certification
11 resulted in a certified class of over 5,000,000 individuals.
- 12 5) In 2018, I fully briefed a contested class certification motion in the
13 matter of *Harelson v. U.S. Aviation*, in the United States District Court,
14 Northern District of California. After certification was fully briefed, the
15 matter successfully settled.
- 16 6) In 2013, I certified an investment fraud suit, in the matter of *Larsen v.*
17 *Coldwell Banker*, in the United States District Court, Central District of
18 California.
- 19 7) In 2012, I fully briefed a contested class certification motion, in the
20 wage and hour matter of *Gillings v. Time Warner*, in the United States
21 District Court, Central District of California. In that matter, summary
22 judgment was granted against my clients and the certification motion
23 was deemed moot. I appealed to the Ninth Circuit and obtained a
24 reversal of the District Court’s decision. Upon remand, the matter
25 settled.
- 26 8) In approximately 2011, I fully briefed a contested class certification
27 motion, in the wage and hour matter of *Gomez v. Lincare, Inc.*, in the
28

1 Superior Court of California, County of Orange. Certification was
2 denied. The result was appealed, and a partial reversal was obtained.

3 9) In approximately 2008, I fully briefed a contested class certification
4 motion, in the wage and hour matter of *Ghazaryan v. Diva Limousine,*
5 *LTD.*, Superior Court of California, County of Los Angeles.
6 Certification was denied. I appealed, handling all briefing, and, in
7 *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009), pet.
8 for rev. denied, I obtained a decision directing the trial court to certify
9 the class. *Ghazaryan* is now widely cited, including by the California
10 Supreme Court, as a comprehensive source for the standards applied to
11 certification motions in California.

12 10) In approximately 2006, I fully briefed a contested class certification
13 motion, in the wage and hour matter of *Laliberte v. Pacific Mercantile*
14 *Bank*, Superior Court of California, County of Orange. Certification
15 was denied. I appealed, handling all briefing. The published opinion of
16 *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.
17 denied, pet. for cert. den. resulted, and I petitioned for a Writ of
18 Certiorari related to certification due process issues.

19 11) In approximately 2008, I assisted with briefing of a contested class
20 certification motion, in the wage and hour matter, against the
21 Automobile Club of Southern California (AAA). A class was certified
22 and the matter tried.

23 (d) I have prosecuted appeals in more than 20 class action matters alone, arguing
24 before the United States Court of Appeals for the Ninth Circuit Court and
25 several of California's Courts of Appeal. I have taken several appeals through
26 to Petitions for Writs of Certiorari to the United States Supreme Court. In
27 connection with the appeals I have handled, I have participated in appeals
28

1 resulting in decisions concerning or relating to class actions or wage and hour
2 issues. Among others, those include:

- 3 i. *Camp v. Home Depot, U.S.A., Inc.*, 84 Cal. App. 5th 638 (October
4 24, 2022), *rev. granted* (February 1, 2023);
- 5 ii. *Donohue v. AMN Services, Inc.*, (February 25, 2021) (amicus
6 counsel)
- 7 iii. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169
8 (9th Cir. Jan. 29, 2019), *pet. for rehearing and pet. for en banc*
9 *rehearing den.*;
- 10 iv. *Troester v. Starbucks Corporation*, 5 Cal. 5th 829 (2018), *as*
11 *modified on denial of reh'g* (Aug. 29, 2018);
- 12 v. *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir.
13 2014);
- 14 vi. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524
15 (2009), *pet. for rev. denied*;
- 16 vii. *Laliberte v. Pacific Mercantile Bank*, 147 Cal. App. 4th 1 (2007),
17 *rev. denied, pet. for cert. denied*;
- 18 viii. *Alvarez v. May Dept. Stores Co.*, 143 Cal. App. 4th 1223 (2006),
19 *rev. denied, pet. for cert. denied*;
- 20 ix. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal. App. 4th 1497 (2008),
21 *rev. denied*;
- 22 x. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741 (9th Cir.
23 2000), *pet. for cert. denied*;
- 24 xi. *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011)
25 (amicus counsel);
- 26 xii. *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357
27 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB
28 matter is of particular note, as it is at the center of a dispute

1 regarding the interplay between the Federal Arbitration Act (FAA)
2 and two labor relations laws, the National Labor Relations Act
3 (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue
4 have been accepted by the United States Supreme Court.

5 (e) I was the lead appellate author in a matter before the California Supreme Court
6 that generated substantial interest in the field of wage and hour litigation. That
7 matter, *Troester v. Starbucks Corporation*, resolved a significant issue of
8 whether, under California law, a *de minimis* defense exists to the employer's
9 obligation to pay all wages for all compensable time worked by an employee.

10 (f) I was the lead appellate counsel in a matter before the California Court of
11 Appeal (Sixth Appellate District) that generated substantial interest in the field
12 of wage and hour litigation. That matter, *Camp v. Home Depot, U.S.A., Inc.*,
13 held that prior jurisprudence erroneously concluded that, under California law,
14 underpayment of wages as a result of rounding of time clock punches is lawful
15 so long as the rounding was neutral on its face and as applied. *Camp* is now
16 pending before the California Supreme Court but remains citable as authority
17 pursuant to an Order of the California Supreme Court.

18 (g) In addition to my work on complex litigation matters and class actions, I have
19 authored published articles and columns on issues related to class actions and
20 other litigation issues, including:

21 i. H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J.
22 18 (2006), at <http://blj.ucdavis.edu/article.asp?id=636> (May 1,
23 2006);

24 ii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Where Troester Stops*
25 *Not Even Troester Knows*, DAILY JOURNAL (Los Angeles), July 2,
26 2019;

27 iii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Unaccounted Time:*
28 *Reading the Tea Leaves of Troester*, DAILY JOURNAL (Los Angeles),

- September 12, 2018;
- iv. Dennis F. Moss and H. Scott Leviant, *Class Actions: One step forward after two steps back*, DAILY JOURNAL (Los Angeles), January 11, 2012;
- v. H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY JOURNAL (Los Angeles), December 28, 2010;
- vi. H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los Angeles), April 21, 2010;
- vii. H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class Action Defense?*, FORUM, January/February 2009
- viii. H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-2010 (Ongoing series);
- ix. H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;
- x. H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los Angeles), December 2, 2009;
- xi. H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles), April 15, 2008;
- xii. H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los Angeles), May 4, 2007;
- xiii. H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;
- xiv. H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid Wage Cases*, FORUM, January/February 2008;
- xv. H. Scott Leviant, et al., *Electronic Evidence: No Longer an Optional Element in a Comprehensive Litigation Plan*, ADVOCATE, April 2006;

xvi. H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some considerations for effective RICO pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

- (h) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (<http://www.thecomplexlitigator.com>). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice, with a primary emphasis on wage and hour litigation issues. Through my blog, I have also, on occasion, published podcasts of round table discussions with preeminent members of the wage and hour practice bar on both the plaintiff and defense sides. My blog has been cited to the California Supreme Court in at least one Petition for Review. The Complex Litigator has been in existence since 2008, having outlasted many other legal blogs, and it has a unique readership that numbers in the tens of thousands.
- (i) I have also lectured on issues related to class actions and complex litigation, including the following educational seminars:
- i. *Strategies for Settlement of Individual and Wage & Hour Class Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation Conference (December 16, 2011)
 - ii. *The Year in Review – Staying Abreast of Current Cases*, Consumer Attorneys of San Diego Class Action Symposium (October 14, 2011)
 - iii. *Concepcion v. AT&T and Derivative Wage & Hour Claims*, Bridgeport's Mid Year Wage & Hour Litigation Conference (June 3, 2011)
 - iv. *Advanced Principles: UCL Remedies and Defenses*, 20th Annual Golden State Antitrust and Unfair Competition Law Institute (October 21, 2010)

- v. *Refining Your Wage and Hour Practice*, 2010 CELA Annual Conference (October 2, 2010)
- vi. *Word v. WordPerfect Software, Tips, Tools and Tricks: Legal Technology for Plaintiffs Employment Lawyers* (September 30, 2010)
- vii. *California's 17200 -- Its Use and Abuse*, Federalist Society (May 19, 2010)
- viii. *20 Tips for Successful Navigation of e-Discovery Requirements*, Los Angeles County Bar Association's Thirtieth Annual Labor and Employment Law Symposium (March 31, 2010)
- ix. *Social Networking for Lawyers: A Roadmap to Success*, Los Angeles County Bar Association's 2nd Annual two-day 2009 Small Firm and Solo Practitioners Conference: MISSION POSSIBLE (June 25, 2009)
- x. *A Seminar Overview of the Current State of Employment Law*, The Westchester/LAX/Marina Del Rey Chamber of Commerce (February 23, 2006)

(j) I served three consecutive years as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I worked to preserve the right of California's consumers and employees to bring proposed class actions. For example, I provided assistance to CAOC in its successful effort to defeat AB 298, which would have substantially impaired the ability of plaintiffs to prosecute class actions in California. More recently, on behalf of CAOC, I co-authored several requests for publication of unpublished class action decisions, including one such request in *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co.*, Case No. 09-2843, the California Supreme Court matter entitled *Californians for Disability Rights v.*

1 *Mervyn's, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal
2 matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489
3 (2011).

4 27. My current contingent billing rate is consistent with my practice area, legal market and
5 accepted hourly rates:

- 6 (a) In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
7 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
8 reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of
9 wage-and-hour class actions that I have frequently opposed when litigating wage-
10 and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year
11 - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th
12 Year - \$435, 8th Year - \$455.
- 13 (b) In 2009 I was retained as appellate counsel in the appeal of a denial of class
14 certification. For the specialized work on that appeal, I charged an hourly rate of
15 \$650.00 per hour, a rate the hiring co-counsel accepted.
- 16 (c) In the wage and hour class action *Savaglio, et al, v. WalMart*, Alameda County
17 Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for
18 Attorneys' Fees, filed September 10, 2010, the Court approved hourly rates from
19 \$435 per hour for four years of experience to \$875 per hour for 51 years of
20 experience.
- 21 (d) The 2024-25 Adjusted Laffey Matrix states that an attorney with 20 or more years
22 experience can reasonably charge \$1,141 per hour.
23 <http://www.laffeymatrix.com/see.html>.¹² That rate is derived from the
24 Washington, D.C. area and requires a costs of living evaluation for use in Los
25 Angeles. Using federal statistics for average attorney salaries, attorney pay is 4.9%
26 lower in Los Angeles, compared to Washington, D.C., indicating a 4.9%

27
28 ¹² Last viewed October 15, 2024.

downward adjustment to the Laffey Matrix may be appropriate. <https://www.bls.gov/oes/current/oes231011.htm>.¹³ However, using federal employee pay tables, federal employee wages are equal when Los Angeles is compared to Washington, D.C., indicating no adjustment to the Laffey Matrix is appropriate. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>.¹⁴ And, using Schedule 9 of 5 U.S.C. § 5332, there is a 3% differential favoring Los Angeles. Thus, something in the range of a 4.4% locality reduction to a 3.0% locality increase appears appropriate here. Thus, applying an adjustment factor of 0.0%, the locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 20 or more years of experience is \$1,141. The complete Adjusted Laffey Matrix is set forth below.

- (e) The full 2024-2025 Adjusted Laffey Matrix provides for the following hourly rates for paralegal/law clerks and attorneys falling into various ranges of years of experience:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20+
6/01/24-5/31/25	1.080182	\$258	\$473	\$581	\$839	\$948	\$1141

- (f) I have been selected to Super Lawyers from 2012-2025, achieving that professional recognition for more than a decade. I was selected for the Rising Stars edition of Super Lawyers in 2009.

- (g) Based upon my practice area, geographic market, experience, including all of the above information, reputation, and generally accepted hourly rates, my current, regular hourly billing rate is now \$975.00, which is well below the presumptively appropriate hourly rate of \$1,141 for attorneys with 20 or more years of experience.

¹³ Last viewed January 30, 2024.

¹⁴ Last viewed January 30, 2024.

1
2 REASONABLENESS OF THE REQUESTED FEE AWARD

3 28. When this case was taken on a contingent fee basis, with the firm agreeing to assume
4 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
5 Moon Law Group, PC, paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express
6 mail charges. There was never a guarantee that Moon Law Group, PC, would recoup those expenditures.
7 The firm took on this case, which necessarily required the firm to forego other opportunities, given finite
8 resources to devote to cases.

9 29. Because of the uncertainty of the outcome in this and other wage and hour litigation
10 undertaken by Moon Law Group, PC, we took this case with the expectation that a risk enhancement,
11 either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
12 available if we prevailed. This expectation stems from the fact that many cases we undertake as putative
13 class actions do not resolve successfully.

14 30. Class Counsel's experience in employment class actions was integral in evaluating the
15 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
16 Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the
17 rapidly evolving substantive law (state and federal), as well as the procedural law of class action
18 litigation.

19 31. In the past 5 years, Moon Law Group, PC, has settled hundreds of wage & hour class
20 actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it
21 has been the experience at Moon Law Group, PC, that attorney fee awards of one-third of a common
22 settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek
23 no more than one third of the settlement amount in fees. This is consistent with common practice,
24 consistent with Ninth Circuit practice, consistent with California law approving the percentage of the
25 fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503
26 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals
27 performing work for Plaintiff before and after the filing of this matter. That work includes:
28

- (a) Numerous interviews with the client, and review of documents provided by Plaintiff;
- (b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;
- (c) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;
- (d) Review of the first and second amended complaints, and finalization of those complaints;
- (e) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through informal discovery;
- (f) Contacting witnesses;
- (g) Review of data and documents produced by Defendant;
- (h) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (i) Research and preparation of Plaintiff's mediation brief;
- (j) Attendance at mediation;
- (k) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments;
- (l) Preparation of the initial motion for preliminary approval and multiple revisions thereafter;
- (m) Monitoring the administration process, including data collection issues;
- (n) Drafting the motion for final approval; and
- (o) Submitting materials to the LWDA for PAGA approval.

32. The recorded lodestar incurred by Moon Law Group, PC, is **\$90,527.50** to date, based on the firm's contemporaneous time recording software, and I did not bill for a significant amount of time related to case management activities (I estimate that I did not bill for approximately 5 hours of time reviewing case management correspondence, reviewing mediation data, and numerous other

activities, for an unbilled lodestar of approximately \$4,875). The breakdown of work by attorney is as follows:

Attorney	Time (Hours)	Billing Rate	Total
H. Scott Leviant	32.7	\$975	\$31,882.50
Kane Moon	25.8	\$950	\$24,510.00
Mariam Ghazaryan	20.3	\$700	\$14,210.00
Lilit Tunyan	18.5	\$600	\$11,100.00
Sandy Pham	15.1	\$500	\$7,550.00
Sophia Tu (Paralegal)	5.1	\$250	\$1,275.00
	117.5	Total:	\$90,527.50

That lodestar would be approximately \$4,875 higher if I included the estimated time that I did not include in by billing entries. I anticipate that Class Counsel will spend an additional five hours on this matter, appearing at the final approval hearing, resolving any post-approval issues that may arise, and appearing at a final accounting hearing. I will incur most or all of that time myself, including time devoted to preparation of the motion for final approval and working with the administrator to resolve any issues and prepare a final declaration about the notice process, for an estimated additional lodestar of \$9,750.00. Added to the lodestar to date, I anticipate that Class Counsel's lodestar will be no less than **\$100,277.50**. Class Counsel requests **\$91,666.67** in attorneys' fees (33 1/3% of the GSA, including the amount triggered by the escalator clause), as authorized under the Agreement, and this represents a multiplier of approximately **0.91**, which falls well within of the range of commonly approved lodestar multipliers, when compared to the recorded, unbilled, and estimated lodestar of **\$100,275.50**. It has long since been established that multipliers between two and four are common and reasonable for a lodestar crosscheck. A lodestar multiplier of below 1.0 is less than commonly approved lodestar multipliers and confirms that the proposed Settlement falls within a range of reasonableness. Class Counsel expended a prudent amount of time to achieve the excellent result. Class Counsel has also incurred costs in this matter of **\$19,075.43**, as set forth in **Exhibit "2"**. Exhibit 2 includes the estimated future costs for filing

1 the Motion for Final Approval.¹⁵

2
3 THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
4 INCENTIVE AWARD

5 33. Here, Plaintiff seeks a Service Payment of up to **\$7,500.00**. This amount is very
6 reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing
7 a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by
8 Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this
9 Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided
10 exhaustive information to counsel before the filing of this matter; assisted with the settlement process
11 (which included conferring with counsel during the preparation of Plaintiff's mediation brief); and,
12 regularly conferred with counsel regarding the case whenever questions arose. It should also be
13 emphasized that Plaintiff is deaf, and his many discussions with Plaintiff's counsel required the
14 assistance of a translator to assist him during calls. Plaintiff's Declaration also confirms that Plaintiff was
15 an active participant in the filing and settlement of this case.

16
17 THE THIRD-PARTY ADMINISTRATOR QUALIFICATIONS AND STATEMENT OF NO
18 CONFLICTS OR AFFILIATION

19 34. The parties have agreed that administration will be handled by a third-party
20 administrator. In counsel's experience as class counsel in similar wage-and-hour actions with a similar
21 number of employees, Phoenix Settlement Administrators, is fully capable of administering the
22 settlement at a competitive and reasonable cost and should be approved by the Court to administer the
23 settlement notice process. Phoenix Settlement Administrators was selected because it submitted a low
24 bid in the amount of **\$11,832.79** for administration services, below the estimated amount of \$15,000.
25 Phoenix Settlement Administrators has also provided a declaration confirming its experience and its
26

27 ¹⁵ The Settlement provides that Defendant will not oppose costs requested in any amount up to
28 \$17,500.00, so Defendant retains the right, if it elects to do so, to oppose the costs requested in excess of
that amount.

1 implementation of measures designed to protect Class Member data and Class Settlement funds.
2 Finally, this firm has no relationship with Phoenix Settlement Administrators, other than as a client
3 retaining a vendor of services via an arms-length transaction. We have no ownership interest in
4 Phoenix Settlement Administrators.

5
6 EXHIBITS

7 35. As noted above, a true and correct copy of the CLASS ACTION AND PAGA
8 SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit “1.”** The
9 Settlement includes Exhibit A (the “Notice”).

10 36. Attached hereto as **Exhibit “2”** is a true and correct copy of Class Counsel’s litigation
11 costs incurred as of date.

12 37. Attached hereto as **Exhibit “3”** is a true and correct copy of the notice of the settlement
13 provided to the LWDA.

14
15 PAGA SETTLEMENT NOTIFICATION TO DIR

16 38. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement
17 through the online submission portal.

18
19 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
20 true and correct. Executed December 13, 2024, at Los Angeles, California.

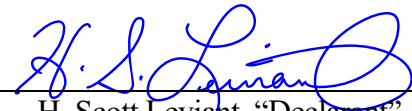
21
22 
23 H. Scott Leviant, “Declarant”

Exhibit “1”

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Attorneys for Plaintiff Sherif Fathy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHERIF FATHY, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

JAY NOLAN COMMUNITY SERVICES,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21STCV38798

CLASS ACTION

[Hon. Yvette M. Palazuelos, Dept. 9]

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

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

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Sherif Fathy (“Plaintiff”) and defendant Jay Nolan Community Services, Inc (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Sherif Fathy, individually, and on behalf of all others similarly situated v. Jay Nolan Community Services, Inc*, Case No.: 21STCV38798, initiated on October 20, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all individuals who worked for Defendant in California as hourly employees during the PAGA Period.
- 1.5. “Class” means all individuals who have worked for Defendant in California as hourly employees during the Class Period, excluding those individuals who have entered into (i) arbitration agreements or (ii) agreements releasing the claims alleged by Plaintiff.
- 1.6. “Class Counsel” means Moon Law Group, PC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security

number, and number of Class Period Pay Periods and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee), excluding those individuals who have entered into (i) arbitration agreements or (ii) agreements releasing the claims alleged by Plaintiff.

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address (“NCOA”) database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation unless otherwise agreed by the Parties, attached as **Exhibit A** and incorporated by reference into this Agreement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend this Agreement, and the revised Class Notice shall be incorporated herein in place of the original Exhibit A.

1.12. “Class Period” means the period from October 20, 2017 through the date that a preliminary approval order is entered in the Action.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

- 1.16. “Defendant” means named Defendant Jay Nolan Community Services, Inc.
- 1.17. “Defense Counsel” means Epstein Becker & Green, P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its order granting final approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the motion for final approval of the Settlement.
- 1.21. “Gross Settlement Amount” means \$275,000.00 which is the total amount Defendant agrees to pay to resolve this Action except as provided in Paragraphs 3.1 and 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.
- 1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Pay Periods worked during the Class Period.
- 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. “Non-Participating Class Member” means any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.30. “PAGA Period” means the period from October 20, 2020, through the date that a preliminary approval order is entered in the Action.
- 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.32. “PAGA Notice” means Plaintiff’s October 15, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,250.00) and the 75% to LWDA (\$21,750.00) in settlement of PAGA claims.
- 1.34. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.
- 1.35. “Pay Period” means any pay period during which a Class Member or Aggrieved Employee worked for Defendant for at least one day, during the Class Period or PAGA Period, as applicable.
- 1.36. “Plaintiff” means Sherif Fathy, the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s order granting preliminary approval of the

Class portion of the Settlement.

1.38. “Preliminary Approval Order” means the proposed order granting preliminary approval of the Class portion of the Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41. “Released Parties” means: Defendant and its subsidiaries and/or parent corporations, predecessors and successors, as well as their divisions, affiliates, past and present officers, owners, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, private investigators and each and all of the foregoing persons’ heirs, assigns, executors, administrators and successors, or any of them, or anyone claiming by, through, under or on behalf of any of them.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

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

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

2. RECITALS.

2.1. On October 20, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages (Cal. Lab.

Code §§ 204,1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code §2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*).

On February 7, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for violation of the Private Attorneys General Act (“PAGA”). The Parties will file a Second Amended Complaint, adding an additional cause of action under the FLSA. The Second Amended Complaint will be the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On February 8, 2023, the Parties participated in an all-day mediation presided over by experienced wage and hour mediator, Eve Wagner, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, electronic time and pay records, policy documents, and data about the class. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

2.5. The Court has not granted class certification.

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

1 affected by the Settlement.

2
3 **3. MONETARY TERMS.**

4 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
5 Defendant promises to pay \$275,000.00 and no more as the Gross Settlement Amount
6 and to separately pay any and all employer payroll taxes owed on the Wage Portions
7 of the Individual Class Payments. Defendant has no obligation to pay the Gross
8 Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 4.3 of
9 this Agreement. The Administrator will disburse the entire Gross Settlement Amount
10 without asking or requiring Participating Class Members or Aggrieved Employees to
11 submit any claim as a condition of payment. None of the Gross Settlement Amount
12 will revert to Defendant.

13 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
14 deduct the following payments from the Gross Settlement Amount, in the amounts
15 specified by the Court in the Final Approval:

16 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative
17 of not more than \$7,500.00 (in addition to any Individual Class Payment and
18 any Individual PAGA Payment the Class Representative is entitled to receive
19 as a Participating Class Member). Defendant will not oppose Plaintiff's request
20 for a Class Representative Service Payment that does not exceed this amount.
21 As part of the motion for Class Counsel Fees Payment and Class Litigation
22 Expenses Payment, Plaintiff will seek Court approval for any Class
23 Representative Service Payments no later than 16 court days prior to the Final
24 Approval Hearing. If the Court approves a Class Representative Service
25 Payment less than the amount requested, the Administrator will retain the
26 remainder in the Net Settlement Amount. The Administrator will pay the Class
27 Representative Service Payment using IRS Form 1099. Plaintiff assumes full
28 responsibility and liability for employee taxes owed on the Class

Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be \$91,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$17,500.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$15,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration expenses are less, or the Court approves payment less than \$15,000.00 the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked by all Participating Class Members during the Class Period and (b)

1 multiplying the result by each Participating Class Member's Pay Periods.

2 3.2.4.1. Tax Allocation of Individual Class Payments. 25% of each

3 Participating Class Member's Individual Class Payment will be
4 allocated to settlement of wage claims (the "Wage Portion"). The Wage
5 Portions are subject to tax withholding and will be reported on an IRS
6 W-2 Form. 10% of each Participating Class Member's Individual Class
7 Payment will be allocated to settlement of claims for interest for which
8 1099 forms shall be issued. The remaining 65% of each Participating
9 Class Member's Individual Class Payment will be allocated to
10 settlement of claims for penalties and reimbursements for which 1099
11 forms shall be issued (the "Non-Wage Portion"). The Non-Wage
12 Portions are not subject to wage withholdings and will be reported on
13 IRS 1099 Forms. Participating Class Members assume full
14 responsibility and liability for any employee taxes owed on their
15 Individual Class Payment.

16 3.2.4.2. Effect of Non-Participating Class Members on Calculation of

17 Individual Class Payments. Non-Participating Class Members will not
18 receive any Individual Class Payments. The Pay Periods of Non-
19 Participating Class Members are not included in the calculation of
20 payments to Participating Class Members and therefor have no effect
21 on the calculation of Individual Class Payments paid from the Net
22 Settlement Amount.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
24 \$29,000.00 to be paid from the Gross Settlement Amount, with 75%
25 (\$21,750.00) allocated to the LWDA PAGA Payment and 25% (\$7,250.00)
26 allocated to the Individual PAGA Payments.

27 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
28 dividing the amount of the Aggrieved Employees' 25% share of PAGA

Penalties \$7,250.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2.If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099-MISC Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Class and Aggrieved Employee Counts. Based on a review of its records, Defendant estimates there are 337 Class Members who worked during the period from October 20, 2017 through February 8, 2023. Defendant also estimates that there were approximately 813 Aggrieved Employees who worked during the period from October 20, 2020 through February 8, 2023.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel

will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 75 days after the Effective Date. If an appeal is filed, Defendant shall fund the settlement no later than 30 days after the date the judgment is affirmed, in whole or in material part, and no longer subject to further appeal.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class

1 Payment and the Individual PAGA Payment. Before mailing any checks, the
2 Settlement Administrator must update the recipients' mailing addresses using
3 the NCOA database.

4 4.4.2. The Administrator must conduct a Class Member Address Search for all other
5 Class Members whose checks are returned undelivered without a United States
6 Postal Service ("USPS") forwarding address. Within 7 days of receiving a
7 returned check the Administrator must re-mail checks to the USPS forwarding
8 address provided or to an address ascertained through the Class Member
9 Address Search. The Administrator need not take further steps to deliver
10 checks to Class Members whose re-mailed checks are returned as undelivered.
11 The Administrator shall promptly send a replacement check to any Class
12 Member whose original check was lost or misplaced, requested by the Class
13 Member prior to the void date.

14 4.4.3. For any Class Member whose Individual Class Payment check or Individual
15 PAGA Payment check is uncashed and cancelled after the void date, the
16 Administrator shall transmit the funds represented by such checks to the
17 California Controller's Unclaimed Property Fund in the name of the Class
18 Member thereby leaving no "unpaid residue" subject to the requirements of
19 California Code of Civil Procedure § 384(b).

20 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
21 shall not obligate Defendant to confer any additional benefits or make any
22 additional payments to Class Members (such as 401(k) contributions or
23 bonuses) beyond those specified in this Agreement.

24
25 **5. RELEASES OF CLAIMS.**

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

1 5.1. Plaintiff's Release.

2 5.1.1. Scope of Plaintiff's Release. Plaintiff and his or her respective former and
3 present spouses, representatives, agents, attorneys, heirs, administrators,
4 successors, and assigns generally, release and discharge Released Parties from
5 all claims, transactions, or occurrences that occurred during the Class Period,
6 including, but not limited to: (a) all claims that were, or reasonably could have
7 been, alleged, based on the facts contained, in the Operative Complaint and (b)
8 all PAGA claims that were, or reasonably could have been, alleged based on
9 facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or
10 ascertained during the Action and released under 5.2, below ("Plaintiff's
11 Release"). Plaintiff's Release does not extend to any claims or actions to
12 enforce this Agreement, or to any claims for vested benefits, unemployment
13 benefits, disability benefits, social security benefits, workers' compensation
14 benefits that arose at any time, or based on occurrences outside the Class
15 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different
16 from, or in addition to, the facts or law that Plaintiff now knows or believes to
17 be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
18 effective in all respects, notwithstanding such different or additional facts or
19 Plaintiff's discovery of them.

20 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes
21 of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
22 provisions, rights, and benefits, if any, of Section 1542 of the California Civil
23 Code, which reads:

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

27 5.2. Release by Participating Class Members: Any and all causes of action, claims, rights,
28 damages, penalties, liabilities, expenses, losses, attorneys' fees, and costs, alleged in

any of the pleadings in the Action or alleged in Plaintiff's notice to the LWDA and that could have been asserted in this Action based on the facts alleged in the Action or the LWDA notice, including: (a) any alleged failure by Defendant (1) to pay overtime and double time wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (2) to provide compliant meal periods or compensation in lieu thereof; (3) to provide compliant rest periods or compensation in lieu thereof; (4) to pay minimum wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (5) to timely pay wages during or at the end of employment; (6) to provide compliant wage statements; and (7) to reimburse for necessary business expenses; (b) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, et seq., based on the alleged failures set forth in (a)(1) through (a)(7) above; and (c) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(7) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, violation of the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. sections 201, et seq. (per the requirements of the FLSA, the release of FLSA claims shall apply only to those Class Members who cash their check under this Settlement or otherwise opt-in), or any other federal or state statute, rule and/or regulation (Wage Order 5) during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period.

Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Aggrieved Employees: All Aggrieved Employees – regardless of whether they are also Class Members – are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all rights or claims for statutory penalties, attorneys’ fees, and costs pursuant to PAGA, California Labor Code sections 2698, et seq., arising under the California Labor Code or Wage Orders alleged in any of the pleadings in the Action or alleged in Plaintiff’s notice to the LWDA and that could have been asserted in this Action based on the facts alleged in the Action or the LWDA notice for alleged violations of, inter alia, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, including any alleged failure by Defendant to (1) pay overtime and double time wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (2) provide compliant meal periods or compensation in lieu thereof; (3) provide compliant rest periods or compensation in lieu thereof; (4) pay minimum wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (5) to timely pay wages during or at the end of employment; (6) provide compliant wage statements; (7) maintain accurate records of hours worked and meal periods taken; and (8) reimburse for necessary business expenses.

6. MOTION FOR PRELIMINARY APPROVAL.

Plaintiff shall prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for preliminary approvals, to the extent the Court maintains such a checklist.

6.1. Defendant’s Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, if any

1 such actual or potential conflicts exist. Similarly, if any other pending matter or action
2 asserting claims will be extinguished or adversely affected by the Settlement,
3 Defendant shall prepare and deliver to Class Counsel a signed declaration from
4 Defendant and/or Defense Counsel identifying any other pending matter or action
5 asserting claims that will be extinguished or adversely affected by the Settlement.
6 Alternatively, if such other actions are filed between the execution of this Agreement
7 and the filing of the Motion for Preliminary Approval and become known to
8 Defendant and/or Defense Counsel, Defense Counsel will advise Class Counsel.

9 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
10 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
11 notice, and memorandum in support, of the Motion for Preliminary Approval that
12 includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of
13 the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed order
14 granting preliminary approval and approval of PAGA settlement; (iii) a draft proposed
15 Class Notice; (iv) a signed declaration from the Administrator attaching its "not to
16 exceed" bid for administering the Settlement and attesting to its willingness to serve;
17 competency; operative procedures for protecting the security of Class Data; amounts
18 of insurance coverage for any data breach, defalcation of funds or other misfeasance;
19 all facts relevant to any actual or potential conflicts of interest with Class Members;
20 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or
21 Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and
22 competency to serve and disclosing all facts relevant to any actual or potential
23 conflicts of interest with Class Members, and the Administrator; (vi) a signed
24 declaration from Class Counsel attesting to their competency to represent the Class
25 Members; their timely transmission to the LWDA of all necessary PAGA documents
26 (initial notice of violations [Labor Code § 2699.3(a)], Operative Complaint [Labor
27 Code § 2699(l)(1)], this Agreement [Labor Code § 2699(l)(2)]); and, all facts relevant
28 to any actual or potential conflict of interest with Class Members or the Administrator.

Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement or disclose the existence of any such pending matters. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Plaintiff and Plaintiff Counsel, Plaintiff Counsel will advise Defense Counsel.

6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

1 interest or relationship, financial or otherwise, with the Administrator other than a
2 professional relationship arising out of prior experiences administering settlements.

3 7.2. Employer Identification Number. The Administrator shall have and use its own
4 Employer Identification Number for purposes of calculating payroll tax withholdings
5 and providing reports state and federal tax authorities.

6 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
7 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
8 Regulation § 468B-1.

9 7.4. Notice to Class Members.

10 7.4.1. No later than three (3) business days after receipt of the Class Data, the
11 Administrator shall notify Class Counsel that the list has been received and
12 state the number of Class Members, Aggrieved Employees, and Pay Periods in
13 the Class Data.

14 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
15 days after receiving the Class Data, the Administrator will send to all Class
16 Members identified in the Class Data, via first-class USPS mail, the Class
17 Notice [with Spanish translation, if applicable] substantially in the form
18 attached to this Agreement as **Exhibit A**. The first page of the Class Notice
19 shall prominently estimate the dollar amounts of each Individual Class
20 Payment and/or Individual PAGA Payment payable to the Class Member
21 and/or Aggrieved Employee, and the number of Class Pay Periods and PAGA
22 Pay Periods (if applicable) used to calculate these amounts. Before mailing
23 Class Notices, the Administrator shall update Class Member addresses using
24 the NCOA database.

25 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class
26 Notice returned by the USPS as undelivered, the Administrator shall re-mail
27 the Class Notice using any forwarding address provided by the USPS. If the
28 USPS does not provide a forwarding address, the Administrator shall conduct a

1 Class Member Address Search, and re-mail the Class Notice to the most
2 current address obtained. The Administrator has no obligation to make further
3 attempts to locate or send Class Notice to Class Members whose Class Notice
4 is returned by the USPS a second time.

5 7.4.4. The deadlines for Class Members' written objections, challenges to pay
6 periods, and Requests for Exclusion will be extended an additional 14 days
7 beyond the 45 days otherwise provided in the Class Notice for all Class
8 Members whose notices are re-mailed. The Administrator will inform the Class
9 Member of the extended deadline with the re-mailed Class Notice.

10 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
11 discovers any persons who believe they should have been included in the Class
12 Data and should have received Class Notice, the Parties will expeditiously
13 meet and confer in person or by telephone, and in good faith. in an effort to
14 agree on whether to include them as Class Members. If the Parties agree, such
15 persons will be Class Members entitled to the same rights as other Class
16 Members, and the Administrator will send, via email or overnight delivery, a
17 Class Notice requiring them to exercise options under this Agreement not later
18 than 14 days after receipt of Class Notice, or the deadline dates in the Class
19 Notice, which ever are later.

20 7.5. Requests for Exclusion (Opt-Outs).

21 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion
22 of the Settlement must send the Administrator, by fax, email, or mail, a signed
23 written Request for Exclusion not later than 45 days after the Administrator
24 mails the Class Notice (plus an additional 14 days for Class Members whose
25 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
26 Member or his/her representative that reasonably communicates the Class
27 Member's election to be excluded from the Class portion of the Settlement and
28 includes the Class Member's name, address and email address or telephone

number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final as to the Parties, but a Class Member whose Request for Exclusion is rejected by the Administrator may present a challenge to that determination to the Court.

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

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

7.6. Challenges to Calculation of Pay Periods. Each Class Member shall have 45 days after

the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Pay Periods and/or PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right to correct erroneous Class Data if subsequently discovered), but a Class Member whose Pay Period challenge is rejected by the Administrator may present the same evidence supporting the Pay Period challenge to the Court for review. The Administrator shall promptly provide copies of all challenges to calculation of Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

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

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an

1 additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

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

17 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
18 promptly review on a rolling basis Requests for Exclusion to ascertain their
19 validity. Not later than 5 days after the expiration of the deadline for
20 submitting Requests for Exclusion, the Administrator shall email a list to Class
21 Counsel and Defense Counsel containing (a) the names and other identifying
22 information of Class Members who have timely submitted valid Requests for
23 Exclusion ("Exclusion List"); (b) the names and other identifying information
24 of Class Members who have submitted invalid Requests for Exclusion; (c)
25 copies of all Requests for Exclusion from Settlement submitted (whether valid
26 or invalid).

27 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
28 reports to Class Counsel and Defense Counsel that, among other things, tally

1 the number of: Class Notices mailed or re-mailed, Class Notices returned
2 undelivered, Requests for Exclusion (whether valid or invalid) received,
3 objections received, and challenges to Class Pay Periods and/or PAGA Pay
4 Periods received and/or resolved ("Weekly Report"). The Weekly Reports
5 must include provide the Administrator's assessment of the validity of
6 Requests for Exclusion and attach copies of all Requests for Exclusion and
7 objections received. In addition to the Weekly Reports, the Administrator shall
8 report to the Parties when it has completed the initial distribution of the
9 Individual Class Payments and Individual PAGA Payments to all individuals
10 with valid addresses.

11 7.8.4. Pay Period Challenges. The Administrator has the authority to address and
12 make decisions consistent with the terms of this Agreement on all Class
13 Member challenges over the calculation of Class Pay Periods and/or PAGA
14 Pay Periods. The Administrator's determination of each Class Member's
15 allocation of Class Pay Periods and/or PAGA Pay Periods shall be final as to
16 the Parties (although Defendant shall retain the right to correct erroneous Class
17 Data if subsequently discovered), but a Class Member whose Class Pay Period
18 and/or PAGA Pay Period challenge is rejected by the Administrator may
19 present the same evidence supporting the Class Pay Period and/or PAGA Pay
20 Period challenge to the Court for review.

21 7.8.5. Administrator's Declaration. Not later than 14 days before the date by which
22 Plaintiff is required to file the Motion for Final Approval of the Settlement, the
23 Administrator will provide to Class Counsel and Defense Counsel, a signed
24 declaration suitable for filing in Court attesting to its due diligence and
25 compliance with all of its obligations under this Agreement, including, but not
26 limited to, its mailing of Class Notice, the Class Notices returned as
27 undelivered, the re-mailing of Class Notices, attempts to locate Class
28 Members, the total number of Requests for Exclusion from Settlement it

received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records, Defendant estimates that there are 337 Class Members who worked during the period from October 20, 2017 through February 8, 2023. If it is determined that the total number of Class Members who worked from October 20, 2017 through February 8, 2023 is more than 10% greater than this figure (i.e., if there were actually 371 or more Class Members who worked from October 20, 2017 through February 8, 2023), then Defendant will have the option to either (i) allow the Gross Settlement Amount to increase on a pro rata basis above 10% to the extent the threshold is exceeded (e.g., if the threshold referenced herein is exceeded by 11%, the GSA will increase by 1%), or (ii) shorten the Class Period such that the threshold is not exceeded – i.e., such that there is not an increase in the number of Class Members of more than 10%.

Also based on its records, Defendant represents that there were approximately 813 Aggrieved Employees who worked during the period from October 20, 2020 through February 8, 2023. If it is determined that the total number of Aggrieved Employees who worked from October 20, 2020 through the date that a preliminary approval order is entered in the Action is more than 10% greater

1 than this figure (i.e., if there are actually 895 or more Aggrieved Employees who worked from
2 October 20, 2020 through the date that a preliminary approval order is entered in the Action), then
3 Defendant will have the option to either (i) allow the Gross Settlement Amount to increase on a pro
4 rata basis above 10% to the extent the threshold is exceeded (e.g., if the threshold referenced herein is
5 exceeded by 11%, the GSA will increase by 1%), or (ii) shorten the PAGA Period such that the
6 threshold is not exceeded – i.e., such that there is not an increase in the number of Aggrieved
7 Employees of more than 10%.

8
9 **9. DEFENDANT’S RIGHT TO WITHDRAW.**

10 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total
11 of all Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The
12 Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or
13 effect whatsoever, and that neither Party will have any further obligation to perform under this
14 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
15 administration expenses incurred to that point. Defendant must notify Class Counsel and the Court of
16 its election to withdraw not later than seven days after the Administrator sends the final Exclusion
17 List to Defense Counsel; late elections will have no effect.

18
19 **10. MOTION FOR FINAL APPROVAL.**

20 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court,
21 a motion for final approval of the Settlement that includes a request for approval of the PAGA
22 settlement under Labor Code § 2699(l), a Proposed final approval order and a proposed Judgment
23 (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to
24 Defense Counsel not later than five days prior to filing the Motion for Final Approval. Class Counsel
25 and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith,
26 to resolve any disagreements concerning the Motion for Final Approval.

27 10.1. Response to Objections. Each Party retains the right to respond to any objection raised
28 by a Participating Class Member, including the right to file responsive documents in

1 Court no later than [five] court days prior to the Final Approval Hearing, or as
2 otherwise ordered or accepted by the Court.

3 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
4 Approval on any material change to the Settlement (including, but not limited to, the
5 scope of release to be granted by Class Members), the Parties will expeditiously work
6 together in good faith to address the Court's concerns by revising the Agreement as
7 necessary to obtain Final Approval. The Court's decision to award less than the
8 amounts requested for the Class Representative Service Payment, Class Counsel Fees
9 Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses
10 Payment shall not constitute a material modification to the Agreement within the
11 meaning of this paragraph.

12 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
13 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
14 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
15 administration matters, and (iii) addressing such post-Judgment matters as are
16 permitted by law.

17 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
18 conditions of this Agreement, specifically including the Class Counsel Fees Payment
19 and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement,
20 the Parties, their respective counsel, and all Participating Class Members who did not
21 object to the Settlement as provided in this Agreement, waive all rights to appeal from
22 the Judgment, including all rights to post-judgment and appellate proceedings, the
23 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and
24 appeals. The waiver of appeal does not include any waiver of the right to oppose such
25 motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations
26 to perform under this Agreement will be suspended until such time as the appeal is
27 finally resolved and the Judgment becomes final.

28 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the

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

11. AMENDED JUDGMENT.

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

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses.

The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement

1 together with its attached exhibits shall constitute the entire agreement between the
2 Parties relating to the Settlement, superseding any and all oral representations,
3 warranties, covenants, or inducements made to or by any Party.

4 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
5 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
6 appropriate action required or permitted to be taken by such Parties pursuant to this
7 Agreement to effectuate its terms, and to execute any other documents reasonably
8 required to effectuate the terms of this Agreement including any amendments to this
9 Agreement.

10 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
11 best efforts, in good faith, to implement the Settlement by, among other things,
12 modifying the Settlement Agreement, submitting supplemental evidence and
13 supplementing points and authorities as requested by the Court. In the event the Parties
14 are unable to agree upon the form or content of any document necessary to implement
15 the Settlement, or on any modification of the Agreement that may become necessary
16 to implement the Settlement, the Parties will seek the assistance of a mediator and/or
17 the Court for resolution.

18 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
19 directly or indirectly assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity and portion of any liability, claim,
21 demand, action, cause of action, or right released and discharged by the Party in this
22 Settlement.

23 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
24 providing any advice regarding taxes or taxability, nor shall anything in this
25 Settlement be relied upon as such within the meaning of United States Treasury
26 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

27 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
28 modified, changed, or waived only by an express written instrument signed by all

Parties or their representatives, and approved by the Court.

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

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

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

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

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

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

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls

on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiff:

Kane Moon
kmoon@moonlawgroup.com
H. Scott Leviant
hsleviant@moonlawgroup.com
Mariam Ghazaryan
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant:

James Goodman
jgoodman@ebglaw.com
Kevin D. Sullivan
ksullivan@ebglaw.com
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, California 90064
Telephone: (310) 556-8861
Facsimile: (310) 553-2165

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

be admissible in evidence to prove the existence and contents of this Agreement.

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

Plaintiff & Class Representative:

Dated: December 19, 2023

By:

DocuSigned by:



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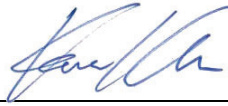
Sherif Fathy

Plaintiff's Counsel:

Dated: December 21, 2023

MOON LAW GROUP, PC

By:



Kane Moon

H. Scott Leviant

Mariam Ghazaryan

Attorneys for Plaintiff Sherif Fathy

Defendant:

Dated: December 19, 2023

JAY NOLAN COMMUNITY SERVICES, INC

By:



Edward Amey

Chief Executive Officer

Defendant's Counsel:

Dated: December 19, 2023

EPSTEIN BECKER & GREEN, P.C.

By:

A handwritten signature in blue ink, appearing to be "James Goodman", written over a horizontal line.

James Goodman

Kevin Sullivan

Attorneys for Defendant

Jay Nolan Community Services, Inc.

Exhibit “A”

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

Sherif Fathy v. Jay Nolan Community Services, Inc, Case No.: 21STCV38798

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against defendant Jay Nolan Community Services, Inc (“Jay Nolan” or “Defendant”) for alleged wage and hour violations. The Action was filed by former Jay Nolan employee Sherif Fathy (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of hourly employees (“Class Members” or “Class Member”) who worked for Jay Nolan during the “Class Period” (October 20, 2017 to July 18, 2024); and, (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Jay Nolan during the “PAGA Period” (October 20, 2020 to June 19, 2023) (“Aggrieved Employees” or “Aggrieved Employee”). Excluded from being Class Members are any individuals who have entered into (i) arbitration agreements or (ii) agreements releasing the claims alleged by Plaintiff.

The proposed settlement (the “Settlement”) has two main parts: (1) a “Class Settlement” requiring Jay Nolan to fund individual settlement payments to Class Members (“Individual Class Payments”), and (2) a “PAGA Settlement” requiring Jay Nolan to fund individual settlement payments to Aggrieved Employees (“Individual PAGA Payments”) and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records, you are not eligible for such a payment under the Settlement because you didn’t work during the covered period commencing October 20, 2020.)

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

The court has preliminarily approved the proposed Settlement and approved this Notice. The court has not yet decided whether to grant final approval. Your legal rights are affected, depending on whether you take action or do nothing in response to this Notice. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the final approval hearing, the court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The court will also decide whether to enter a judgment that requires Jay Nolan to make payments under the Settlement and requires Class Members, Aggrieved Employees, and the LWDA to give up their rights to assert certain claims against Jay Nolan.

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

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

Jay Nolan will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Jay Nolan employee. The Action accuses Jay Nolan of violating California labor laws by failing to pay overtime wages, minimum and straight time wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks, accurate itemized wage statements, and claims based on the FLSA. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Moon Law Group, APC ("Class Counsel.")

Jay Nolan strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Jay Nolan or Plaintiff are correct on the merits. In the meantime, Plaintiff and Jay Nolan (the "Parties") hired an experienced, neutral mediator, Eve Wagner, in an effort to resolve the Action by negotiating and to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Jay Nolan have negotiated a proposed Settlement that is subject to the court's final approval. Both sides agree the proposed

Settlement is a compromise of disputed claims. By agreeing to settle, Jay Nolan does not admit any violations or concede the merit of any claims.

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

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

1. Jay Nolan will pay \$275,000 as the Gross Settlement Amount (“Gross Settlement”). Jay Nolan has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsels’ attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the court grants final approval, Jay Nolan will fund the Gross Settlement 75 days after the judgment entered by the court becomes final. The judgment will be final on the date the Court enters judgment, or a later date if Participating Class Members object to the proposed Settlement or the judgment is appealed.

2. Court approved deductions from Gross Settlement. At the final approval hearing, Plaintiff and/or Class Counsel will ask the court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the court at the final approval hearing:

A. Up to \$91,666.67 (33 and 1/3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$17,500 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$7,500.00 for the class representative service award for filing the Action, working with Class Counsel and representing the Class. A class representative award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment, and any Individual PAGA Payment.

C. Up to an estimated \$15,000.00 to the Administrator for services administering the Settlement.

D. \$29,000.00 for PAGA penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period pay periods.

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

3. Net Settlement distributed to Class Members. After making the above deductions in amounts approved by the court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period pay periods.

4. Taxes owed on payments to Class Members. Plaintiff and Jay Nolan are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages (“Wage Portion”) and 65% to interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. JAY NOLAN will separately pay employer payroll taxes owed on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Jay Nolan have agreed to these allocations, and although the Court has preliminary approved these allocations, neither side nor the Court is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to promptly cash payment checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be redirected to California Controller's Unclaimed Property Fund in the name of the Class Member.

6. Requests for exclusion from the Class Settlement (“Opt-Outs”). You will be treated as a Participating Settlement Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, no later than [redacted], that you wish to Opt-Out. The easiest way to notify the Administrator is to send a written and signed

Request for Exclusion by the [REDACTED] response deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Jay Nolan.

You cannot Opt-Out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments in the Action but are required to give up their right to assert PAGA claims against Jay Nolan based on the PAGA Period facts alleged in the Action.

7. The proposed settlement will be void if the court denies final approval. It is possible the court will decline to grant final approval of the Settlement or decline to enter a judgment. It is also possible the court will enter a judgment that is reversed on appeal. Plaintiff and Jay Nolan have agreed that, in either case, the Settlement will be void: Jay Nolan will not pay any money and Class Members will not release any claims against Jay Nolan.

8. Administrator. The court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' requests for exclusion. The Administrator will also decide Class Member challenges over pay periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Participating Class Members' release. After the judgment is final and Jay Nolan has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of another lawsuit against Jay Nolan or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The "Released Parties" are Jay Nolan and each of its subsidiaries and/or parent corporations, predecessors and successors, as well as their divisions, affiliates, past and present officers, owners, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, private investigators and each and all of the foregoing persons' heirs, assigns, executors, administrators and successors, or any of them, or anyone claiming by, through, under or on behalf of any of them.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Second Amended Complaint, including:

(a) any alleged failure by Defendant (1) to pay overtime and double time wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (2) to provide compliant meal periods or compensation in lieu thereof; (3) to provide compliant rest periods or compensation in lieu thereof; (4) to pay minimum wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (5) to timely pay wages during or at the end of employment; (6) to provide compliant wage statements; and (7) to reimburse for necessary business expenses; (b) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, et seq., based on the alleged failures set forth in (a)(1) through (a)(7) above; and (c) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(7) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, violation of the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. sections 201, et seq. (per the requirements of the FLSA, the release of FLSA claims shall apply only to those Class Members who cash their check under this Settlement or otherwise opt-in), or any other federal or state statute, rule and/or regulation (Wage Order 5) during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period.

Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. The PAGA release. After the court's judgment is final, and Jay Nolan has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff and the LWDA will release the PAGA claim for violations identified in Plaintiff's PAGA Notice to the LWDA.

The PAGA Release is as follows:

All Aggrieved Employees – whether or not they are also Class Members – are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all rights or claims for statutory penalties, attorneys' fees, and costs pursuant to PAGA, California Labor Code sections 2698, et seq., arising under the California Labor Code or Wage Orders alleged in any of the pleadings in the Action or alleged in Plaintiff's notice to the LWDA and that could have been asserted in this Action based on the facts alleged in the Action or the LWDA notice for alleged violations of, inter alia, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, including any alleged failure by Defendant to (1) pay overtime and double time wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (2) provide compliant meal periods or compensation in lieu thereof; (3) provide compliant rest periods or compensation in lieu thereof; (4) pay minimum wages, including based on the alleged failure to properly compensate for time worked purportedly off the clock; (5) to timely pay wages during or at the end of employment; (6) provide compliant wage statements; (7) maintain accurate records of hours worked and meal periods taken; and (8) reimburse for necessary business expenses.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members, and (b) multiplying the result by the number of pay periods worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,250,000.00 by the total number of PAGA Period pay periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period pay periods worked by each individual Aggrieved Employee.

3. Pay period challenges. The number of Class Period pay periods you worked during the Class Period and the number of PAGA pay periods you worked during the PAGA Period, as recorded in Jay Nolan's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Jay Nolan's calculation of pay periods based on Jay Nolan's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve pay period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Class Members) and Jay Nolan's Counsel.

5. HOW WILL I GET PAID?

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

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is eligible as an Aggrieved Employee).

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

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

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request and identify the Action and include your identifying information. You must make the request yourself. If someone else makes the request for you, it will not be valid. The

Administrator must receive your request to be excluded by [REDACTED], or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Jay Nolan are asking the Court to approve. At least 16 court days before the [REDACTED] final approval hearing, Class Counsel and/or Plaintiff will file in court a motion for final approval that includes, among other things, the reasons why the proposed Settlement is fair, and a request for awards of fees, litigation expenses and a service award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Settlement, the motion for final approval and for awards of fees, litigation expenses and service award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is [REDACTED]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, and include your name, current address, telephone number, and approximate dates of employment for Jay Nolan and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the final approval hearing on [REDACTED] at [REDACTED] in Department 9 of the Spring Street Courthouse of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the hearing, the court will decide whether to grant final approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The court will invite comment from objectors, Class Counsel and defense counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It's possible the Court will reschedule the final approval hearing. You should contact Class Counsel to verify the date and time of the final approval hearing if you are planning to attend the hearing or have your own lawyer attend.

9. HOW CAN I GET MORE INFORMATION?

The Agreement signed by the Parties and attached to Plaintiff's declaration in support of the motion for preliminary approval sets forth everything Jay Nolan and Plaintiff have promised to do under the proposed Settlement. The easiest way to obtain and read the Agreement or any other Settlement document is to go to the Administrator's website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>), and entering the Case Number for the Action.

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

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Los Angeles, California 90064
Telephone: (310) 556-8861
Facsimile: (310) 553-2165

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

11. WHAT IF I CHANGE MY ADDRESS?

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

Exhibit “2”

Date	Description	Charge
10/25/2021	LWDA PAGA Notice Filing Fee	\$ 75.00
10/11/2021	Complaint fee - Complex	\$ 1,481.72
10/11/2021	Administrative Case Database Initiation Fee	\$ 750.00
11/1/2021	Ace - Attorney Service	\$ 136.00
11/30/2021	Ace - Attorney Service	\$ 50.90
1/10/2022	Mediation fee (plaintiff's share)	\$ 9,950.00
12/1/2021	LASC Service Charge	\$ 4.00
12/1/2021	LASC Service Charge	\$ 4.00
12/28/2021	One Legal - Attorney Service	\$ 7.26
2/3/2022	LASC Service Charge	\$ 7.26
1/19/2022	LASC Service Charge	\$ 7.26
2/9/2022	LASC Service Charge	\$ 7.26
2/9/2022	LASC Service Charge	\$ 7.26
4/7/2022	Case Anywhere	\$ 136.80
7/29/2022	Case Anywhere	\$ 135.00
10/11/2022	Case Anywhere	\$ 135.00
1/5/2023	Case Anywhere	\$ 147.00
2/22/2023	Berger Consulting - Data Analysis	\$ 4,760.00
4/15/2023	Case Anywhere	\$ 135.00
11/29/2022	Filing Fee	\$ 27.81
12/1/2022	LASC Service Charge	\$ 7.26
7/13/2023	LASC Service Charge	\$ 7.26
8/22/2023	Case Anywhere	\$ 135.00
10/9/2023	Case Anywhere	\$ 141.00
10/24/2023	Filing Fee	\$ 27.81
11/8/2023	Ace - Attorney Service	\$ 46.00
12/22/2023	Motion Filing Fee	\$ 68.91
1/2/2024	LASC Service Charge	\$ 7.26
1/8/2024	Case Anywhere	\$ 177.00
4/3/2024	Case Anywhere	\$ 141.00
4/18/2024	Filing Fee	\$ 27.81
4/17/2024	Filing Fee	\$ 27.81
4/29/2024	LASC Service Charge	\$ 7.26
5/9/2024	Ace - Attorney Service	\$ 104.00
6/13/2024	LASC Service Charge	\$ 7.26
7/2/2024	Case Anywhere	\$ 171.00
7/15/2024	LASC Service Charge	\$ 7.26
		\$ 19,075.43

Exhibit “3”

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **DECLARATION OF H. SCOTT LEVIANT IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

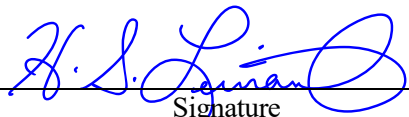
James A. Goodman
jgoodman@ebglaw.com
Kevin Sullivan
ksullivan@ebglaw.com
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, California 90067
Facsimile: (310) 553-2165

Counsel for Defendant

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

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **December 13, 2024**, at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature