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Private Attorney General Representative*

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

JOHN WALDREP, in his capacity as Private
Attorney General Representative,

Plaintiff,

v.

CAMBLY INC.,

Defendant.

Case No. 34-2022-00314360-CU-OE-GDS

*Assigned for all purposes to:
Hon. Lauri A. Damrell, Dept. 22*

**DECLARATION OF SHANNON LISS-
RIORDAN IN SUPPORT OF
PLAINTIFF'S REVISED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Operative Complaint: March 3, 2025
Trial Date: None Set

1 I, Shannon Liss-Riordan, declare as follows:

2 1. I am a partner at the law firm of Lichten & Liss-Riordan, P.C. and am lead
3 attorney for the Settlement Class in the above-captioned matter. I submit this declaration in
4 support of Plaintiff's Revised Motion for Preliminary Approval of Class Action Settlement. I
5 have personal knowledge of the information set forth herein.

6 2. In this case, Plaintiff has alleged that Defendant Cambly Inc. ("Cambly") has
7 misclassified tutors, who use Cambly's application to provide online ESL instruction, as
8 independent contractors rather than employees under California law. Plaintiff alleges that
9 Cambly is an ESL tutoring service and that tutors perform services within the usual course of
10 Cambly's business. Plaintiff has alleged that Defendant's misclassification of tutors violates the
11 California Labor Code by failing to reimburse these individuals for their necessary business
12 expenses (such as home internet and the use of their personal computers and devices to teach
13 students online), failing to ensure that Class Members were paid minimum wage for all hours
14 worked (including prep time and scheduling time), and failing to provide meal and rest breaks
15 when tutors taught for the requisite number of consecutive hours. Defendant has denied
16 Plaintiff's allegations regarding misclassification and denies that Defendant has violated
17 California state law.

18 3. I began this case by filing a PAGA letter with Defendant and the Labor &
19 Workforce Development Agency ("LWDA") on behalf of Plaintiff Jon Waldrep on November
20 9, 2021. *See* Letter to LWDA (attached here as **Exhibit A**). I investigated the claims prior to the
21 filing of Plaintiff's PAGA letter and the complaint, including by reviewing publicly available
22 information that described Defendant's business model (such as Cambly's website and the
23 Cambly Application) and working closely with Plaintiff to establish a complete understanding
24 of Defendant's operations.

25 4. I filed a complaint on behalf of Mr. Waldrep, bringing a PAGA claim on behalf
26 of the State of California and other similarly situated individuals on January 21, 2022.

1 5. During the pendency of this case, the U.S. Supreme Court decided *Viking River*
2 *Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 [142 S.Ct. 1906, 213 L.Ed.2d 179], *reh'g denied*
3 (2022) 143 S.Ct. 60 [213 L.Ed.2d 1145], in which it held that PAGA claims like Plaintiff's
4 claim here, could be divided into individual and non-individual components, and individual
5 PAGA claims could be compelled to arbitration.

6 6. Soon after that decision, the California Supreme Court granted review in *Adolph*
7 *v. Uber Technologies, Inc.* (Cal. July 20, 2022 No. S274671) to address the question left open in
8 *Viking River*: "whether an aggrieved employee who has been compelled to arbitrate claims
9 under the Private Attorneys General Act (PAGA) that are 'premised on Labor Code violations
10 actually sustained by' the aggrieved employee . . . maintains statutory standing to pursue
11 'PAGA claims arising out of events involving other employees' . . . in court or in any other
12 forum the parties agree is suitable."

13 7. In light of these developments, the Parties agreed that Waldrep would submit his
14 individual PAGA claim to individual arbitration and that the representative portion of the claim
15 would remain pending and stayed before this Court in the interim.

16 8. The Parties proceeded to arbitrate the claim before the American Arbitration
17 Association, and Arbitrator Helen Blohm was duly appointed to oversee the case. The Parties
18 exchanged written discovery, and Cambly produced nearly 6,000 pages of responsive
19 documents.

20 9. In the meantime, the California Supreme Court issued its decision in *Adolph*,
21 where the Court affirmed that Waldrep would maintain statutory standing to pursue the
22 representative portion of his PAGA claim after he arbitrated the individual portion of the claim.
23 *See Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 [310 Cal.Rptr.3d 668, 532 P.3d
24 682].

25 10. Following the decision by the California Supreme Court in *Adolph*, the Parties
26 agreed to explore settlement in this matter. The Parties exchanged substantial data and engaged
27 in extensive mediation discussions. This detailed data included the total number of PAGA class
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members, total workweeks, and detailed week-by-week data for each class member regarding their total pay and time spent teaching on the platform each week.¹

11. The mediation took place on December 14, 2023, with professional mediator Hon. Kevin Murphy (Ret.), who is experienced in mediating class action disputes. After a lengthy mediation session, the Parties reached a global settlement that would resolve both PAGA and class claims on behalf of affected tutors in California, and they executed a Memorandum of Understanding (MOU) to that effect.

12. I estimated Plaintiff's maximum theoretical recovery based on the full amount of the expense reimbursement and minimum wage claims, which I view as the strongest and most valuable claims. Assuming expenses of \$30 per pay period per tutor, the expense reimbursement damages came to \$84,570. Likewise, the minimum wage damages came to roughly \$113,332.97 for the class, not counting additional time spent preparing for and scheduling classes, which would likely increase these damages to close to \$150,000. Thus, the class damages on these claims comes to \$234,570. The total settlement amount greatly exceeds this figure.

13. Based on the data Defendant provided, I also calculated the maximum PAGA exposure. I calculated penalties for the expense reimbursement claim for the Settlement Class by multiplying the penalty (\$100) by the number of pay periods in which a violation occurred (2,819), utilizing \$200 for subsequent violations. The total penalties for expense reimbursement claim came to \$340,000. I calculated the penalties for willful misclassification by multiplying the PAGA penalty (\$5,000) by the number of employees (227) which resulted in \$1.135 million in penalties. Similarly, Plaintiff estimated minimum wage damages by multiplying the PAGA penalty (\$100) by the number of pay periods in which a violation occurred (2,819) and adding double the amount of the unpaid wages for a total of \$457,333. For the pay statement claim, I multiplied the PAGA penalty (\$250) by the number of pay periods (2,819), with each person's

¹ Cambly also has records of the identities of these individuals and their contact (email) information, which will enable the Parties to provide notice to the Settlement Class.

1 penalties capped at \$4,000 for a total of \$343,750. For the employee records claim, I multiplied
2 the total penalty (\$500) by the total number of employees (227) for \$113,500 in penalties.
3 Finally, for the illegal contracts claim, I multiplied the penalty of \$100 by the total number of
4 unlawful contracts entered into (227) for a total of \$22,700 in penalties. The total PAGA
5 exposure for all of these various Labor Code violations came to \$2.41 million. Thus, the total
6 settlement amount accounts for 16.3% of the total PAGA exposure.

7 14. While the above calculations were totaled for a sum estimate of \$2.41 million in
8 PAGA liability exposure, it is unclear whether penalties for multiple different Labor Code
9 violations can be “stacked” and combined.² Recovery of the full “stacked” amount of PAGA
10 penalties seems unlikely because of the Court’s discretion to reduce a PAGA penalty on
11 grounds that it is “unjust” or “oppressive.” Lab. Code § 2699 (e)(2). *See also Fleming v.*
12 *Covidien Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *3-4 (invoking § 2699(e)(2) and
13 reducing PAGA penalty award from \$2.8 million to \$500,000); *Makabi v. Gedalia* (Cal. Ct.
14 App. Mar. 2, 2016) 2016 WL 815937, at *2 & n.3 (unpublished) (noting that the trial court
15 invoked § 2699(e)(2) and declined to apply any PAGA penalties, despite finding that Defendant
16 violated PAGA). Indeed, a vast percentage of the maximum theoretical PAGA penalties are due
17 to “willful misclassification,” but willfulness would be challenging to prove here, given the
18 ongoing legal uncertainty as to the proper classification of tutors and the fact that no court has
19 ever found Defendant liable for misclassification. *See Amaral v. Cintas Corp. No. 2* (2008) 163
20 Cal.App.4th 1157, 1201, 1204 (noting where an employer presents a defense “based in law,” or
21 even where there is “uncertainty in the law,” the willfulness element cannot be satisfied for
22 Labor Code statutes that impose a “willfulness” requirement). California courts have held that
23 settlements should be compared to *likely* recoveries, not theoretical maximums. *See Cahill v.*
24 *San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 964–965; *Van Ba Ma v. Covidien*

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27 ² *See Yadira v. Fernandez* (N.D. Cal. Sept. 8, 2011) 2011 WL 4101266, at *3 citing *Doe v.*
28 *D.M. Camp & Sons* (E.D. Cal. 2008) 624 F.Supp.2d 1153, 1174 (recognizing that “[w]here state
law provides for statutory damages, the trial court’s discretion may be called upon to prevent
double recovery”).

1 *Holding, Inc.* (C.D. Cal. May 30, 2014) 2014 WL 2472316, at *3 (courts do not judge
2 settlement amounts “against a hypothetical or speculative measure” but instead against “what
3 the plaintiffs were likely going to recover”); *In re Tableware Antitrust Litigation* (N.D. Cal.
4 2007) 484 F.Supp.2d 1078, 1080 (“To evaluate adequacy, courts primarily consider plaintiffs’
5 *expected recovery* balanced against the value of the settlement offer.”) (emphasis added). Here,
6 the likely recovery on the PAGA claim is *not* \$2.4 million, based both on the difficulties in
7 proving the underlying Labor Code violations and the likelihood that a court would
8 substantially reduce the penalties awarded.

9 15. Here, where my firm has secured a substantial class settlement, a more nominal
10 PAGA settlement is fair and is in line with substantial California case law. *See Vicerat v.*
11 *Mistras Group, Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at
12 *9 (“[W]here a settlement for a Rule 23 class is robust, the statutory purposes of PAGA may be
13 fulfilled even with a relatively small award on the PAGA claim itself, because such ‘a
14 settlement not only vindicates the rights of the class members as employees, but may have a
15 deterrent effect upon the defendant employer and other employers, an objective of PAGA.’”);
16 *see also O’Connor v. Uber Technologies Inc.* (N.D. Cal., Civ. A. No. 13-3826) Dkt. No. 736 at
17 p. 4 (Letter from the LWDA) (“The LWDA recognizes that this Court does not review the
18 PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine
19 whether it is fundamentally fair, reasonable and adequate, with primary consideration for the
20 interests of absent class members.”).

21 16. Numerous courts have approved settlements that similarly propose to pay less
22 than 1% of the total theoretical PAGA exposure, particularly where the PAGA allocation is part
23 of a larger, robust class settlement, as is the case here. *See, e.g., Turner v. Motel 6 Operating*
24 *L.P.* (C.D. Cal. Nov. 6, 2018) 2018 WL 6977474 (approving PAGA allocation of \$20,000 on
25 maximum PAGA liability of “over \$10,000,000,” representing approximately 0.2% of the total
26 PAGA liability); *Avila v. Cold Spring Granite Company* (E.D. Cal. Jan. 12, 2018) 2018 WL
27 400315 (approving \$10,000 PAGA allocation based on maximum PAGA exposure of
28

1 \$2,610,874.85, about 0.38% of the maximum PAGA recovery). Indeed, courts have approved
2 PAGA allocations that would pay *far less* of the total maximum exposure than is the case here.³
3 As such, I believe that in reality, the PAGA claim is worth a fraction of this total theoretical
4 value.

5 17. As set forth above, this payment of \$393,000 for approximately 227 California
6 tutors will provide a substantial recovery to Settlement Class Members. The average settlement
7 share after all deductions have been made is roughly \$950, with no Class Member receiving less
8 than \$25, and some Class Members receiving as much as \$10,000. I assign minimal value to the
9 other claims for the following reasons:

10 **Failure to Pay Overtime Wages (Lab. Code §§ 510, 1198, 1194)**

11 18. I ascribed some value to the overtime claims released by tutors as part of the
12 settlement, though I believe that value is minimal for the reasons explained below. Lab. Code §
13 1198 and Wage Order 9 require employers to pay their employees at their overtime rate of pay
14 for hours worked in excess of eight per day and/or forty (40) per week. Lab. Code § 1194
15 permits an employee receiving less than his or her overtime wages to recover the unpaid balance
16 of such wages in a civil action. Likewise, the Fair Labor Standards Act (“FLSA”) requires that
17 an employer pay time-and-a-half an employee’s regular rate of pay for all hours worked beyond
18 forty in a workweek. *See* 29 U.S.C. § 207(a)(1).

19 19. Here, the data showed that the total amount of hours worked in excess of forty
20 per week by Class Members was negligible. The data was not available on a daily basis, and
21 thus, it is possible that some tutors occasionally worked more than eight hours per day.

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23 ³ *See, e.g., Studley v. All. Healthcare Servs., Inc.* (C.D. Cal. Sept. 26, 2013) 2013 WL
24 12334708, at *5 (approving \$1,000 payment to the LWDA where the maximum exposure for
25 PAGA penalties was projected to be \$1,706,250, or .0058% of the maximum PAGA exposure,
26 noting that the penalty was part of a robust class settlement); *Syed v. M-I, L.L.C.* (E.D. Cal. Feb.
27 22, 2017) 2017 WL 714367, at *13 (approving \$100,000 penalty payment where the maximum
28 PAGA exposure was estimated to be \$53.6 million, or .018% of the maximum PAGA exposure,
noting that the penalty was a small part of a larger class settlement); *Moppin v. Los Robles
Regional Medical Center* (C.D. Cal. Sept. 12, 2016) 2016 WL 7479380 (approving \$15,000
PAGA penalty allocation, where Plaintiff calculated potential PAGA exposure of \$46,736,442,
about .03% of the maximum exposure).

1 However, the information supplied by the named plaintiff, coupled with the fact that a small
2 number of tutors (including the named plaintiff) did most of the teaching throughout the class
3 period, makes clear that the overtime claim simply does not have much value because it was
4 exceedingly rare that tutors worked more than eight hours per day or forty hours per week.

5 **Willful Misclassification (Lab. Code § 226.8)**

6 20. I assigned negligible value to the claim for willful misclassification because I do
7 not believe that we would be able to recover on this claim on a class-wide basis for several
8 reasons. First, the Court of Appeal has found that there is no private right of action under Lab.
9 Code § 226.8. *See Noe v. Superior Court*, (2015) 237 Cal.App.4th 316, 338, [187 Cal.Rptr.3d
10 836, 856]. Thus, there is a good chance that Plaintiff would not be able to recover on this and
11 would only be able to bring the claim as a predicate violation for the PAGA claim. Moreover,
12 even if a different Court of Appeal were to find that there is a private right of action under Lab.
13 Code § 226.8, the statute requires a showing of “willfulness” which may be difficult to meet in
14 the face of ongoing litigation and uncertainty in this area. Indeed, even after the California
15 Supreme Court’s decision in *Dynamex*, there is still a dispute regarding whether workers like
16 tutors are employees or independent contractors, including whether *Dynamex* would apply the
17 claims pled here, or even PAGA claims, and the lack of any definitive court rulings regarding
18 the application of Assembly Bill 5 (“AB 5”) and Lab. Code § 2775 in this context may preclude
19 a finding of willfulness. Thus, there is a good chance Plaintiff would not be able to recover on
20 this claim except as a predicate violation for the PAGA claim. *See O’Connor v. Uber Techs.,*
21 *Inc.* (N.D. Cal. Mar. 29, 2019, No. 13-CV-03826-EMC) 2019 WL 1437101, at *11 n.6 (noting
22 that “[s]everal of the remaining claims required a finding of willfulness” including claims under
23 § 226.8, such that it was “reasonable for [p]laintiffs’ counsel to assign no or little value to these
24 claims when considering the overall full-verdict value.”).

25 **Failure to Provide Itemized Wage Statements (Lab. Code § 226, Wage Order 9)**

26 21. Lab. Code § 226 (and the relevant Wage Order) permits an employee to recover
27 actual damages or a penalty if he or she does not receive an itemized statement containing
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1 certain information about the employee's compensation. To recover under § 226, an employee
2 must also show injury. Injury exists under § 226 when an employee is not provided with a pay
3 statement at all, *see* § 226(e)(2), or when there is a deficient wage statement *and* an employee
4 cannot promptly and easily determine from the statement alone the information required by §
5 226(a)(2) (total hours worked), (a)(3) (piece rate units earned, if applicable), (a)(4) (all
6 deductions), (a)(6) (inclusive dates of the pay period), and (a)(9) (all applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly rate
8 by the employee). Courts have determined that this injury generally requires that the employee
9 be unable to "quickly verify earnings when looking at the wage statements." *Holak v. K Mart*
10 *Corp.* (E.D. Cal. Sept. 30, 2014) 2014 WL 4930762, at *7.

11 22. I believe it would be difficult to show injury here, including because Defendant
12 would likely argue that its pay statements set forth the information required. Because Defendant
13 did in fact maintain records of the hours worked by Settlement Class Members, the recovery for
14 these claims was likely to be negligible.

15 23. Furthermore, I believe that Plaintiff faces a significant barrier in recovering on
16 this claim because of difficulty in proving that the violation was "knowing and intentional." In
17 order to recover under § 226, an employee must establish that any violation of § 226(a) was
18 "knowing and intentional," which as discussed above, may be difficult in light of Defendant's
19 position that tutors are properly classified as independent contractors. *See Aguirre v. Genesis*
20 *Logistics* (C.D. Cal. Dec. 30, 2013, No. SACV 12-00687) 2013 WL 10936035, at *2 (reducing
21 penalties in part because information missing from wage statements "was readily available to
22 drivers," demonstrating "there was no scheme to keep the relevant information from drivers");
23 *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing
24 penalties in part because employees "suffered no injury due to the erroneous wage statements,
25 and made no complaint of the errors or omissions contained therein prior to filing suit"); *Raines*
26 *v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 (trial courts have
27 discretion to reduce penalties for "technical violations that cause no injury").
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1 **Failure to Pay Wages on Termination and Failure to Timely Pay Wages**

2 24. I believe that claims for failure to pay wages upon termination under Lab. Code
3 §§ 201, 202, 203 and for failure to timely pay wages under Lab. Code § 204 are unlikely to
4 result in any recovery for the class. Lab. Code §§ 201 and 202 require employers to pay wages
5 earned and unpaid within a certain time frame if an employee quits (within 72 hours) or is
6 discharged (immediately). Lab. Code § 203 provides for “waiting time” penalties assessed only
7 when such failure to pay wages when due is “willful,” and a finding of willfulness is precluded
8 when there is a “good faith dispute” as to whether a plaintiff is subject to the Labor Code
9 provisions at all, *i.e.* when there is a good faith dispute as to whether a plaintiff is in
10 independent contractor rather than an employee. Finally, Lab. Code § 204 requires that an
11 employer pay all wages due twice during each calendar month, and Plaintiff’s claim here is
12 premised on the notion that unpaid overtime was not paid on time, twice each month.
13 I assigned negligible value to these claims. Even if Plaintiff prevails on the misclassification
14 issue, I expect that it would be difficult for Plaintiff to overcome Cambly’s good faith defense to
15 liability with respect to this claim, which requires a finding of “willfulness.” *See, e.g., Dalton v.*
16 *Lee Publications, Inc.* (S.D. Cal. Mar. 22, 2011, No. 08CV1072 BTM NLS) 2011 WL 1045107,
17 at *5 (granting summary judgment to defendant on Lab. Code § 203 claim, which requires a
18 finding of willfulness, on grounds that there was a good faith dispute that plaintiff was an
19 independent contractor); *see also O’Connor*, 201 F.Supp.3d at n.12 (noting that “Lab. Code §
20 203 ... requires[s] a finding of willfulness”); *Reber v. AIMCO* (C.D. Cal. Aug. 25, 2008, No.
21 SA CV07–0607) 2008 WL 4384147. Indeed, this standard has been adopted by the Court of
22 Appeal in *Diaz v. Grill Concepts Servs., Inc.* (2018) 23 Cal.App.5th 859, 868 (holding
23 willfulness is precluded if there is “uncertainty in the law” or the employer has a “good faith
24 mistaken belief . . . grounded in a ‘good faith dispute,’ which exists when the ‘employer
25 presents a defense, based in law or fact which, if successful, would preclude any recovery on the
26 part of the employee.’”).

1 **Meal & Rest Breaks**

2 25. With respect to meal and rest break claims, I likewise assigned these claims
3 negligible value. California courts have held that an employer satisfies its obligation under the
4 meal and rest break laws “if it relieves its employees of all duty, relinquishes control over their
5 activities and permits them a reasonable opportunity to take an uninterrupted 30–minute break,
6 and does not impede or discourage them from doing so.” *Safeway, Inc. v. Superior Court* (2015)
7 238 Cal.App.4th 1138, 1148, *review denied* (Oct. 21, 2015) (quoting *Brinker Rest. Corp. v.*
8 *Superior Court* (2012) 53 Cal.4th 1004, 1040). The California Supreme Court has
9 acknowledged that “[w]hat will suffice may vary from industry to industry.” *Brinker*, 53 Cal.4th
10 at 1040.

11 26. Here, as a practical matter, most tutors did not even work multiple hours in a
12 day, much less four hours straight without taking a break, which would be required to trigger
13 the meal and rest break laws. Thus, this claim has very little value insofar as few tutors actually
14 worked enough to trigger this legal obligation. Moreover, the situation presented by this case
15 differs from a traditional workplace, where the default is that an employee is working except
16 during recognized breaks. In such a workplace, unless an employer “affirmatively authorizes” a
17 break (rather than merely allowing it), an employee may not feel comfortable taking a break.
18 But with Cambly, the whole system is set up so that tutors can set their own schedules or cancel
19 a class if they need to. Cambly’s entire system can be understood to constitute a policy of
20 “permitting” or “authorizing” breaks whenever a tutor wants one. The issue raised by *Brinker*,
21 53 Cal.4th at 1033, is when the employer does not have a policy “permitting” or “authorizing”
22 breaks, but here, where Cambly “permits” and “authorizes” tutors to take breaks, Plaintiff
23 properly recognized that meal and rest break claims posed some difficulty.⁴

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27 ⁴ Moreover, Plaintiff notes that there is a line of “post-*Brinker* district court cases that find that
28 liability springs not simply from a facially defective policy, but from proof that a rest break was
unlawfully *denied*.” *Cummings v. Starbucks Corp.* (C.D. Cal. Mar. 24, 2014) 2014 WL
1379119, at *19 (emphasis added) (collecting cases).

27. Thus, it is unsurprising that other courts have assigned these claims little or no value in assessing settlements against other “gig economy” companies. *See O'Connor v. Uber Techs., Inc.* (N.D. Cal. Mar. 29, 2019) 2019 WL 1437101, at *11 (noting that plaintiffs’ “meal and rest break claims were blunted by Uber’s argument that its entire system can be understood to constitute a policy of ‘permitting’ or ‘authorizing’ breaks whenever a driver wants” such that “it was reasonable for [p]laintiffs’ counsel to assign no or little value to these claims when considering the overall full-verdict value.”) (internal quotations omitted); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 939 (assigning meal and rest break claims zero value); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030 (approving settlement which assigned zero value to these claims).

Failure to Keep Accurate Records (Lab. Code §§ 226, 1174.5, 353)

28. Lab. Code § 1174 requires an employer to maintain payroll records pertaining to its employees, and Lab. Code § 1174.5 provides for penalties for willful failures to maintain such records. A finding that an employer’s failure to comply with § 1175 was in good faith precludes liability for the violation. *Dalton v. Lee Publications, Inc.* (S.D. Cal. Mar. 22, 2011) 2011 WL 1045107, at *6 (granting summary judgment on § 1174 claim because of a good faith dispute that employees were independent contractors).

29. As set forth above, even if Plaintiff were to prevail on the misclassification issue, I believe it would be difficult for Plaintiff to show that Defendant did not maintain all information required by § 1174, and, even if it did not, it would be difficult for Plaintiff to overcome Defendant’s good faith defense to liability with respect to this claim. Accordingly, I believe there would be a substantial risk of no recovery on this claim.

Unfair, Unlawful, and Fraudulent Business Practices under the Unfair Competition Law

30. To the extent this cause of action would result in restitution, such recovery is already accounted for in the calculations above, which assigned a value to the underlying wage claims and expense reimbursement claims in the case. Therefore, rather than double-counting

1 this possible recovery again under these causes of action, Plaintiff assumes this claim would
2 have no value when calculating maximum exposure.

3 **Class Certification**

4 31. Class Certification for settlement purposes is appropriate here. First, as set forth
5 above, the class is sufficiently numerous and ascertainable as the Settlement Class would cover
6 approximately 227 tutors, comprised of “all approximately 227 current and former individuals
7 who provided services in connection with Cambly’s platform in the State of California at any
8 time from November 9, 2020 to May 26, 2022.”

9 32. Second, common questions of law and fact will predominate tutors’
10 classification under the ABC test announced in *Dynamex* and codified through AB 5. Plaintiff
11 alleges that tutors perform the same service—teaching and practicing English with non-native
12 English speakers through Cambly’s online system—and Plaintiff asserts that this service was
13 performed within Cambly’s usual course of business. Thus, while Defendant disputes these
14 allegations and assertions, Plaintiff asserts that he would be likely to establish that the tutors are
15 employees under Prong B of the ABC test, and a class can be certified on this basis alone. *See*
16 *Costello v. BeavEx, Inc.* (7th Cir. 2016) 810 F.3d 1045, 1060, *cert. denied*, 137 S.Ct. 2289
17 (2017) (noting that because failing to prove one prong of the ABC test can be dispositive of
18 employee-status, commonality as to even one prong of the test is sufficient to warrant class
19 certification); *James v. Uber Technologies, Inc.* (N.D. Cal. Jan. 26, 2021, No. 19-cv-06462-
20 EMC) 338 F.R.D. 123 (certifying class under Prongs A and B of the ABC test only).

21 33. Third, the named Plaintiff’s claims are typical of the Settlement Class because he
22 worked as a tutor for more than two years in California during the proposed settlement class
23 period and incurred expenses associated with the use of his computer and home internet and did
24 not make minimum wage for all hours worked.

25 34. Fourth, the named Plaintiff and Settlement Class Counsel are adequate
26 representatives of the Settlement Class. There is no potential conflict between the named
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1 Plaintiff and the other Class Members since they are challenging practices that Plaintiff
2 contends are applied uniformly to all Settlement Class Members.

3 35. Moreover, my firm has provided adequate representation to the Settlement Class.
4 I have been extremely active representing workers who are part of a remote workforce (such as
5 call center workers and other online tutors), and “gig economy” workers in misclassification
6 cases in California, both before and after *Dynamex* and AB 5, and being from Massachusetts, I
7 have 20 years’ experience litigating misclassification cases under the ABC test that the Supreme
8 Court has now adopted in *Dynamex*. In California, I obtained the first ruling applying *Dynamex*,
9 in which the Orange County Superior Court (Judge Claster) granted summary judgment to
10 plaintiffs on their claim that they had been misclassified under the ABC test. *See Johnson v.*
11 *VCG-IS, LLC* (San Diego Super. Ct. Sept. 5, 2018) Case No. 30-2015-00802813, Ruling on
12 Motions for Summ. J. (attached here as **Exhibit B**). Moreover, I have received much attention
13 for my work in this area. *See* Diana Kapp, *Uber’s Worst Nightmare*, San Francisco Magazine,
14 May 18, 2016 (attached here as **Exhibit C**) (describing my work on misclassification cases
15 against “gig economy” companies and noting that “Liss-Riordan has achieved a kind of
16 celebrity unseen in the legal world since Ralph Nader sued General Motors”).

36. Additionally, I have won a number of ground-breaking wage cases across a variety of industries at trial,⁵ and have also won numerous appeals on behalf of employees in wage and hour cases.⁶

⁵ See, e.g., *Ordoneo v. Marriott International, Inc.*, (April 9, 2023, No. CGC-16-550454) (Order following Bench Trial) (verdict for plaintiff class for violation of California law by not paying out full proceeds of service charges to waitstaff employees); *Norrell v. Spring Valley Country Club, Inc. et al.* (Mass. Super. 2017, Norfolk C.A. No. 1482-cv-00283) (verdict for plaintiff class for violation of Massachusetts Tips Law); *Calcagno v. High Country Investor, Inc., d/b/a Hilltop Steak House* (Mass. Super. 2006, Essex Civ. A. No. 03-0707) (employer violated Tips Law by not paying out full proceeds of service charges to waitstaff employees); *Benoit et al. v. The Federalist, Inc.* (Mass. Super. 2007, Suffolk Civ. A. No. 04-3516) (same); *Travers v. Flight Services & Systems, Inc.* (D. Mass. 2014, C.A. No. 11-cv-10175) (jury awarded skycaps approximately \$1 million on retaliation claim, though verdict was later reduced by the court, and appeal is pending); *Bradley et al. v. City of Lynn et al.* (D. Mass. 2006) 443 F.Supp.2d 145 (verdict for plaintiff class where federal court held following bench trial that Commonwealth's entry level firefighter hiring examination has disparate impact on minorities and violated Title VII); *DiFiore v. American Airlines, Inc.*, (D. Mass. 2008, Civ. A. No. 07-10070) (skycaps should have received proceeds of \$2 per bag charge for curbside check-in because passengers reasonably believed it was their tip), reversed on federal preemption grounds, 646 F.3d 81 (1st Cir. 2011).

⁶ See, e.g., *Roman v. Jan-Pro Franchising Int'l, Inc.*, 342 F.R.D. 274 (N.D. Cal. 2022) (partial summary judgment granted for the class on key issues, including that janitors were employees under the ABC test); *Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. 2021) 986 F.3d 1106 (holding that landmark *Dynamex* decision applies to misclassification claims against "cleaning franchisor," and applies to top-tier company in multi-tier "fissured employment" scheme; providing guidance on strength of ABC test for employment misclassification; and reinstating wage claims on behalf of janitors who challenged paying for their jobs and other wage violations); *Vazquez v. Jan-Pro Franchising International, Inc.* (2021) 10 Cal.5th 944 (finding California Supreme Court's landmark *Dynamex* ABC misclassification test ruling applies retroactively); *Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904 (holding Amazon Flex delivery drivers exempt from the Federal Arbitration Act, 9 U.S.C. § 1 under the transportation worker exemption); *Waithaka v. Amazon.com* (1st Cir. 2020) 966 F.3d 10 (same); *Haitayan v. 7-Eleven, Inc.* (9th Cir. 2019) 762 Fed.Appx. 393 (reinstating wage claims against 7-Eleven and reversing district court's denial of injunction for plaintiffs and potential class members facing choice of pursuing wage claims or keeping their jobs); *Maplebear, Inc. d/b/a Instacart v. Donna Busick* (2018) 26 Cal.App.5th 394, [237 Cal.Rptr.3d 98] (affirming California Superior Court's decision declining to vacate class arbitration clause construction award); *Khanal v. San Francisco Hilton, Inc.* (9th Cir. 2017) 681 Fed.Appx. 624 (reversing district court's dismissal of wage claims as preempted by the LMRA); *Williams v. Jani-King of Philadelphia Inc.* (3d Cir. 2016) 837 F.3d 314 (affirming grant of class certification to class of cleaning workers alleging misclassification and wage violations); *Marzuq v. Cadete Enterprises, Inc.* (1st Cir. 2015) 2015 U.S. App. LEXIS 21301 (Dunkin Donuts general managers could be eligible for overtime pay by proving management was not their primary duty, distinguishing 1982 precedent, which had held fast food managers to be overtime-exempt); *Travers v. Flight Services & Systems* (1st Cir. 2015) 2015 U.S. App. LEXIS 21671 (affirming jury verdict in favor of skycap who was terminated in retaliation for leading class); *Depianti v. Jan-Pro Franchising International, Inc.* (2013) 465 Mass. 607 (Massachusetts Supreme Judicial Court held that national company could not evade liability for independent contractor misclassification by virtue of it not having direct contracts with the workers); *Taylor v. Eastern Connection Operating, Inc.* (2013) 465 Mass. 191 (SJC held Massachusetts

37. Finally, a class action is the superior means of resolving the litigation, for both the Parties and the Court. Granting class certification is superior to litigating numerous individual cases that would remain without certification of the Settlement Class. Because there are approximately 227 Class Members, it makes eminent sense to certify the Settlement Class.

Revisions to Settlement Agreement, Notice, and Motion for Preliminary Approval

38. On August 15, 2024, the Court issued a Tentative Ruling on the Plaintiff's initial Motion for Preliminary Approval of Settlement. In that Tentative Ruling, the Court directed the Parties to address a number of issues in the Settlement Agreement, Notice, Motion for Preliminary Approval, and Proposed Order. Plaintiff thereafter voluntarily withdrew the Motion for Preliminary Approval without prejudice so that the Parties could address and resolve the issues identified by the Court.

39. To address the issues identified by the Court in its tentative ruling of August 15, 2024, the Parties have made the following changes to the Settlement Agreement and related papers:

- a. In response to issue number 1, Plaintiff filed a First Amended Complaint on March 3, 2025.
- b. In response to issue number 2, Plaintiff has attached a copy of the letter providing Notice to the LWDA to this declaration as **Exhibit A**. Plaintiff will submit the proposed Settlement Agreement to the LWDA concurrently with this motion.
- c. In response to issue number 3, the Parties have revised the proposed Settlement Agreement such that both the Class Period and the PAGA Period are now defined as the time between November 9, 2020 to May 26, 2022. As such, the release now tracks both the Class Period and the PAGA Period.

independent contractor law applicable to work performed in New York for Massachusetts company); *Matamoros v. Starbucks Corp.* (1st Cir. 2012) 699 F.3d 129 (holding that Starbucks violated Massachusetts Tips Law by allowing shift supervisors to share in tip pool).

- 1 d. In response to issue number 4, the Parties have eliminated the claim form
2 submission requirement. As explained in the Revised Motion for Settlement
3 Approval, the Parties initially included a claim form process because Defendant
4 does not have access to the Settlement Class Members' mailing addresses since
5 Settlement Class Members were paid through PayPal (*i.e.*, via email). Thus,
6 checks cannot simply be mailed to Settlement Class Members upon the Court's
7 approval of the Settlement Agreement. However, the Parties and the settlement
8 administrator have determined that it is possible to issue payments directly to
9 Settlement Class Members' PayPal accounts (which Defendant does have on
10 file), thus eliminating the need for a claiming process. The Notice has not been
11 revised to reflect separate estimates of the teaching minutes in the Class Period
12 and PAGA Period, as those two periods are now the same.
- 13 e. In response to issue number 5, the Parties have revised the proposed Settlement
14 Agreement to establish separate funds for both the Class Settlement Payment
15 (the Settlement Payment Fund) and the PAGA Payment (the PAGA Payment
16 Fund).
- 17 f. In response to issue number 6, though this case involves the settlement of wage
18 and hour claims and derivative claims for penalties, it would be detrimental to
19 the class should Cambly be forced to pay employer-side taxes. The Settlement
20 Agreement states that the agreed upon settlement amount is "an 'all in' number
21 that includes, without limitation, all monetary benefits and payments to the
22 Settlement Class, Service Award, Class Counsel Award, Settlement
23 Administrator Expenses and the PAGA Payment, and all claims for interest, fees,
24 and costs." Settlement Agreement at ¶ 4.1. As such, any deductions required with
25 the issuance of W-2 wages would significantly reduce the payments to the
26 Settlement Class. Non-wage payments to absent Class Members ensure that the
27
28

maximum amount is paid and, thus, is in the “best interests of those whose claims will be extinguished.” 4 Newberg on Class Actions, § 11.41.

- g. In response to issue number 7, the Parties edited the Settlement Agreement’s releases.
- h. In response to issue number 8, Plaintiff has made required revisions to the Notice.
- i. In response to issue number 9, Plaintiff has provided argument in support of an attorney’s fees award of one-third of the common fund in the Revised Motion for Preliminary Approval.
- j. In response to issue number 10, Plaintiff has provided argument in support of the \$10,000 class representative enhancement payment in the Revised Motion for Preliminary Approval.
- k. In response to issue number 11, Plaintiff has made required revisions to the Proposed Order.

Attachments to the Declaration

40. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s PAGA letter to the California Labor & Workforce Development Agency, dated November 9, 2021.

41. Attached hereto as **Exhibit B** is a true and correct copy of Judge Cluster’s decision in *Johnson v. VCG-IS, LLC* (Orange County Super. Ct. Cal. Sept. 5, 2018, No. 30-2015-00802813), Ruling on Motions for Summ. J.

42. Attached hereto as **Exhibit C** is a true and correct copy of an article written about me by Diana Kapp, titled *Uber’s Worst Nightmare*, San Francisco Magazine, May 18, 2016.

43. Attached hereto as **Exhibit D** is a true and correct copy of the Parties’ Revised Settlement Agreement.

44. Attached hereto as **Exhibit E** is a true and correct copy of the Parties’ proposed Notice of Class Action Settlement and Claim Form.

EXHIBIT A

L I C H T E N & L I S S - R I O R D A N , P . C .

ATTORNEYS AT LAW

HAROLD L. LICHTEN*
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TELEPHONE 617-994-5800
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× ADMITTED IN MASSACHUSETTS
Δ ADMITTED IN CALIFORNIA
◇ ADMITTED IN NEW YORK
■ ADMITTED IN PENNSYLVANIA
^ ADMITTED IN NEW JERSEY
◆ ADMITTED IN CONNECTICUT
☆ ADMITTED IN DISTRICT OF COLUMBIA
□ ADMITTED IN TENNESSEE

November 9, 2021

VIA ELECTRONIC FILING

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAinfo@dir.ca.gov

Re: Notice Pursuant to California Labor Code § 2699.3(a)(1)

Dear PAGA Administrator:

My firm represents Jon Waldrep connection with his claims pursuant to the California Labor Code against Cambly Inc. (“Cambly”). Mr. Waldrep, an adult resident of Sacramento, California, has been working for Cambly as an online English Second Language (“ESL”) tutor, since approximately February 2020, helping adults across the globe learn English and practice their English language skills. Because Cambly illegally misclassifies its teachers as independent contractors rather than employees, Cambly has violated numerous provisions of the California Labor Code.

Pursuant to Cal. Lab. Code §2699.3(a)(1), please consider this letter notice of the specific provisions of the California Labor Code violated by Cambly that may result in penalties under the Private Attorney General Act of 2004.

Factual Background

Cambly is an online ESL tutoring service, incorporated in Delaware with an office in San Francisco, California. The company employs teachers such as Mr. Waldrep throughout California to perform online ESL sessions with students in numerous countries, which are taught subject to Cambly’s strict standards, discussed infra.

As the California Supreme Court’s decision in Dynamex Operations W. v. Superior Court, (2018) 4 Cal. 5th 903, reh’g denied (June 20, 2018) makes clear, Cambly teachers should be classified as employees, rather than independent contractors, for the purposes of the Labor Code

L I C H T E N & L I S S - R I O R D A N , P . C .

statutes. Under the “ABC” test adopted in Dynamex, in order to justify classifying its teachers as non-employees, Cambly would have to prove its teachers perform services outside their usual course of business, which they cannot do here. Likewise, Cambly cannot satisfy its burden to prove that teachers have been customarily engaged in an independently established trade, occupation, or business of the same nature as the work they performed for Cambly, as they are prohibited from providing ESL tutoring services to Cambly students outside the Cambly platform. Additionally, Cambly cannot satisfy its burden to demonstrate that teachers have been free from Cambly’s control and direction, both under their contract and in fact.

Cambly requires its teachers to sign contracts in order to obtain work, and it classifies its teachers as independent contractors despite the following reasons – among others that may be discovered at a later date – that teachers should be properly classified as employees:

- Teachers provide a service (i.e. teaching English) that benefits Cambly and forms an integral part of its regular course of business (i.e. online tutoring);
- Teachers do not engage in a business distinct and independent from Cambly’s business and instead form an integrated part of Cambly’s business model (and are in fact prohibited from contacting students outside Cambly’s messaging function or arranging to provide teaching services to students outside the Cambly system);
- Cambly also controls numerous aspects of teachers’ work:
 - Cambly determines the length of teachers’ student sessions (which are provided in 15-, 30- or 60-minute intervals) as well as teachers’ pay; for example, Cambly pays teachers on a per minute rate that it determines in its sole discretion. Teachers cannot negotiate the amount that they will be paid and are instead paid according to Cambly’s formula.
 - Cambly records every online class taught and handles complaints from their customers by reviewing the recording, determining whether the class was completed satisfactorily, and notifying the teacher accordingly;
 - Cambly requires that tutors abide by its standards, including avoiding certain topics of conversation, maintaining a neat background, free of noise and “maintain[ing] a well-groomed and professional appearance while working with students”, with no “sleeveless attire, exposed shoulders, exposed cleavage, [and] sunglasses” permitted;
 - Cambly provides online course materials for tutors to use in their teaching;
 - Cambly tracks tutors’ ratings (out of 5) and penalizes tutors with low ratings and penalizes tutors who cancel classes during priority hours by freezing their ability to schedule further priority hours;

L I C H T E N & L I S S - R I O R D A N , P. C.

- Cambly does not compensate teachers for time spent preparing for classes (including creating lesson plans and materials) or for time spent scheduling classes, which is time consuming because Cambly's system requires each class to be individually scheduled using its online booking system;
- Cambly tests every teacher's equipment before they are able to begin teaching online sessions, but it does not compensate teachers for necessary business expenses such as the cost of the required internet connection and computer with webcam (as teachers are prohibited from utilizing tablets or smartphones to conduct online sessions);
- Cambly does not compensate teachers if a student cancels a class on short notice, and if a student fails to show up for a class, teachers are required to wait for ten minutes and are compensated only for those ten minutes (at a rate of 17 cents/minute), not the balance of the missed teaching session;
- Cambly sometimes requires that teachers work straight through multiple lessons, without breaks, as lessons are scheduled back to back; teachers may be disciplined, for example, for taking water breaks or bathroom breaks during a lesson.

Because Cambly's teachers are, in fact, employees, they are protected by the provisions of the California Labor Code. Accordingly, we wish to notify you of the following violations of the California Labor Code:

Violations of the California Labor Code

1. Cambly has violated Cal. Lab. Code § 2802 by failing to reimburse tutors for all reasonably necessary expenditures incurred in the discharge of their duties, including but not limited to the cost of their computer, webcam, and internet connection;
2. Cambly has violated Cal. Lab. Code § 226.8 by willfully misclassifying tutors as independent contractors;
3. Cambly has violated Cal. Lab. Code §§ 1197 and 1194 by failing to ensure that its tutors receive the applicable state minimum wage for all hours worked insofar as Cambly pays 17 cents per minute for its classes, which amounts to a sub-minimum wage of \$10.20 per hour, and it does not compensate tutors for time spent preparing lessons;
4. Cambly has violated Cal. Lab. Code §§ 1194, 1198, 510, and 554 by failing to pay the appropriate overtime premium for all overtime hours worked beyond forty per week or eight hours per day;
5. Cambly has violated Cal. Lab. Code §§ 226.7 and 512 by failing to afford its tutors meal and rest breaks when tutors teach back to back classes;

L I C H T E N & L I S S - R I O R D A N , P. C.

6. Cambly has violated Cal. Lab. Code § 226 for failure to provide accurate, itemized wage statements, including failing to provide information about hours worked during each weekly pay period;
7. Cambly has violated Cal. Lab. Code § 432.5 by requiring tutors to sign illegal contracts.

Accordingly, Mr. Waldrep seeks all applicable civil penalties related to the foregoing violations. Mr. Waldrep hereby invites the Labor and Workforce Development Agency to take any action it deems appropriate.

Yours Truly,


Shannon Liss-Riordan

cc: Cambly General Counsel (via certified mail)

EXHIBIT B

1 **AEGIS LAW FIRM, PC**
KASHIF HAQUE (State Bar No. 218672)
2 SAMUEL A. WONG (State Bar No. 217104)
JESSICA L. CAMPBELL (State Bar No. 280626)
3 9811 Irvine Center Drive, Suite 100
4 Irvine, California 92618-2902
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6 **LICHTEN & LISS-RIORDAN PC**
SHANNON LISS-RIORDAN, State Bar No. 310719
7 MATTHEW W. THOMSON, *pro hac vice*
8 729 Boylston St., Suite 2000
Boston, Massachusetts 02116
9 Telephone: (617) 994-5800
Facsimile: (617) 994-5801

10
11 Attorneys for Plaintiffs

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

14 **ORIANA JOHNSON and BRYNEISHA**
15 **PHILLIPS, individually and on behalf of**
other aggrieved employees,

16 Plaintiffs,

17 vs.

18 **VCG-IS, LLC, a California Corporation, dba**
19 **IMPERIAL SHOWGIRLS; VCG HOLDING**
20 **CORP.; INTERNATIONAL**
21 **ENTERTAINMENT CONSULTANTS,**
INC.,

22 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

09/05/2018 at 10:56:00 AM

Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

Case No. 30-2015-00802813-CU-CR-CXC

Assigned to: Hon. William Cluster
Dept. CX104

PLAINTIFFS' NOTICE OF RULING

Hearing Date: August 31, 2018
Time: 9:00 a.m.
Courtroom: CX104

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 31, 2018 at 9:00 a.m., in the above-entitled
3 action, the Court made the following rulings:

- 4 1. The Court vacated the trial date set for December 10, 2018 and vacated the Trial
5 Readiness Conference set for November 30, 2018.
- 6 2. The Court set a further status conference for October 22, 2018 at 8:30 a.m.
- 7 3. The Court ordered the parties to submit a joint status conference statement on or before
8 October 15, 2018, which shall address the subjects mentioned on the record, including,
9 the status of discovery, settlement discussions, any anticipated motion to compel
10 arbitration, any anticipated motion for summary adjudication regarding the issue of
11 which entities are the employers of the aggrieved employees pursuant to Cal. Code Civ.
12 Proc. § 437c(t), at least a reference to a trial plan, and a reasonable timeframe to prepare
13 for trial along with what discovery is needed for trial.
- 14 4. The Court order that no further discovery be served until after the next status conference,
15 but currently-pending discovery is not stayed.
- 16 5. The Court adopted its tentative rulings regarding Plaintiffs' Motion for Summary
17 Adjudication and Defendant IEC's Motion for Summary Judgment as to Plaintiffs
18 Johnson and Phillips only. The tentative rulings are pasted below.

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20
21 **Plaintiffs' Motion for Summary Adjudication as to Defendants' Affirmative Defenses that**
22 **Plaintiff Was Properly Classified as an Independent Contractor**

23 Plaintiffs' motion for summary adjudication is GRANTED.

24 **Rulings on Objections**

- 25 · Defendants' 08/17/18 objections to Plaintiffs' Evidence – overruled
- 26 · Plaintiffs' 08/24/2018 objections to Exhibit 5 to the 08/17/2018 Cahill
27 Declaration (New York Times article) – overruled (underlying fact that erotic dance
28 is a form of dance, while hearsay, is judicially noticeable as a fact not commonly in
dispute).

Grounds for Ruling

Plaintiffs performed as exotic dancers at the Imperial Showgirls in Anaheim, California. This is a PAGA-only action based on plaintiffs' allegation that they were improperly classified as independent contractors. Plaintiffs' operative complaint is the Third Amended Complaint filed February 8, 2018.

In their answers, defendants alleged as affirmative defenses that plaintiffs were properly classified as independent contractors and, therefore, exempt from state and federal minimum wage and overtime pay requirements. (03/09/2018 Answer by VCG, IS, LLC and VCG Holding Corp., p. 10, Forty-Fourth affirmative defense; 03/15/2018 Answer by International Entertainment Consultants, Inc., p. 6, Twenty-Second affirmative defense.)

Plaintiffs move for summary adjudication of these affirmative defenses only pursuant to CCP § 437c(f).

On July 18, 2018, this court decided on a motion *in limine* that the "ABC test" approved by the California Supreme Court in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) will be utilized to determine the employee/independent contractor issue in this case. Under this test, which tracks the version of the "ABC test" adopted by Massachusetts courts and which the California Supreme Court described as a "simpler, more structured test," (*Dynamex* at 955), all workers are *presumed* to be employees and it is *the burden of the employer* to prove *all of the following*:

(A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

(B) the worker performs work that is outside the usual course of the hiring entity's business, *and*

(C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

If the employer fails to prove all three elements, the worker must be classified as an employee.

Plaintiffs have met their initial burden on their motion for summary adjudication of establishing that Imperial Showgirls will be unable to prove all three parts of the ABC test in order to overcome the legal presumption that plaintiffs were employees. Specifically, plaintiffs have established that defendant will be unable to prove Part B. Plaintiffs did not address Parts A and C and, as explained below, such analysis was unnecessary under *Dynamex*.

Part B of the ABC test requires an examination of whether "the worker performs work that is outside the usual course of the hiring entity's business." (*Dynamex* at 959.) The Supreme Court used the following as examples of how to analyze this prong. If a bakery hires cake decorators to work on a regular basis, then those cake decorators are likely working within the bakery's "usual business operation" and thus would be employees. Whereas a plumber hired to fix a leak in the bakery's bathroom would be viewed as not working within the bakery's usual course of business and therefore would not be viewed as an employee. (*Id.* at pp. 959-60.)

1 Here, plaintiffs established, and there can be no real dispute, that Imperial Showgirls operates an
2 adult entertainment establishment whose primary purpose is to permit patrons to watch and pay for
3 particular services, such as “lap dances,” from exotic dancers like the two plaintiffs in this case.
4 Imperial Showgirls holds itself out as a “strip club” and the exotic dancers who perform there,
5 including plaintiffs, are central to the defendant’s business--both literally and figuratively as
6 plaintiffs point out. (SSUF Nos. 1, 5, 7, 11.). The entire business of Imperial Showgirls centers
7 around exotic dancers performing for defendant’s customers. That aspect of defendants’ business
8 simply would not survive without them.

9 Defendants’ objections to plaintiffs’ evidence of internet searches pertaining to Imperial Showgirls
10 are overruled. The court can judicially notice that a simple Google search of “Imperial Showgirls,
11 Anaheim CA” will direct the searcher to <http://imperialshowgirlsoc.com/>, which shows the
12 business address as 2640 W Woodland Drive, Anaheim, CA 92801, the address on Google Maps
13 for Imperial Showgirls, as well as the nature of the business depicted on the website. Under these
14 circumstances, defendants cannot simply stand on objections that the website was not properly
15 authenticated. Defendants have failed to submit any evidence that the web addresses relied upon
16 by plaintiffs are *unrelated* to the Imperial Showgirls in this case or inaccurately describe the
17 business at which plaintiffs worked. The information on the website is not hearsay because the
18 court did not consider the truth of any statements made thereon, but rather as evidence of the nature
19 of the business conducted at Imperial Showgirls.

20 Defendants also have failed to provide admissible evidence sufficient to raise a triable issue of
21 material fact as to Part B of the ABC test. Defendants argue that plaintiffs independently and freely
22 contracted to use defendant’s business to perform for customers who pay plaintiffs directly.
23 Significantly, the Entertainment Agreements signed by plaintiffs do not create a triable issue of fact
24 as to whether plaintiffs were properly classified as independent contractors. When the Supreme
25 Court decided *Dynamex*, it did not provide an exemption from the ABC test for such individuals, or
26 hold that the right to contract is superior to California’s public policy of consistent enforcement of
27 wage and hour laws. To the contrary, it noted that wage orders are not only for the benefit of
28 workers themselves, but are implemented industry-wide and are “intended for the benefit of those
law-abiding businesses that comply with the obligations imposed by the wage orders, ensuring that
such responsible companies are not hurt by unfair competition from competitor businesses that
utilize substandard employment practices” and “for the benefit of the public at large.” (*Dynamex* at
952-53.) If the Supreme Court had intended to make an exception for workers who allegedly freely
contracted to change their status, it presumably could have done so.

21 In addition, defendants fail to show that the other businesses operating in the same complex with
22 Imperial Showgirls raises a factual issue regarding Part B.

23 Having found defendants will be unable as a matter of law to establish Part B, the Court need not
24 address Parts A and C. (See *Dynamex*, at p. 963 [“Furthermore, inasmuch as a hiring entity’s failure
25 to satisfy any one of the three parts itself establishes that the worker should be treated as an
26 employee for purposes of the wage order, a court is free to consider the separate parts of the ABC
27 standard in whatever order it chooses. Because in many cases it may be easier and clearer for a
28 court to determine whether or not part B or part C of the ABC standard has been satisfied than for
the court to resolve questions regarding the nature or degree of a worker’s freedom from the hiring
entity’s control for purposes of part A of the standard, the significant advantages of the ABC
standard—in terms of increased clarity and consistency—will often be best served by first

1 considering one or both of the latter two parts of the standard in resolving the employee or
independent contractor question”].)

2 As to the oppositions by Holding and IEC, they miss the mark regarding this Court’s motion in
3 limine ruling that it will not apply the ABC Test to the joint employer analysis. Plaintiffs’ motion
4 is directed only to adjudicating defendants’ affirmative defenses that plaintiffs were properly
5 classified by Imperial Showgirls as independent contractors, and as to that issue, the ABC test
6 applies. The motion does not address or impact plaintiffs’ theories of liability as to Holding and
7 IEC except to the extent they, if found to be plaintiffs’ employer, cannot raise the affirmative
8 defense that plaintiffs were properly designated as independent contractors. Put another way, the
court *is not finding* as plaintiffs suggest in their reply that plaintiffs are “employees” of all
defendants, but rather that plaintiffs are properly designated as employees of Imperial Showgirls.
Whether Holding and IEC are liable as plaintiffs’ employer or as joint employers is not resolved by
this motion.

9 **Impact of Ruling on Other “Aggrieved Employees”**

10 In their oppositions, defendants ask that any ruling in plaintiffs’ favor be limited to the named
11 plaintiffs only or, if the ruling extends to all “aggrieved employees,” that defendants first should be
12 permitted to conduct discovery. Defendants point out that on December 12, 2017 the Court
13 scheduled phase 1 of the trial and limited it to the issue of whether the two named plaintiffs were
14 misclassified. Plaintiffs do not dispute that the parties, prior to *Dynamex*, were told of the phasing
of the case in this manner. As a result, the parties agreed to limit discovery solely to the issue of
whether the two plaintiff representatives were misclassified. (See Shahabi Decl., ¶¶ 3-5, Ex. “B” to
VCG Holding’s 08/17/18 Index of Evidence.)

15 The Court is amenable to considering further briefing and discussion regarding whether this ruling
16 is dispositive of plaintiff’s misclassification allegations as to all “aggrieved employees.” Indeed,
17 that would appear to be the case. In their operative Third Amended Complaint, plaintiffs bring this
PAGA action on behalf of themselves “and other aggrieved employees *who performed at*
18 *Defendants’ establishments in California as dancers* and who were misclassified as independent
19 contractors during the one-year period preceding the filing of the initial Complaint . . .” (Emphasis
20 added.) Given the Court’s ruling on Part B of the ABC test that defendants will be unable to prove
21 that the two plaintiffs, as exotic dancers, are working outside the usual course of Imperial
22 Showgirls’ business, it is difficult to conceive of how defendants will be able to show that other
aggrieved employees as defined by plaintiffs in the case are any different. In addition, defendants
have failed to identify what information, if any, obtained through discovery would compel a
different result, but the court will give them the opportunity to make that showing. The Court will
discuss with the parties whether a further hearing should be scheduled on these issues.

23 **Defendant IEC’s Motion for Summary Judgment**

24 Defendant IEC’s motion for summary judgment is DENIED. That motion is premised almost
25 entirely on the argument that the two Plaintiffs were properly classified as independent contractors,
26 and not as employees. Indeed, virtually every one of the 102 supposedly undisputed facts in IEC’s
27 separate statement (filed April 12, 2018) centers on this issue. In light of the above ruling regarding
28 Plaintiffs’ status as employees under *Dynamex*, the motion must be denied.

1
2 Dated: September 5, 2018

AEGIS LAW FIRM, PC

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4 By: /s/Jessica L. Campbell
5 Jessica L. Campbell
6 Attorneys for Plaintiffs
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my
business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On September 5, 2018, I served the foregoing document entitled:

5 • **PLAINTIFF'S NOTICE OF RULING**

6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
7 copy thereof enclosed in sealed envelope(s) addressed as follows:

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10 Rassa L. Ahmadi
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22 *Attorneys for Defendants:*
23 *VCG-IS, LLC, dba Imperial Showgirls; VCG*
24 *Holding Corp.*

Attorneys for Defendant:
International Entertainment Consultants, Inc.

25 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
26 electronic transmission to the addressee(s) listed above on the date below. (*Cal. Code*
27 *Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).*)

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

Executed on September 5, 2018, at Irvine, California.


Grethel Gonzalez

EXHIBIT C

Uber's Worst Nightmare

Diana Kapp | Photo: Justin Kaneps | May 18, 2016

Shannon Liss-Riordan just put a \$100 million dent in the sharing economy giant. She's out for a lot more than that.



The most reviled woman in Silicon Valley was badly in need of some coffee.

It was 8:40 a.m. on the Friday before Super Bowl Sunday, and Shannon Liss-Riordan had just arrived in the café of the Westin St. Francis, one arm pulling a rolling suitcase, the other carrying a still-warm laptop. Wearing a black blazer, black pants, and black leather boots, the attorney stood out among the throngs of jersey-clad football fans overtaking the lobby—an all-business peregrine falcon among so many colorful squawking parakeets. “Don’t ask,” she exhaled apologetically, having rolled up 25 minutes late. “You wouldn’t believe how many motions we’ve filed in the last 48 hours.”

That morning’s stupor, like so many before it, would prove worthwhile. After months of drafting briefs into the wee hours, cramming for the California bar exam (necessary because she wasn’t yet licensed to practice law in the state), and continuous, body-clock-wrecking cross-country flights, Liss-Riordan would soon win the largest settlement of her career: \$100 million for 385,000 Uber drivers in California and Massachusetts who’d sued the company for misclassifying them as freelancers rather than employees. Ultimately, the deal, which was announced on April 21, came together secretly and hurriedly, in a flurry of meetings over two weeks in April. While legal pundits are still debating the settlement’s winners and losers (the New York Times chalked up a victory for Uber; Mother Jones called it for the workers), one thing

is certain: By preempting the scheduled June 20 trial, Uber avoided having to face off against Liss-Riordan, who was eager to go for the jugular.

When I met her on Super Bowl Friday, Liss-Riordan was brimming with confidence that she could convince a San Francisco jury that Uber's drivers were not independent contractors, as the company contended, but in fact employees, highly controlled by management and due a host of protections conferred by decades of hard-fought labor battles. Now, two months later, she is almost rueful about the resolution. "I was so looking forward to this trial," she tells me on the Saturday after news of the settlement broke.



For months before its climax, Liss-Riordan's class action lawsuit had taken on bellwether status in Silicon Valley. Many onlookers believed that the ruling would finally resolve the worker-classification debate looming scythe-like over the head of the new sharing economy. Some predicted that, should Liss-Riordan prevail, the suit could cripple Uber, kill other startups in their cradles, and, hell, maybe even end the whole trendy "gig economy" sector as a whole. That the suit didn't slay Uber once and for all doesn't mean that it didn't inflict major pain on it. Asked to list the most important reforms assured by the \$100 million settlement, Liss-Riordan touts the deal's ability to bolster drivers' job security; to force Uber to implement a more favorable tipping policy; and to give workers the means to organize as a group, granting them representation "akin to what unions provide."

But that's not everything she was gunning for, I suggest—drivers still won't be considered employees under the settlement. "I only settled, and I would only settle," she responds, "because I believe what we achieved is a significant achievement in the lives of drivers." (This contention was strongly disputed earlier this week by several lawyers pursuing their own class-action cases against Uber. "She has single-handedly stuck a knife in the back of every Uber driver in the country," one of them told Bloomberg.) But more to the point, Liss-Riordan says, she's far from finished with Uber and its myriad cousins. The round-one bell may have dinged, but the attorney intends to continue her crusade on behalf of workers, calling large corporations to the mat and wringing major concessions and siphoning huge sums from them when necessary.

Independent contractors, a class of worker that is expected to characterize 40 percent of all U.S. laborers by 2020, are due no benefits, guarantee of hours, or minimum wage, enabling the enterprises that employ them to keep labor costs low. But if this galaxy of free agents suddenly has to be treated like employees, with all the expensive benefits that the status conveys—well, let's just say that Silicon Valley offers Liss-Riordan a wealth of opportunity. In fact, when I called her to talk about the Uber settlement, she told me she had just selected the last of the furniture for her new Geary Street office. That's right, the first annex of Liss-Riordan's Boston-based firm will soon open in San Francisco. It'll be located right off of Union Square.

When I visited her in January in Boston's Back Bay neighborhood, where her firm, Lichten & Liss-Riordan, PC, is headquartered, Liss-Riordan stood outside her office and gestured at the businesses lining the block. Dunkin Donuts, Boston Cab, Lord & Taylor, Starbucks—at one time or another, she has sued all of them for labor violations. “Yes,” she laughed, “it gets pretty hard avoiding all my companies.”

Uber came into Liss-Riordan's sights in 2012 when, during a dinner in San Francisco, a friend whipped out his phone to show off a cool new app. She saw the cars crawling around his screen and immediately grokked the model—back in Boston, she was representing cab drivers who wanted the benefits allotted to employees. Seeing the glint in her eye, her friend blurted, “Don't you dare. Do not put them out of business!”

Liss-Riordan sealed a major victory on December 9 of last year, when the class action lawsuit she had filed on behalf of 8,000 California Uber drivers in 2013 was upgraded by a San Francisco judge to include basically every single Uber driver in California—more than half of the company's current U.S. workforce. Suddenly, the Wall Street Journal was calling her “one of the most influential and controversial figures in Silicon Valley,” and her lawsuit was threatening the very existence of the world's largest privately held company (current valuation: approximately \$68 billion, greater than Ford, Honda, and GM).

The crux of her case was whether the sharing economy habit of using contractors rather than fully vested employees violates basic labor laws. It was a question that could potentially affect the fortunes of dozens of would-be and actual unicorns in Silicon Valley, including Google Express, Postmates, Handy, Caviar, Instacart, GrubHub, DoorDash, Jolt, and Lyft, all of which Liss-Riordan is in some stage of suing. Indeed, the attorney could throw a stone at any car driving down Post Street, and chances are that she would hit a vehicle delivering food or passengers or packages for one of the new-economy businesses that she is after.

True to her nickname, Sledgehammer Shannon—bequeathed to her by the American Airlines skycaps she represented in a 2008 tip-skimming case—Liss-Riordan, 47, has been smashing up corporate America through rapid-fire class action lawsuits for a decade and a half (she currently has some 80 suits in motion). Beyond what's visible outside her firm's front door in Boston, her victims include Federal Express, Harvard University, almost every major U.S. airline, and the strip joint Centerfolds. Her newest clients are teachers for testing giant Kaplan, who claim they are being deprived of overtime pay, and stage actors working for studios “owned by people like Danny DeVito and Tim Robbins.” Broadly, she is out to advance the wage-and-hour corner of labor law, basically everything related to compensation for hourly-wage Americans, who, she believes, are faring worse than ever. “I'm not feeling good about the big picture,” she says. “The labor movement has obviously been in sharp decline, which has seriously impacted worker welfare. It's very important to push back against this rollback.”

Over the years, Liss-Riordan's firm, which typically takes one-third of what it wins and charges nothing when it loses, has pulled in more than \$200 million for its class action clients. And in the process, Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors. At a three-day Department of Labor “Future of Work” symposium last December in Washington, D.C., attendees in the hallways were leaping into Liss-Riordan's orbit to take selfies with her. This is not normal for plaintiff's attorneys in the wage-and-hour racket. “She hadn't spoken on a panel,” says the National Employment Law Project's Cathy Ruckelshaus, who was at the conference. “She was just recognized.”

Liss-Riordan's path to legal stardom began with the renowned feminist labor activist and congresswoman Bella Abzug, who hired her soon after she graduated from Harvard. She had no special connections to Abzug, or to anyone else, but simply copied the number of every New York-based women's organization out of the phone book and started dialing. "I loved [Abzug's] big ideas, and her big hats," she reminisces. The office photographs of Abzug marching in union protests moved Liss-Riordan. "It was inspiring to see her have an idea and make it happen," she says. "That's what made me desire law school, so I could do something bigger."

Her progressive leanings, though, had been baked in long before that. The progeny of socialists (her maternal great-grandfather organized unions with Samuel Gompers), Shannon Liss grew up in Meyerland, Texas, the daughter of a Reagan Democrat dad and a liberal mother. At age five she professed that when she married, she would hyphenate her last name "because it was the only way that made any sense." (Her husband and three children all use Liss-Riordan.) She excelled in math and science, starting a math club in high school that wound up being voted "most organized in the country." ("I never knew there was such a contest," she says. "I was just doing my thing.")

In 1992, she left Abzug to stage a conference featuring Anita Hill, fresh from the carnival of the Clarence Thomas harassment hearings. Through this work, she met Gloria Steinem, who introduced her to Rebecca Walker, a Yale student whose treatise on modern-day feminism, "Becoming the Third Wave," had just appeared in Ms. magazine. Over burritos in the Village, the pair hashed out how to turn Walker's ideas into action. First up was Freedom Summer 1992, a cross-country bus tour to register women voters. Hillary Clinton blew them off after committing to meet the bus in Little Rock, which partly explains why Liss-Riordan is now feeling the Bern. Ultimately, though, she yearned to fix the system from within, while Walker wanted to stay outside of it. Laws needed to be changed. People needed to be held accountable. So in 1993, Liss-Riordan headed to Harvard Law School to work on just that.

She opened Lichten & Liss-Riordan, PC, in 2009, breaking off, along with one of her mentors, Harold Lichten, from an established labor-law firm. "I work for her now," laughs Lichten, a messy professor type who, at 18, quit the University of Pennsylvania basketball team rather than get the required crew cut. Clearly, the two bond over heeding their first principles. Liss-Riordan bought a Cambridge pizza joint in 2012 after she won a back-pay lawsuit for the employees, which helped push the restaurant into bankruptcy. After purchasing it, she made most of the employees part-owners and renamed the pizzeria the Just Crust.

The day I shadowed her in Boston, Liss-Riordan was a whirl of motion. At one point, while we were chatting in her office, the reception desk buzzed and she disappeared down an exposed-brick stairwell hung with vintage photos of workers—seamstresses, a 1930s-era stripper. She returned with a redheaded woman in jeans, whom she motioned to sit at the conference table.

"I was very interested in what you sent me," Liss-Riordan said, plopping down beside her. The woman was a massage therapist at Harvard University's Center for Wellness. "Were you able to do any snooping around to see if there were other pockets [of contractors] around campus with similar setups?" the attorney asked. The woman said not yet. Liss-Riordan followed with a run of questions: How many hours do you work? Thirty a week. Who sets your schedule? Management. Who buys your equipment? They do. Do you pay for your own insurance? Yes. If there was a client you had before that you didn't like, could you say you'd rather not take them again? The woman shook her head: No way. Liss-Riordan glanced through the documents the

woman had slid her. “There is a good argument that you have been misclassified as a contractor,” she said, then suggested they go after sick and holiday pay, and perhaps benefits like free Harvard courses.

“Didn’t you go to Harvard?” the woman inquired timidly. “I read that on your website.” Liss-Riordan responded with a laugh: “I’ve sued Harvard twice before. They gave me two degrees, so I’m not sure they appreciate it.” (She roomed there with YouTube CEO Susan Wojcicki.) The woman asked if she would lose her job. “I’m scared,” she said. “No, no way,” Liss-Riordan retorted. “It’s scary, but you are doing the right thing. Actually, that it’s Harvard protects you. They know they can’t get away with misbehaving.”

Over the years, Liss-Riordan has sought employee status for truck drivers, call-center workers, home cleaners, even exotic dancers. “It’s just the next logical extension to take it into these on-demand jobs, where it’s pretty clear these low-wage workers are not running their own businesses,” says the National Employment Law Project’s Ruckelshaus, who has worked with Liss-Riordan on several cases. A lawyer defending one of Liss-Riordan’s suits spins her MO in another way: “She’s found this tiny niche, and now she’s just exploiting the hell out of it.”

Indeed, her power-to-the-worker rhetoric flies in the face of many of Silicon Valley’s prized principles and has earned her some well-funded enemies. The very labor laws she defends, says veteran VC Len Baker of Sutter Hill Ventures, are “encrusted with so much crap they just really bog us down.” Sam Altman, who heads the prolific startup hatchery Y Combinator, believes that “individual flexibility and freedom” should trump current laws that tie employees to employer. “I definitely think it’s bad to make everyone de facto full-time employees,” he says. The whole point of the on-demand economy, maintains Eric Goldman, director of the High Tech Law Institute at the Santa Clara University School of Law, “is to allow more granular ways of people providing their services.” This new, frictionless, seamless way of parsing tasks and connecting available labor to paying work, says Baker, is “just much more efficient economically.”

To all this, Liss-Riordan simply responds: Bogus. She finds the cult of contract labor “really kind of scary, a great loophole” that’s allowing corporations to screw the little guys. In her view, companies like Uber blatantly skirt minimum-wage and overtime-pay rules, which have been in place since the New Deal. By classifying drivers as contractors, Uber can fire them at will, have them run down their own cars and tires while avoiding having to reimburse them the IRS-mandated 57.5 cents (now 54) per mile for wear and tear, and sidestep mandates for workers’ compensation and health insurance. The legal framework behind this “might be one of the sharpest attacks on workers we’ve seen in a long time,” Liss-Riordan says. “The rhetoric is, ‘But oh, this is good for the worker—be this on-demand worker, and you’ll have this freedom.’ But they are not their own bosses. Technology has created more extreme ways that employers can take advantage of workers. They are tethered to their phone. There are constant ratings, surge incentives, and data tracking their behavior at times, with more pull than a human manager would have.”

Silicon Valley, naturally, would like to come up with another way to get around this existential divide. “The best thing would be a new categorization” for gig-economy workers, says Altman, “because these people really lie somewhere between traditional notions of contractor and employee.” But Liss-Riordan has a standard retort for this third-category concept: “Why is there this call for dismantling these protections that have been fought for over decades in order to

help a \$50 billion company get richer, while the drivers are making less and less and paying Uber's business expenses?" To her, the notion that flexibility is incompatible with full-time employment is a cop-out. "Plenty of companies let workers set their own schedules," she says. "If it costs Uber more to make everyone employees, they should just take a bigger cut and at least be transparent about all this."

Back in December, in U.S. District Court Judge Edward M. Chen's domain high above the city, Liss-Riordan strenuously objected to Uber's move of emailing every driver a new contract, which had to be signed for drivers to continue working. Buried within the fine print was a clause that rendered signers ineligible to join any future class action lawsuits, instead mandating arbitration to resolve grievances. Liss-Riordan finds it infuriating, if somewhat vindicating, that companies have turned to such clauses as a way of dodging responsibility. "They didn't even deign to talk to class counsel before sending out a communication to my clients," she said to the judge. "I would urge the court to consider the arguments that Uber should not be able to curtail liability. Not on the 14th page of an email on an iPhone." Judge Chen ruled in her favor, overriding Uber's arbitration agreement and allowing drivers to file suit as a class.

Arbitration clauses like the one Judge Chen struck down are increasingly being used by companies as a legal end-around. The Supreme Court has strengthened the power of these clauses in recent years, on the grounds that individual mediations are a more efficient means of resolving disputes. But to Liss-Riordan, the shift serves only to protect big business: "I just think it's reprehensible that the Supreme Court has allowed all these companies that are blatantly breaking the law to protect themselves."

It was Uber's arbitration clause that ultimately sent Liss-Riordan's suit careening to a settlement. When the U.S. Court of Appeals for the Ninth Circuit, on April 5, agreed to hear Uber's appeal, "it was not a good sign at all," she says. If Judge Chen's decision to override the arbitration agreement was reversed by the Ninth Circuit, her clients could be left high and dry. "Uber made it known they would appeal this all the way to the Supreme Court if they could," she says. And given the deadlocked state of the court at the moment, the odds of a 4–4 decision leaving the lower court's ruling in place seemed too risky. "There's just a lot of uncertainty," she says.

During our meeting at the Westin, I asked Liss-Riordan if she viewed her lawsuits as primarily having a policing function on bad-acting companies like Uber, or if she believed that she had a shot at challenging the constitutionality of arbitration clauses. She was circumspect. "There are so many ways that companies can evade the laws," she said. "If you chase them in litigation, they can just keep changing the arbitration clause a little bit. For them, they are like this magic bullet."

Using lawsuits, Liss-Riordan is trying to combat these corporate shenanigans by bringing old-fashioned collective bargaining to the new economy. And increasingly, other jurisdictions are taking a similar approach. Seattle just passed a law allowing Uber drivers to organize, and new legislation aimed at enabling gig workers to bargain collectively was recently introduced before the California legislature. (The bill was pulled before a final vote.) The Teamsters are now reportedly attempting to create an independent drivers' "association" akin to a union. "Lawsuits like hers are already having an impact," says Arun Sundararajan, professor at the New York University Stern School of Business and the author of *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism*. The fundamental benefit of these

lawsuits, he says, is in “getting us on a path toward a better solution to funding our social safety net.”

Liss-Riordan is never one to relent unless forced. Says her partner Lichten, admiringly, “She’s like a pit bull with a Chihuahua in her mouth.” Among the concessions Uber had to make to reach the April settlement was forgoing its practice of firing drivers without cause. “That’s a pretty big deal,” says Santa Clara University law professor Goldman. What’s more, drivers will no longer be deactivated for a low rate of pickups, will receive a warning before losing their job, and can contest a termination before a panel of their peers. An even bigger deal, Liss-Riordan says, was convincing the judges in both her Uber and Lyft cases to deny summary judgment. What this means is that companies will not be able to do away with lawsuits of this nature quickly and painlessly. “They were saying that any company that finds itself with a lawsuit for misclassification can find itself in front of a jury. And that’s big,” she says. “It’s a big price to put an end to the case, and it will continue to give companies pause before they play fast and loose with these rules.”

There is evidence of this already. On-demand players such as Instacart, Shyp, Zirtual, and Honor have recently shifted course, reclassifying some of their workers as employees. “Everyone who wants to be Uber of the next thing—they’ve been watching these battles,” Liss-Riordan says. And, she is quick to point out, Uber may be paying \$100 million to make this suit go away, but it hasn’t gotten the employment-classification monkey off its back. “No court has decided here whether these drivers are employees or independent contractors,” she says. At multiple times during our phone conversation in April, Liss-Riordan returned to her favorite point: “This was a settlement. Nothing has been decided.”

Before hanging up, I pushed her on my last question: What is your next chess move against Uber? Is this fight over? She hemmed and hawed over what to reveal publicly, before finally relenting. “Oh, OK,” she said, grinning audibly on the other end of the line. “You can say I’m not done with this company.”

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EXHIBIT D

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

JON WALDREP,

Plaintiff,

v.

CAMBLY INC.,

Defendant.

Case No. 34-2022-003 14360-CU-OE-GDS

**REVISED PAGA AND CLASS ACTION
SETTLEMENT AGREEMENT**

This Revised PAGA and Class Action Settlement Agreement and Release, including Exhibits 1 through 3 hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between Plaintiff Jon Waldrep (“Plaintiff”) on behalf of himself and the Settlement Class and the State of California as defined below, on the one hand, and Defendant Cambly Inc. (“Cambly”) on the other hand (“Defendant”). Plaintiff and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all claims brought or that could have been brought against Cambly in the above-captioned case, including as amended pursuant to this Agreement (the “Action”), and all claims based on or reasonably related thereto. This Agreement is

intended to fully and finally compromise, resolve, discharge, and settle the Settlement Class Members' Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

I. RECITALS

This Agreement is made in consideration of the following facts:

1.1 WHEREAS, on January 24, 2022, Jon Waldrep filed a Private Attorneys General Act, California Labor Code, § 2698, *et seq.* ("PAGA") representative action complaint in Sacramento County Superior Court (Case No. 34-2022-003 14360-CU-OE-GDS), asserting various Labor Code violations against Cambly arising from its alleged misclassification of English tutors in California as independent contractors, on behalf of the State of California Labor and Workforce Development Agency ("LWDA");

1.2 WHEREAS, following the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 213 L. Ed. 2d 179, *reh'g denied*, 143 S. Ct. 60 (2022) and the California Supreme Court's decision to hear *Adolph v. Uber Technologies, Inc.*, Case No. S274671 (Cal. July 20, 2022) (granting review), the Parties jointly agreed that Plaintiff would submit his individual PAGA claim to arbitration before the American Arbitration Association ("AAA") and would stay the representative portion of his PAGA claim pending in the Sacramento County Superior Court;

1.3 WHEREAS, Arbitrator Helen Blohm was appointed to oversee Plaintiff Waldrep's arbitration and the Parties began the discovery process before agreeing to mediate in fall 2023;

1.4 WHEREAS, Plaintiff alleges generally that Cambly improperly classified him and all putative Settlement Class Members as independent contractors rather than employees, and asserts derivative claims related thereto;

1.5 WHEREAS, Cambly denies the allegations in the Action; maintains each and any tutor's claims must be individually arbitrated pursuant to the arbitration provision within Cambly's Terms of Service Agreement; denies that it has engaged in any wrongdoing; denies that any Settlement Class Member was ever an employee of Cambly; denies that Plaintiff's allegations state valid claims; denies that a litigation class could properly be certified in the Action; denies that Plaintiff's claims could

properly be maintained as a representative action; and states that it is entering into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation;

1.6 WHEREAS, a bona fide dispute exists as to whether any amount of wages, reimbursements, penalties, or any other measure of damages available under the California Labor Code are due from Defendant to any putative Settlement Class Member or to the LWDA;

1.7 WHEREAS, in preparation for mediation, the Parties engaged in formal discovery as part of the AAA arbitration and also engaged in informal discovery in the form of exchanging information and reviewing and analyzing extensive data made available by Cambly, which enabled Plaintiff and the mediator to thoroughly evaluate Plaintiff's claims and the claims of the putative class, and the likely outcomes, risks, and expense of pursuing litigation;

1.8 WHEREAS, the Parties attended a remote mediation session via Zoom on December 14, 2023, with professional mediator Hon. Kevin Murphy (Ret.);

1.9 WHEREAS, as a result of the mediation, Plaintiff's Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Cambly in the Action. Plaintiff's Counsel further recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the action against Cambly through trial and appeals. Counsel has also considered the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in any such litigation;

1.10 WHEREAS, as part of the Settlement, the Parties stipulated to Plaintiff filing a First Amended Complaint in the Superior Court for settlement purposes only, adding class-wide allegations. The Parties agree that Cambly is not required to file an answer or any other responsive pleading to the operative First Amended Complaint, and that Plaintiff will not take a default against Cambly, since the Parties are actively participating in settlement administration.

1.11 WHEREAS, for settlement purposes only, Cambly will stipulate to the certification of class claims that are subject to the certification requirements of California Code of Civil Procedure section 382. Cambly disputes that certification is proper for the purposes of litigating the class claims

1 proposed or in flowing from the claims asserting in this Action. Cambly expressly reserves the right
2 to oppose certification of any purported class should the Settlement fail to become final and effective;

3 1.12 WHEREAS, the Parties desire to compromise and settle all issues and claims that have
4 been, could have been, or should have been brought against Cambly or related persons in this Action,
5 including but not limited to, those claims alleged in the Complaint or First Amended Complaint;

6 1.13 WHEREAS, on June 11, 2024 Plaintiff filed a Motion for Preliminary Approval of Class
7 Action Settlement, seeking Court approval a proposed PAGA and Class Action Settlement Agreement.

8 1.14 WHEREAS, on August 15, 2024, the Court issued a Tentative Ruling on Plaintiff's
9 Motion for Preliminary Approval of Class Action Settlement, directing the Parties to revise their
10 proposed PAGA and Class Action Settlement Agreement.

11 1.15 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
12 AGREED, by the Plaintiff for himself and on behalf of the Settlement Class, and by Cambly that,
13 subject to the approval of the Court, this Action shall be settled, compromised, and judgment shall be
14 entered with prejudice, and the Settlement Class Members' Released Claims shall be finally and fully
15 compromised and settled as to the Released Parties, in the manner and upon the terms and conditions
16 hereafter set forth in this revised agreement.

17 **II. DEFINITIONS**

18 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
19 meanings set forth below:

20 2.1 "Settlement Class" means all approximately 227 current and former individuals who
21 provided services in connection with Cambly's platform in the State of California at any time from
22 November 9, 2020 to May 26, 2022;

23 2.2 "Class Counsel" means Lichten & Liss-Riordan, P.C.

24 2.3 "Class Counsel Award" means (i) the attorneys' fees and costs for Class Counsel's
25 litigation and resolution of the action, as awarded by the court, which may not exceed one-third of
26 \$393,000.

1 2.4 “Class Notice” means the notice of class action settlement to be provided to Settlement
2 Class Members, without material variation from **Exhibit 1**. The Class Notice provides the Settlement
3 Class an opportunity to opt-out of the Class Action Agreement outlined herein.

4 2.5 “Class Period” means the period from November 9, 2020 to May 26, 2022.

5 2.6 “Court” means the Sacramento County Superior Court.

6 2.7 “Effective Date” means seven (7) days after which both of the following events have
7 occurred: (i) the Court’s Final Approval order has been entered; and (ii) the Court’s Final Approval
8 order and Judgment have become Final.

9 2.8 “Exclusion/Written Objection Deadline” means that the final date by which a Settlement
10 Class Member may (i) object to any aspect of the Settlement, or (ii) request to be excluded from the
11 Settlement. The Exclusion/Written Objection Deadline shall be sixty (60) days after the Notice Date,
12 defined below as the date of the initial distribution of the Class Notice to Settlement Class Members
13 by electronic mail. The Exclusion/Written Objection Deadline shall be specifically identified and set
14 forth in the Preliminary Approval Order and the Class Notice.

15 2.9 “Final” when referring to a judgment or order, means that (i) the judgment is a final,
16 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on
17 which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the
18 judgment having been commenced, such appeal or other review is finally concluded and no longer is
19 subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for
20 re-hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has
21 been finally resolved in such manner that affirms the judgment order in its entirety.

22 2.10 “Final Approval” means the Court’s entry of a Final Approval order finally approving
23 this Settlement.

24 2.11 “Final Approval Hearing” means the hearing at or after which the Court will make a final
25 decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved
26 by the Court.

1 2.12 “Judgment” means the judgment to be entered in the Action on Final Approval of this
2 Settlement.

3 2.13 “Legally Authorized Representatives” means an administrator/administratrix, personal
4 representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian,
5 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally
6 appointed person responsible for handling the business affairs of a Settlement Class Member.

7 2.14 “Named Plaintiff’s General Released Claims” means any and all past, present, and future
8 claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or
9 liabilities, of any nature and description whatsoever, known or unknown, contingent or accrued,
10 existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
11 recovery (including but not limited to those based in contract or tort, common law or equity, federal,
12 state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential,
13 punitive or exemplary damages, statutory damages, penalties, interest, attorneys’ fees, costs or
14 disbursements), against the Released Parties (as defined below), including unknown claims covered
15 by California Civil Code section 1542, by the Plaintiff, arising during the PAGA and Class Periods,
16 for any type of relief that can be released as a matter of law, including, without limitation, claims for
17 wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated
18 damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief
19 with the exception of any claims which cannot be released as a matter of law. Plaintiff Jon Waldrep
20 will generally release all known and unknown claims against Cambly and waive the application of
21 section 1542 of the California Civil Code. The claims released pursuant to this paragraph include but
22 are not limited to the Settlement Class Members’ Released Claims, as well as any other claims under
23 any provision of the FLSA, the California Labor Code (including sections 132a, 4553 *et seq.*) or any
24 applicable California Industrial Welfare Commission Wage Orders, and claims under state or federal
25 discrimination statutes, including, without limitation, the California Fair Employment and Housing
26 Act, California Government Code section 12940 *et seq.*; the California Business and Professions Code
27 sections 17200 *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51 *et seq.*; the
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1 California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the
2 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age Discrimination in Employment
3 Act of 1967, as amended; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001
4 *et seq.*; the Family and Medical Leave Act, the Employee Retirement Income Security Act; the
5 National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the Uniformed
6 Services Employment and Reemployment Rights Act, and all of their implementing regulations and
7 interpretive guidelines, as well as any other similar state, federal, local, or common law claims for
8 unpaid wages, minimum wages, regular wages, tips, gratuities, overtime wages (including but not
9 limited to calculation of the correct overtime or regular rate), working more than six days in seven,
10 expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction
11 of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave,
12 final pay, penalties for timely payment of wages upon discharge, waiting time penalties, PAGA
13 penalties, and unfair business practices.

14 2.15 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement
15 Class Members by electronic mail, as set forth in Section VI.

16 2.16 "Opt Out List" means the Court-approved list of all persons who timely and properly
17 request exclusion from the Settlement Class.

18 2.17 "Plaintiff" means Jon Waldrep.

19 2.18 "PAGA Claims" means the Plaintiff's representative claims seeking penalties pursuant
20 to PAGA, as alleged in the LWDA letter, Complaint, First Amended Complaint and/or based on any
21 other provision of the Labor Code, Wage Orders or any other statute or regulation (whether identified
22 in the Complaint or not) to the fullest extent permitted by law.

23 2.19 "PAGA Members" means all current and former individuals who provided services in
24 connection with Cambly's platform in the State of California at any time during the PAGA Period.
25 PAGA Members cannot opt out of the Settlement.
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1 2.20 “PAGA Payment” means a total payment of \$30,000 to settle all PAGA Claims for the
2 PAGA Period. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to PAGA,
3 and 25% will be distributed pro rata to PAGA Members based on their Total Classroom Minutes.

4 2.21 “PAGA Payment Fund” means the funds paid to the LWDA and the PAGA Members for
5 civil penalties pursuant to PAGA.

6 2.22 “PAGA Period” means the period from November 9, 2020 to May 26, 2022.

7 2.23 “Plan of Allocation” means the plan for allocating the Settlement Payment Fund (and the
8 PAGA Members’ share of the PAGA Payment Fund) between and among Settlement Class Members
9 as approved by the Court.

10 2.24 “Preliminary Approval Date” means the date that the Court enters the Preliminary
11 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto; and (ii)
12 enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement
13 Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing
14 on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

15 2.25 “Preliminary Approval Order” means the order that the Plaintiff and Cambly will seek
16 from the Court, without material variation from **Exhibit 2**. Entry of the Preliminary Approval Order
17 shall constitute preliminary approval of the Settlement Agreement.

18 2.26 “Released Parties” means (1) Cambly Inc.; (2) any predecessors and successors in
19 interest, any current or former parent corporations, subsidiary corporations, affiliates, and assigns; (3)
20 companies acquiring any or all of Cambly’s assets or capital stock; (4) any of Cambly’s past or present
21 divisions, suppliers, distributors, dealers, or sales branches; and (5) all current or former officers,
22 directors, shareholders, agents, representatives, principals, heirs, accountants, auditors, consultants,
23 insurers and reinsurers, attorneys, and employees.

24 2.27 “Reserve Fund” means five percent (5%) of the Total Settlement Amount or \$19,650,
25 which shall be set aside to pay any unexpected or unplanned amounts, including late or disputed
26 claims. The Reserve Fund will be held until sixty (60) days after all disputes have been resolved, all
27 claims have been paid and all checks have been cashed or expired. Any unused portion of the reserve
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1 fund will be paid out in a second distribution to settlement class members who submitted a claim and
2 cashed their first settlement check alongside any other residual funds from uncashed checks in
3 accordance with Paragraphs 5.4 and 10.5.

4 2.28 “Settlement Class Members’ Released Claims” means any and all claims, actions,
5 demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, pursuant
6 to any theory of recovery against Cambly arising within the Class Period, for any type of relief that
7 can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid
8 costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages,
9 interest, attorneys’ fees, litigation costs, restitution, or equitable relief (with the exception of any
10 claims which cannot be released as a matter of law), that could be brought based on the allegations in
11 the Action, including but not limited to any claims or factual allegations set forth in the LWDA letter,
12 Complaint and/or First Amended Complaint, namely Cambly’s alleged misclassification of the
13 Settlement Class as independent contractors. The claims released pursuant to this paragraph
14 specifically include, without limitations, a release of claims under Cal. Labor Code, §§ 2802, 226.7,
15 226.8, 1197, 1194, 1198, 510, 554, 512, 432.5, 1182.12, 1194.2, 1197.1, 1199, 226, 226(a), 226.3,
16 551, 552, 221-224, 225.5, 227, 201-203, 204, 210, 227.3 San Francisco Minimum Wage Ordinance,
17 Los Angeles Citywide Minimum Wage Ordinance, Los Angeles County Minimum Wage Ordinance,
18 IWC Wage Order No. 9-2001, the Private Attorneys General Act, Cal. Lab. Code, § 2698, *et seq.*, in
19 connection with claims related to independent contractor misclassification; as well as any other claims
20 under the California Labor Code or any applicable California Industrial Welfare Commission Wage
21 Orders; and all of their implementing regulations and interpretive guidelines, as well as any other
22 similar state, local, or common law claims that relate to independent contractor misclassification. The
23 release does not include claims that, as a matter of law, cannot be released and does not include claims
24 for retaliation, discrimination, wrongful termination, and individual claims filed with the appropriate
25 agency for the recovery of workers’ compensation benefits.

26 2.29 “Settlement Payment” means the amount payable to each Settlement Class Member who
27 does not opt out. The Settlement Payment shall be calculated pursuant to Section V herein.
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1 2.30 “Settlement Payment Fund” means the funds paid to Settlement Class Members after
2 deducting the Class Counsel Award, Named Plaintiff’s Service Award, Settlement Administrator
3 Expenses, and the PAGA Payment.

4 2.31 “Settlement” means the settlement of the Action between and among Plaintiff and
5 Cambly, as set forth in this Settlement Agreement.

6 2.32 “Settlement Administrator” means Simpluris, the neutral, third-party settlement
7 administrator to be appointed by the Court.

8 2.33 “Settlement Administrator Expenses” means the amount to be paid to the Settlement
9 Administrator from the Settlement Payment Fund, including the total costs, expenses, and fees of the
10 Settlement Administrator. The amount may not exceed \$14,000.

11 2.34 “Settlement Class Member” means any member of the Settlement Class.

12 2.35 “Service Award” means the amount approved by the Court to be paid to the Plaintiff Jon
13 Waldrep, in addition to his individual Settlement Payment, in recognition of his efforts in coming
14 forward as the PAGA Representative and name plaintiff. The Service Award amount payable to
15 Plaintiff is not to exceed \$10,000.

16 2.36 “Total Settlement Amount” means Three Hundred Ninety Three Thousand Dollars
17 (\$393,000.00) for payment of all claims, which is the maximum amount that Cambly is obligated to
18 pay under this Settlement Agreement under any circumstances in order to resolve and settle the Action,
19 subject to Court approval. The Total Settlement Amount shall be inclusive of all costs and fees,
20 including, but not limited to, Class Counsel Award, applicable Settlement Administrator Expenses,
21 escrow costs and expenses, Service Awards, PAGA Payment, and interest. The Total Settlement
22 Amount is a material term to this Settlement Agreement and Defendant may revoke the Agreement if
23 the Court insists on a change that increases the obligation of the Defendant to pay an amount in excess
24 of the Total Settlement Amount. Changes requested by the Court to the allocation of funds between
25 PAGA and the remaining class claims, or changes in the amount of attorneys’ fees and costs or
26 enhancement award to Plaintiff, will not form the basis for any party to revoke this Agreement.

1 2.37 “Total Classroom Minutes” means the total number of minutes a Settlement Class
2 Member provided services during the Settlement Class Period in connection with Cambly’s platform,
3 as determined by Cambly.

4 2.38 “Void Date” means the date by which any checks issued to Settlement Class Members
5 shall become void, *i.e.* on the 181st day after mailing.

6 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
7 **PRELIMINARY AND FINAL APPROVAL**

8 3.1 Upon execution of this Settlement Agreement, Plaintiff shall submit to the Court a motion
9 for preliminary approval of the Settlement. Class Counsel shall provide a draft motion for Defendant’s
10 counsel review with reasonable time in advance of the filing. The Parties will also submit a preliminary
11 approval order (**Exhibit 2** hereto) containing a plan for the sending of the Class Notice to Settlement
12 Class Members within fifteen (15) days after the Preliminary Approval Date (the Notice Date), and
13 establishing a period of sixty (60) days from the Notice Date within which any Settlement Class
14 Member may (i) request exclusion from the Settlement Class, (ii) submit written objections to the
15 proposed Settlement, and/or (iii) submit written objections to Class Counsel’s request for the Class
16 Counsel Award and for Service Award to the Plaintiff (the Exclusion/Written Objection Deadline).

17 3.2 The Parties stipulate to certification under California Code of Civil Procedure Section
18 382, for settlement purposes only, of the Settlement Class. The Parties agree that this stipulation shall
19 not be admissible in, and may not be used by any person for any purpose whatsoever in any legal
20 proceeding, including but not limited to any arbitrations and/or any civil and/or administrative
21 proceedings, other than a proceeding to enforce the terms of the Agreement.

22 3.3 Class Counsel agrees to keep any and all data related to the Settlement Class’s use of the
23 Cambly platform in the strictest confidence and shall not disclose that data.

24 3.4 Class Counsel and Plaintiff agree to use their best efforts, in cooperation with defense
25 counsel, to keep this Action stayed pending Final Approval of the Settlement, and upon Final Approval
26 of the Settlement, Class Counsel and Plaintiff agree to dismiss this Actions with prejudice.
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1 3.5 The Parties stipulate to the form of, and agree to submit to the Court for its consideration
2 this Settlement Agreement, and the following Exhibits to this Settlement Agreement: [Proposed]
3 Preliminary Approval Order (Exhibit 2); and Class Notice (Exhibit 1).

4 3.6 Within 10 days of the Preliminary Approval Date, Class Counsel will notify the LWDA
5 of the Preliminary Approval Order.

6 3.7 At the Final Approval Hearing, Plaintiff shall request entry of a Final Approval Order
7 and a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
8 Settlement and that, among other things:

9 3.7.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
10 consummation pursuant to the terms of the Settlement Agreement;

11 3.7.2 Finds that Class Counsel and Plaintiff adequately represented the Settlement
12 Class for the purpose of entering into and implementing the Agreement;

13 3.7.3 Re-confirms the appointment of the Settlement Administrator and finds that the
14 Settlement Administrator has fulfilled its duties under the Settlement to date;

15 3.7.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
16 constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
17 Members of the pendency of the Action, and their right to exclude themselves from or object to the
18 proposed settlement and/or to appear at the Final Approval Hearing; (iii) was reasonable and
19 constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met
20 all applicable requirements of California Rules of Court 3.766(d) and 3.769(f), due process, and any
21 other applicable rules or law;

22 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
23 list of all Settlement Class Members who have timely and properly requested exclusion from the
24 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and
25 Judgment;

26 3.7.6 Directs that the Final Approval order and Judgment shall be final and entered
27 forthwith;
28

1 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs
2 that the Sacramento County Superior Court retains continuing jurisdiction over the Plaintiff, the
3 Settlement Class, and Cambly as to all matters concerning the administration, consummation, and
4 enforcement of this Settlement Agreement;

5 3.7.8 Adjudges that, as of the Final Approval Date, Plaintiff, and all Settlement Class
6 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List
7 approved by the Court, and their heirs, estates, trustees, executors, administrators, principals,
8 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them
9 or acting or purporting to act for them or on their behalf, regardless of whether they have received
10 actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and
11 released the Settlement Class Members' Released Claims against Cambly and are bound by the
12 provisions of this Agreement;

13 3.7.9 Affirms that, notwithstanding the submission of a timely and proper request for
14 exclusion, Settlement Class Members will still be bound by the Settlement and release of the PAGA
15 Claims as requests for exclusion do not apply to the PAGA Claims, and further affirms that the
16 LWDA's claims for civil penalties pursuant to PAGA are also extinguished through May 26, 2022,
17 the date Cambly stopped contracting with California tutors;

18 3.7.10 Declares this Agreement and the Final Approval order and Judgment to be
19 binding on, and have res judicata and preclusive effect as to all pending and future lawsuits or other
20 proceedings that encompass the Settlement Class Members' Released Claims and that are maintained
21 by or on behalf of any Settlement Class Member who has not been excluded from the Settlement Class
22 as provided in the Opt-Out List approved by the Court and/or his or her heirs, estates, trustees,
23 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
24 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
25 regardless of whether the Settlement Class Member previously initiated or subsequently initiates
26 individual litigation, arbitration, or other proceedings encompassed by the Settlement Class Members'
27 Released Claims, and even if such Settlement Class Member never received actual notice of the Action
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1 or this proposed Settlement;

2 3.7.11 Determines that the Agreement and the Settlement provided for herein, and any
3 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or
4 construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-
5 liability or of the certifiability or non-certifiability of a litigation class, or that PAGA representative
6 claims may validly be pursued, or of any misrepresentation or omission in any statement or written
7 document approved or made by any Party; provided, however, that reference may be made to this
8 Agreement and the Settlement provided for herein in such proceedings as may be necessary to
9 effectuate the provisions of this Agreement, as further set forth in this Agreement;

10 3.7.12 Orders that the preliminary approval of the Settlement, certification of the
11 Settlement Class and final approval of the proposed Settlement, and all actions associated with them,
12 are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated
13 or disapproved in whole or in part by the Court, or any appellate court and/or other court of review, in
14 which event the Agreement and the fact that it was entered into shall not be offered, received, or
15 construed as an admission or as evidence for any purpose, including but not limited to an admission
16 by any Party of liability or non-liability or of any misrepresentation or omission in any statement or
17 written document approved or made by any Party, or of the certifiability of a litigation class or the
18 appropriateness of maintaining a PAGA representative action, as further provided in this Settlement
19 Agreement;

20 3.7.13 Contains such other and further provisions consistent with the terms of this
21 Settlement Agreement to which the Parties expressly consent in writing.

22 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement,
23 Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any
24 modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the
25 Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement
26 Agreement, or (iii) impose any obligation on the Defendant to increase the consideration paid in
27 connection with the Settlement or limit in any way the releases provided herein.
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1 3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order
2 approving the Class Counsel Award and for the Service Award to the Plaintiff, which shall be paid
3 exclusively from the Total Settlement Amount and in accordance with the distribution plan described
4 in Section V. The disposition of Class Counsel's application for a Class Counsel Award, and for
5 Service Award, is within the sound discretion of the Court and is not a material term of this Settlement.

6 3.10 Within 10 days after entry of Judgment, Class Counsel will provide a copy of the
7 Judgment to the LWDA.

8 **IV. SETTLEMENT CONSIDERATION**

9 4.1 The total monetary component of the Settlement from Cambly is the Total Settlement
10 Amount (\$393,000). This is an "all in" number that includes, without limitation, all monetary benefits
11 and payments to the Settlement Class, Service Award, Class Counsel Award, Settlement Administrator
12 Expenses and the PAGA Payment, and all claims for interest, fees, and costs. Under no circumstances
13 shall Cambly be required to pay anything more than the Total Settlement Amount or make any
14 payments under this Settlement before the deadlines set forth in this Agreement.

15 4.2 The Plaintiff and all Settlement Class Members who receive a payment of any kind from
16 the Total Settlement Amount (including, in the case of the Plaintiff, a Service Award) expressly
17 acknowledge that such payments shall be non-wages for which an IRS Form 1099 will be issued, if
18 required.

19 4.3 The terms of this Agreement relating to the Service Award and Class Counsel Award
20 were not negotiated by the Parties before full agreement was reached as to all other material terms of
21 the proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement
22 Class. Cambly agrees not to oppose a request for a Service Award for Plaintiff, as awarded by the
23 Court, up to a maximum of Ten Thousand Dollars (\$10,000). Plaintiff and Class Counsel agree not
24 to seek a Service Award in excess of the above amount.

25 4.4 Class Counsel agrees not to seek an award of attorneys' fees from the Court in excess of
26 \$131,000 (or one third (1/3) of \$393,000). Cambly agrees not to oppose a request for attorneys' fees
27 up to one third (1/3) of the Total Settlement Amount. Any amount awarded as the Class Counsel
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1 Award shall be inclusive of any and all amounts due to all Plaintiffs' Counsel. Cambly and Settlement
2 Class Members shall have no obligation regarding or liability for allocation or payment of any Class
3 Counsel Award to Plaintiffs' Counsel. Any portion of the amounts requested for fees, costs, or the
4 Service Award not approved by the Court shall revert to the Settlement Payment Fund.

5 4.5 If no timely objection to the Settlement is made, the payment of the Class Counsel Award,
6 the Service Award, the Settlement Administrator Expenses, the Settlement Payments and the PAGA
7 Payment shall be made by the Settlement Administrator within seven (7) business days after Cambly
8 funds the Settlement.

9 4.6 The Settlement Administrator shall pay the Class Counsel Award by check, payable to
10 "Lichten & Liss-Riordan, P.C." Class Counsel shall provide the Settlement Administrator notice of
11 receipt of the Class Counsel Award.

12 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

13 5.1 Within thirty (30) days of the Effective Date, Cambly shall fund the Settlement by
14 providing the Settlement Fund (\$393,000) to the Settlement Administrator. The Settlement
15 Administrator shall thereafter distribute the funds in the manner and at the times set forth in this
16 Agreement.

17 5.2 To receive a payment from the Settlement, a Settlement Class Member must not have
18 submitted a request for exclusion from the Settlement.

19 5.3 The amount of each Settlement Class Member's Settlement Payment will be calculated
20 in proportion to their Total Classroom Minutes, as defined herein. Cambly shall provide its best
21 estimate of each Settlement Class Member's Total Classroom Minutes. Utilizing this information, the
22 Administrator will calculate settlement shares in proportion to Total Classroom Minutes, except that
23 no Settlement Class Member shall receive less than \$25, and any shares under \$25 will be rounded up
24 to this minimum share amount. Furthermore, any Settlement Class Member who is also a PAGA
25 Member will receive a pro rata share of the PAGA Members' portion of PAGA Payment (\$7,500 or
26 25% of the PAGA Payment) based on his or her Total Classroom Minutes.

27 5.4 Following distribution of the Settlement Payments to Settlement Class Members, all
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1 funds not claimed prior to the Void Date (*i.e.*, all funds from uncashed checks) shall be redistributed
2 to the Settlement Class Members who received and cashed their first Settlement Payments and whose
3 residual share would be more than \$50.00. These unclaimed funds shall be redistributed pursuant to
4 the same formula described in Paragraphs 5.3.

5 5.5 As described in Section VI, each Settlement Class Member will have the opportunity,
6 should he or she disagree with Cambly's calculation of his or her Total Classroom Minutes, to provide
7 documentation to establish the appropriate number. There will be a presumption that Cambly's
8 records are correct, absent evidence produced by a Settlement Class Member to the contrary.

9 5.6 The Settlement Administrator shall issue the Settlement Payments to each Settlement
10 Class Member – who does not opt out – by sending their settlement payment electronically to the
11 PayPal account that Cambly has on file, or by transmitting payment by another electronic means (e.g.,
12 Venmo) if the Settlement Class Member elects for an alternative form of electronic payment after
13 receiving the Class Notice. If any settlement payment sent to any Settlement Class Member's PayPal
14 account is returned to the Settlement Administrator or otherwise rejected by PayPal, the Settlement
15 Administrator shall make a good-faith search of an appropriate database, and postal mailings shall be
16 forwarded to any postal mail address obtained through such a search. The Settlement Payments shall
17 be reported by the Settlement Administrator to the applicable governmental authorities on IRS Form
18 1099. The Settlement Administrator shall be responsible for issuing copies of IRS Form 1099 for the
19 Plaintiff and Settlement Class Members.

20 **VI. CLASS NOTICE PROCEDURES**

21 6.1 No more than fifteen (15) calendar days after entry of the Preliminary Approval Order,
22 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
23 sending the Class Notice to Settlement Class Members. Class Information shall include names, last
24 known addresses, last known email address, last known phone numbers, Social Security Numbers (to
25 the extent all such information is available to Cambly), and the Total Classroom Minutes credited to
26 each Settlement Class Member.

27 6.2 The Class Notice will inform Settlement Class Members of their right to request
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1 exclusion from the Settlement, of their right to object to the Settlement, and of their right to dispute
2 the information upon which their share of the Settlement will be calculated and the claims to be
3 released. The Class Notice shall also provide each potential Settlement Class Member with a best
4 estimate of his or her Total Classroom Minutes.

5 6.3 Within seven (7) days after receiving the Class Information from Defendant, the
6 Settlement Administrator shall send a copy of the Class Notice by electronic mail to each potential
7 Settlement Class Member.

8 6.4 If any Class Notice sent via electronic mail to any potential Settlement Class Member is
9 undeliverable, then no later than ten (10) days after the Notice Date, the Settlement Administrator shall
10 then send the Class Notice to the potential Settlement Class Member's postal mailing address to the
11 extent such address is found by the Settlement Administrator pursuant to Section 6.5 below, via first-
12 class mail and the deadline opt out of the settlement shall be extended by an additional ten (10) days
13 for any such individual. In the event that any mailed Class Notice is returned as undeliverable, no
14 further postal mailing shall be required. The Settlement Administrator shall maintain a log detailing
15 the instances Class Notices are returned as undeliverable (*i.e.*, by email and subsequently by mail).

16 6.5 To the extent that sending the Class Notice via postal mail is necessary under the terms
17 of Paragraph 6.4, before any mailing, the Settlement Administrator shall make a good-faith attempt to
18 obtain the most-current names and postal mail addresses for all potential Settlement Class Members
19 to receive such postal mail, as well as any other sources, with appropriate databases (*e.g.*, the National
20 Change of Address Database) and performing further reasonable searches (*e.g.*, through Lexis/Nexis)
21 for more-current names and/or postal mail addresses for Settlement Class Members. All Settlement
22 Class Members' names and postal mail addresses obtained through these sources shall be protected as
23 confidential and not used for purposes other than the notice and administration of this Settlement. The
24 Settlement Administrator shall exercise its best judgment to determine the current mailing address for
25 each Settlement Class Member. The address determined by the Settlement Administrator as the
26 current mailing address shall be presumed to be the best mailing address for each Settlement Class
27 Member.
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1 6.6 As set forth in the Class Notice, Settlement Class Members will be asked to object or
2 request exclusion to the Settlement Administrator within sixty (60) days. However, any Settlement
3 Class Members who do object or request exclusion will nevertheless be bound by the release of the
4 Settlement Members' Released PAGA Claims, as outlined in Paragraph 7.7.

5 6.7 Thirty (30) days prior to the deadline to object or request exclusion, a reminder email
6 will be sent by the Administrator to all Settlement Class Members whose initial Class Notice email
7 was not undeliverable (and by mail to any Settlement Class Member whose initial Class Notice email
8 was undeliverable and for whom the Settlement Administrator traced and found a deliverable postal
9 address) and who has not yet submitted an objection or request for exclusion. Two additional emailed
10 reminders will be sent to any Settlement Class Members who have yet to submit a claim or an objection
11 or request for exclusion fourteen (14) days prior to the deadline and seven (7) days prior to the
12 deadline.

13 6.8 The Parties agree that the procedures set forth in this Section constitute reasonable and
14 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
15 current addresses for Settlement Class Members such that no additional efforts to do so shall be
16 required. However, the Parties can agree in their discretion to take additional measures (such as
17 additional emailed or text message reminders or mailed postcards to class members) should they deem
18 it necessary based on a lower than expected claim rate.

19 6.9 The Settlement Administrator will provide Class Notice by, at a minimum, (i) electronic
20 mail notice without material variation from the form attached as Exhibit 1; (ii) if necessary, in
21 accordance with Paragraph 6.4, first-class mail notice; and (iii) a content-neutral settlement website
22 managed by the Settlement Administrator, and approved by counsel for the Parties, which will contain
23 further information about the Settlement, including relevant pleadings. The Class Notice shall comply
24 with California Rules of Court 3.766(d), 3.769(f) and due process.

25 6.10 The Settlement Administrator shall prepare a declaration of due diligence and proof of
26 dissemination with regard to the mailing of the Class Notice, and any attempts by the Settlement
27 Administrator to locate Settlement Class Members, its receipt of valid requests for exclusion, and its
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1 inability to deliver the Notice of Settlement to Settlement Class Members due to invalid addresses
2 (“Due Diligence Declaration”), and provide it to Class Counsel and counsel for Cambly for
3 presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration
4 with the Court contemporaneous with the filing of the Motion for Final Approval of Class Action
5 Settlement.

6 6.11 If any individual whose name does not appear in the Class Information that Cambly
7 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),
8 believes that he or she is a Settlement Class Member, he or she shall have the opportunity to dispute
9 his or her exclusion from the Settlement Class. If an individual believes he or she is a Settlement Class
10 Member, he or she must notify the Settlement Administrator by mail or email within a reasonable
11 amount of time after the Notice Date. The Parties will meet and confer regarding any such individuals
12 in an attempt to reach an agreement as to whether any such individual should be regarded as a
13 Settlement Class Member. If the Parties so agree, the Settlement Administrator will email and/or mail
14 a Class Notice to the individual, and treat the individual as a Settlement Class Member for all other
15 purposes. Such an individual will have all of the same rights as any other Settlement Class Member
16 under this Agreement. In the event that the disbursement of the Settlement Payments has begun (in
17 accordance with this Settlement Agreement) at the time that the Parties agree that such individual
18 should be regarded as a Settlement Class Member, and that if such individual does not exercise his or
19 her right to opt out of the Settlement, the Settlement Payment to such individual shall be disbursed
20 from funds remitted back to the Payment Fund (*i.e.*, from settlement checks that remain uncashed
21 beyond the Void Date).

22 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

23 7.1 Settlement Class Members (with the exception of the Plaintiff) may opt out of the
24 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
25 submit timely, written requests for exclusion. To be effective, such a timely request must include the
26 Settlement Class Member’s name, address, and telephone number; a clear and unequivocal statement
27 that the Settlement Class Member wishes to be excluded from the Settlement Class; and the signature
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1 of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class
2 Member (who is not the class member's counsel). The request must be mailed or emailed to the
3 Settlement Administrator at the mailing address or email address provided in the Class Notice and
4 must be postmarked no later than the Exclusion/Objection Deadline in the case of a mailed request for
5 exclusion. Alternatively, the request for exclusion, as described in this paragraph, may be emailed to
6 the Settlement Administrator from the email address associated with the Settlement Class Member's
7 Cambly account, in which case the requirement of a signature will be waived. With respect to mailed
8 requests for exclusion, the date of the postmark shall be the exclusive means used to determine whether
9 a request for exclusion has been timely submitted. Requests for exclusion must be exercised
10 individually by the Settlement Class Member (or his or her Legally Authorized Representative as
11 defined herein), even if the Settlement Class Member is represented by counsel. However, nothing
12 about the Settlement's opt-out procedure prevents counsel (a) from reviewing the Settlement with the
13 client, (b) from advising the client on whether participating in or opting out of the Settlement is in the
14 client's (as opposed to counsel's) best interest, or (c) from preparing the opt-out request for their client
15 to sign (e.g., including the requisite information such as the Settlement Class Member's name, address,
16 and telephone number, and a clear and unequivocal statement that the individual wishes to be
17 excluded). Attempted collective group, class, or subclass requests for exclusions shall be ineffective
18 and disregarded by the Settlement Administrator. The Settlement Administrator will attempt to
19 contact any Settlement Class Member whose request for exclusion is incomplete or invalid to provide
20 them with an opportunity to cure the defect prior to the deadline.

21 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
22 receives and provide copies of the log and all such requests for exclusion to Class Counsel and counsel
23 for Cambly, on at least a weekly basis beginning approximately fourteen (14) days after the Class
24 Notices are mailed to Settlement Class Members, or as otherwise requested.

25 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly
26 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval
27 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.
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1 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by the
2 Court shall be bound by this Agreement, and judgment entered as to all their claims, which shall be
3 released as provided for herein, even if they never received actual notice of the Action or this proposed
4 Settlement and regardless of whether they received any distribution from the Settlement Payment
5 Fund.

6 7.5 The Settlement Administrator shall determine whether a request for exclusion was timely
7 and properly submitted and shall submit the Opt-Out List to the Court for its approval along with a list
8 of any defective or untimely requests for exclusion. The Court shall have the ultimate authority to
9 approve or disapprove of any requests for exclusion.

10 7.6 Plaintiff Jon Waldrep agrees not to request exclusion from the Settlement Class.
11 Settlement Class Members may object to or opt out of the Settlement, but may not do both. Any
12 Settlement Class Member who submits a timely request for exclusion may not file an objection to the
13 Settlement or receive a Settlement Payment, and shall be deemed to have waived any rights or benefits
14 under the Settlement Agreement, except as provided in Paragraph 10.2.4.

15 7.7 Notwithstanding the submission of a timely request for exclusion, Settlement Class
16 Members will still be bound by the settlement and release of the PAGA Claims or remedies under the
17 Final Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969. Requests for exclusion do
18 not apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

19 7.8 No later than three (3) business days after the Exclusion/Objection Deadline, the
20 Settlement Administrator shall provide to Class Counsel and counsel for Cambly the Opt-Out List
21 together with copies of the opt-out requests, including any untimely or defective requests.
22 Notwithstanding any other provision of this Settlement Agreement, if more than five percent (5%) of
23 potential Settlement Class Members exercise their right to opt out of the Settlement, Cambly at its sole
24 and absolute discretion may elect to rescind, void, and revoke the entire Settlement Agreement by
25 sending written notice that it revokes the Settlement pursuant to this Paragraph to Class Counsel within
26 seven (7) business days following receipt of the Opt-Out List.

27 7.9 Named Plaintiff and his counsel shall support the Settlement and take such steps as are
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1 reasonably necessary to effectuate the Settlement. Plaintiffs' counsel shall recommend the Settlement
2 to the Settlement Class Members, and Plaintiffs' counsel agree to use their best efforts to resolve any
3 objections to the release of all claims described in the Settlement Class Members' Released Claims,
4 including all class actions, putative class actions, individual-plaintiff actions, and arbitrations.
5 Cambly, in turn, agrees to use its best efforts to cooperate with Plaintiffs' counsel's efforts in this
6 regard. Named Plaintiff shall not opt out of or object to the settlement, nor shall he or his counsel
7 directly or indirectly encourage Settlement Class Members to opt out of or object to the settlement.

8 7.10 With regard to any Settlement Class Member who elects to opt out or object to the
9 settlement, nothing herein shall be construed as a waiver of any rights or obligations contained in any
10 contract between Cambly and such Settlement Class Member, including but not limited to, any
11 applicable arbitration agreement.

12 **VIII. PROCEDURES FOR OBJECTIONS**

13 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or
14 adequacy of this Agreement or the proposed Settlement must provide to the Settlement Administrator
15 (who shall forward it to Class Counsel and counsel for Cambly), a timely statement of the objection,
16 as set forth below.

17 8.2 To be timely, the objection must be postmarked and mailed to the Settlement
18 Administrator (or emailed to the Settlement Administrator from the email address associated with the
19 Settlement Class Member's Cambly account) no later than the Exclusion/Objection Deadline. With
20 respect to mailed objections, the date of the postmark on the return-mailing envelope shall be the
21 exclusive means used to determine whether objection has been timely submitted.

22 8.3 The objection must contain at least the following: (i) the objector's full name, address,
23 telephone number, and signature; (ii) a clear reference to the Action; and (iii) a statement of the specific
24 basis for each objection argument. All objections shall be signed by the objecting Settlement Class
25 Member (or his or her Legally Authorized Representative as defined herein), even if the Settlement
26 Class Member is represented by counsel. However, if the objection is emailed to the Settlement
27 Administrator from the email address associated with the Settlement Class Member's Cambly account,
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1 the signature requirement will be waived.

2 8.4 The right to object to the proposed Settlement must be exercised individually by a
3 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
4 ineffective and disregarded. Individual objections may be submitted by a Settlement Class Member's
5 Legally Authorized Representative.

6 8.5 Settlement Class Members who object to the proposed Settlement shall remain
7 Settlement Class Members, and shall be deemed to have voluntarily waived their right to pursue an
8 independent remedy against Cambly and the Released Parties. To the extent any Settlement Class
9 Member objects to the proposed Settlement, and such objection is overruled in whole or in part, such
10 Settlement Class Member will be forever bound by the Final Approval order and Judgment.

11 8.6 It shall be Class Counsel's sole responsibility to respond to any objections made with
12 respect to any application for the Class Counsel Award and Service Award.

13 **IX. RELEASES**

14 9.1 The Settlement Class Members' Released Claims against each and all of the Released
15 Parties shall be released and judgment entered (without an award of costs to any party other than as
16 provided in this Agreement) upon entry of the Final Approval order and Judgment.

17 9.2 As of the Final Approval Date, the Plaintiff, and all Settlement Class Members who have
18 not been excluded from the Settlement Class as provided in the Opt-Out List, individually and on
19 behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors,
20 and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to
21 forever release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties
22 from each and all of the Settlement Class Members' Released Claims, and by operation of the Final
23 Judgment shall have fully and finally released, relinquished, and discharged all such claims against
24 each and all of the Released Parties; and they further agree that they shall not now or hereafter initiate,
25 maintain, or assert any Settlement Class Members' Released Claims against the Released Parties in
26 any other court action or before any administrative body, tribunal, arbitration panel, or other
27 adjudicating body. Without in any way limiting the scope of the release described in Paragraphs 2.15,
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1 2.26, and 2.29 as well as the remainder of this Section, this release covers, without limitation, any and
2 all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or by the Plaintiff or
3 Settlement Class Members, in connection with or related in any manner to the Action, the Settlement
4 of the Action, the administration of such Settlement, and/or the Settlement Class Members' Released
5 Claims, except to the extent otherwise specified in the Agreement.

6 9.3 Subject to Court approval, Plaintiff, and all Settlement Class Members who have not
7 been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by this
8 Settlement Agreement, and judgment entered as to all their claims, which shall be released, even if
9 they never received actual notice of the Action or this Settlement.

10 9.4 As of the Final Approval Date, the State of California and all current and former
11 individuals who provided services in connection with Cambly's platform in the State of California at
12 any time during the Class Period, shall be deemed to have fully, finally, and forever waived, released,
13 relinquished, and discharged each and all of the Released Parties from all the PAGA Claims that arose
14 or may be alleged to have arisen within the PAGA Period, as identified in Plaintiff's November 9,
15 2021 PAGA Letter addressed to the Labor Workforce Development Agency, including the following
16 provisions: California Labor Code sections 2802, 226.8, 1197, 1194, 1198, 510, 554, 226.7, 512, 226,
17 and 432.5.

18 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

19 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties and
20 subject to supervision, direction, and approval of the Court, shall allocate and oversee the distribution
21 of the Settlement Fund, utilizing an allocation reflecting a damages calculation first proposed by
22 Plaintiff's counsel and approved by Defendant's counsel.

23 10.2 Of the \$393,000 total value of the Settlement Fund, \$30,000 shall be allocated to the
24 PAGA Payment Fund. The PAGA Payment Fund shall be applied as follows:

25 10.2.1 Subject to the approval and further order(s) of the Court, 75% of the PAGA
26 Payment Fund (\$22,500) shall be distributed to the LWDA; and

27 10.2.2 Subject to the approval and further order(s) of the Court, 25% of the PAGA
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1 Payment Fund shall be distributed to PAGA Members based on each PAGA Member's pro rata share
2 (i.e., based on their Total Classroom Minutes during the PAGA Period);

3 10.3 The remaining \$363,000 shall be allocated to the Settlement Payment Fund. The
4 Settlement Payment Fund shall be applied as follows:

5 10.3.1 To pay the total costs, expenses, and fees of the Settlement Administrator
6 incurred in connection with providing Class Notice to potential Settlement Class Members, and the
7 management and distribution of the Settlement Payments to Settlement Class Members;

8 10.3.2 Subject to the approval and further order(s) of the Court, to pay Plaintiff's
9 Service Award based on contributions and time expended assisting in the litigation, up to a maximum
10 of \$10,000;

11 10.3.3 Subject to the approval and further order(s) of the Court, to pay the Class
12 Counsel Award as ordered by the Court;

13 10.3.4 After the Effective Date and subject to the approval and further order(s) of the
14 Court, to distribute the Settlement Payments from the Settlement Payment Fund for the benefit of the
15 Settlement Class pursuant to the Plan of Allocation, or as otherwise ordered by the Court.

16 10.4 In the distribution of the Settlement Payments, the Settlement Administrator will include
17 a statement to each Settlement Class Member containing a best estimate of his or her Total Classroom
18 Minutes, as defined herein, being used to calculate the amount of his or her Settlement Payment, as
19 described in Paragraph 5.3.

20 10.5 Settlement Class Members will have an opportunity to dispute Cambly's calculation of
21 their Total Classroom Minutes by providing documentation of contrary classroom minutes to the
22 Settlement Administrator within sixty (60) days of receiving their Notice. The Settlement
23 Administrator shall review any documentation submitted by a Settlement Class Member and consult
24 with the Parties to determine whether an adjustment is warranted. There will be a presumption that
25 Cambly's records are correct, absent evidence produced by a Settlement Class Member to the contrary.

26 10.6 If any portion of the Settlement Payment Fund is not successfully redistributed to
27 Settlement Class Members after the initial Void Date (i.e., checks are not cashed or checks are returned
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1 as undeliverable after the second distribution), then after the Void Date for redistributed checks, the
2 Settlement Administrator shall void the check and shall direct such unclaimed funds to be redistributed
3 to all of the Settlement Class Members who (1) received and cashed their initial Settlement Payments;
4 and (2) would receive a redistribution amount greater than or equal to \$50.00, calculated pursuant to
5 the same formula used to calculate the amounts of the initial Settlement Payments. If any portion
6 thereafter remains unclaimed (*i.e.*, checks are not cashed or checks are returned as undeliverable after
7 the second distribution), then after the Void Date for redistributed checks, the Settlement
8 Administrator shall void the check and shall direct such unclaimed funds to be paid to the *cy pres*
9 recipient – the California Controller’s Unclaimed Property Fund.

10 10.7 Settlement Class Members who are not on the Opt-Out List approved by the Court shall
11 be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein,
12 and the Judgment with respect to all Settlement Class Members’ Released Claims, regardless of
13 whether they obtain any distribution from the Settlement Payment Fund.

14 10.8 Payment from the Settlement Payment Fund made pursuant to and in the manner set
15 forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all
16 Settlement Class Members.

17 10.9 No Settlement Class Member shall have any claim against the Plaintiff, Class Counsel,
18 or the Settlement Administrator based on distributions made substantially in accordance with this
19 Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim
20 against Cambly or its counsel relating to the distributions made under this Settlement.

21 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
22 **SETTLEMENT AGREEMENT**

23 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
24 or does not enter the Final Approval order and Judgment on the terms described herein, or if the Court
25 enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is
26 vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become
27 Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their
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1 sole discretion within thirty (30) days from the date such ruling becomes final, provide written notice
2 to all other Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment
3 as it may be modified by the Court or any appellate court.

4 11.2 Cambly shall have the right to withdraw from the Settlement if the number of Settlement
5 Class Members who attempt to exclude themselves from the Settlement Class equals or exceeds five
6 percent (5%) of potential Settlement Class Members. If Cambly chooses, pursuant to its sole and
7 absolute discretion, to exercise this right, it must do so within seven (7) business days of receipt of the
8 Opt-Out List as provided in Paragraph 7.8, by providing written notice to Class Counsel.

9 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is modified by the
10 Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement Agreement is
11 terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties stipulate and
12 agree the Settlement, this Agreement, the Class Information, the Opt-Out List, and all documents
13 exchanged and filed in connection with the Settlement shall be treated as privileged mediation
14 communications under Cal. Evid. Code, §§ 1115 *et seq.*; (b) the Settlement shall be without force and
15 effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with
16 the exception of this paragraph, which shall remain effective and enforceable; (c) the Parties shall be
17 deemed to have reverted *nunc pro tunc* to their respective status prior to execution of this Agreement,
18 including with respect to any Court-imposed deadlines; (d) all Orders entered in connection with the
19 Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to
20 any Party's position on the issue of class certification, the issue of amending the complaint, or any
21 other issue, in the Action or any other action, and the Parties shall be restored to their litigation
22 positions existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all
23 respects as if the Settlement Agreement and related documentation and orders had not been executed,
24 and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the
25 Settlement Agreement.

26 11.4 Cambly does not agree or consent to certification of the Settlement Class for any purpose
27 other than to effectuate the Settlement of the Action.
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1 **XII. CONDITIONS PRECEDENT**

2 This Settlement will become final and effective only upon the occurrence of all of the following
3 events:

4 12.1 Plaintiff successfully amends his state court action by filing a First Amended Complaint
5 to add class claims on behalf of the Settlement Class for settlement purposes only;

6 12.2 The Court enters an order granting preliminary approval of the Settlement;

7 12.3 The Court enters an order granting Final Approval of the Settlement and a final
8 Judgment;

9 12.4 If an objector appears at the Final Approval Hearing, the time for appeal of the Final
10 Judgment and Order Granting Final Approval of Settlement expires; or, if an appeal is timely filed,
11 there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of the
12 Settlement subject to requirements of this Agreement; and

13 12.5 Defendant fully funds the Total Settlement Amount.

14 **XIII. ADDITIONAL PROVISIONS**

15 13.1 All of the Exhibits to this Agreement are an integral part of the Settlement and are
16 incorporated by reference as though fully set forth herein.

17 13.2 The Plaintiff and Class Counsel acknowledge that an adequate factual record has been
18 established that supports the Settlement and, apart from the limited discovery described in the next
19 sentence, hereby waive any right to conduct further discovery to assess or confirm the Settlement.
20 Notwithstanding the prior sentence, the Parties agree to reasonably cooperate with respect to limited
21 confirmatory discovery to facilitate approval of the settlement and related to the last-known email
22 addresses of Settlement Class Members.

23 13.3 The Parties agree to cooperate fully with each other to accomplish and implement the
24 terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other
25 documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of
26 this Settlement and/or revising this Settlement to comply with the above-entitled Court's requests.
27 The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any
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1 other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement
2 and the terms set forth herein.

3 13.4 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
4 days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
5 holiday, such date or deadline shall be on the first business day thereafter.

6 13.5 This Agreement constitutes the full and complete agreement of the Parties hereto, and
7 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be
8 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
9 successors-in-interest.

10 13.6 The Parties reserve the right, subject to the Court’s approval, to make any reasonable
11 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such
12 extensions must be in writing to be enforceable.

13 13.7 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence, any of
14 terms of the Settlement Agreement, any press release or other statement or report by the Parties or by
15 others concerning the Settlement Agreement or the Settlement, and any negotiations, proceedings, acts
16 performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or the
17 Settlement: (i) may not be deemed to be, may not be used as, and do not constitute an admission or
18 evidence of the validity of any Settlement Class Members’ Released Claims or of any wrongdoing or
19 liability of Cambly; (ii) may not be deemed to be, may not be used as, and do not constitute an
20 admission or evidence of any fault, wrongdoing, or omission by Cambly in any trial, civil, arbitration,
21 criminal, or administrative proceeding of the Action or any other action or proceeding in any court,
22 administrative agency, arbitration, or other tribunal; (iii) may not be used as evidence of any waiver
23 of, unenforceability of, or as a defense to any Cambly arbitration agreement; (iv) may not be used as
24 evidence on any class certification proceeding.

25 13.8 The Released Parties shall have the right to file the Settlement Agreement, the Final
26 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
27 action that may be brought against them in order to support a defense or counterclaim based on
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1 principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
2 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

3 13.9 The Parties to the Settlement Agreement agree that the Total Settlement Amount and the
4 other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, resulted
5 from an arm's-length mediation session facilitated by retired Judge Kevin Murphy, and reflect a
6 settlement that was reached voluntarily based upon adequate information and sufficient discovery and
7 after consultation with experienced legal counsel.

8 13.10 The Plaintiff and Class Counsel have concluded that the Settlement set forth herein
9 constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiff asserted against
10 Cambly, including the claims on behalf of the Settlement Class Members, and that it promotes the best
11 interests of the Settlement Class Members.

12 13.11 To the extent permitted by law, all agreements made and orders entered during the course
13 of the Action relating to the confidentiality of information shall survive this Settlement Agreement.
14 This includes, but is not limited to, the Parties' agreement that Plaintiff, Defendant, and their respective
15 counsel will not make any public disclosure of the Settlement or the Memorandum of Understanding,
16 dated December 14, 2023, until after the filing of the Motion for Preliminary Approval.
17 Notwithstanding the foregoing, the Parties agree that Defendant may make such disclosures that in
18 Defendant's judgment are required in the ordinary course of business. Class Counsel will take all
19 steps necessary to ensure that Plaintiff is aware of, and will encourage them to adhere to, the restriction
20 against any public disclosure of the Settlement until the Motion for Preliminary Approval is filed.
21 Thereafter, Class Counsel and Plaintiff agree not to publicize the terms of the Settlement with the
22 media, including but not limited to, any newspaper, journal, magazine, social media platform, website
23 and/or on-line reporter of settlements, or any other public comment, including advertising this
24 Settlement on their firm's promotional materials, firm website, or its attorneys' biographies.

25 13.12 The waiver by one Party of any breach of this Settlement Agreement by any other Party
26 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.
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1 13.13 This Settlement Agreement, including its Exhibits, constitutes the entire agreement
2 among the Parties, and no representations, warranties, or inducements have been made to any Party
3 concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and
4 covenants contained and memorialized in this Settlement Agreement and its Exhibits. This Settlement
5 Agreement supersedes and replaces the Parties' Memorandum of Understanding, dated December 14,
6 2023, and any other agreements, except as described herein.

7 13.14 This Settlement Agreement may be executed in one or more counterparts. All executed
8 counterparts and each of them shall be deemed to be one and the same instrument provided that counsel
9 for the Parties to this Settlement Agreement shall exchange among themselves original signed
10 counterparts.

11 13.15 The Parties hereto and their respective counsel agree that they will use their best efforts
12 to obtain all necessary approvals of the Court required by this Settlement Agreement and to resolve
13 any objections to the release of all Claims.

14 13.16 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
15 successors and assigns of the Parties hereto, including any and all Released Parties and any
16 corporation, partnership, or other entity into or with which any Released Party hereto may merge,
17 consolidate, or reorganize.

18 13.17 This Settlement Agreement shall not be construed more strictly against one Party than
19 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it
20 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
21 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
22 Agreement.

23 13.18 Except where this Settlement Agreement itself provides otherwise, all terms, conditions,
24 and Exhibits are material and necessary to this Settlement Agreement and have been relied upon by
25 the Parties in entering into this Settlement Agreement.

26 13.19 This Settlement Agreement shall be governed by California law. Any dispute regarding
27 the Settlement Agreement shall first be presented to the mediator, Retired Judge Kevin Murphy, to
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1 provide guidance to the Parties before the Parties seek any party seeks other recourse. Following this
2 initial guidance, any action based on this Settlement Agreement, or to enforce any of its terms, shall
3 be venued in Sacramento County Superior Court, which shall retain jurisdiction over all such disputes.
4 This paragraph relates solely to the law governing this Settlement Agreement and any action based
5 thereon, and nothing in this paragraph shall be construed as an admission or finding that California
6 law applies to the Released Claims of Plaintiff or Settlement Class Members who reside outside of the
7 state.

8 13.20 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
9 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
10 Agreement.

11 13.21 The headings used in this Settlement Agreement are for the convenience of the reader
12 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

13 13.22 In construing this Settlement Agreement, the use of the singular includes the plural (and
14 vice-versa) and the use of the masculine includes the feminine (and vice-versa).

15 13.23 Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his,
16 her, or its independent judgment and upon the advice of his, her, or its counsel, and not in reliance
17 upon any warranty or representation, express or implied, of any nature of any kind by any other Party,
18 other than the warranties and representations expressly made in this Settlement Agreement.

19 13.24 Each counsel signing this Settlement Agreement on behalf of his/her/its clients who are
20 unable to sign the Agreement on the date that it is executed by other Parties represents that such
21 counsel is fully authorized to sign this Settlement Agreement on behalf of his/her/its clients; provided,
22 however, that all Parties who have not executed this Agreement on the date that it is executed by the
23 other Parties shall promptly thereafter execute this Agreement and in any event no later than one (1)
24 week after the Agreement has been executed by counsel.

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IT IS SO AGREED AS TO FORM AND CONTENT BY PLAINTIFF:

Dated: 06/19/2025

Jon Waldrep
Jon Waldrep (Jun 19, 2025 13:30 PDT)
Plaintiff Jon Waldrep

IT IS SO AGREED AS TO FORM AND CONTENT BY DEFENDANT:

Dated: 6/23/25

CAMBLY INC.


Amber Parlow, Head of Legal

IT IS SO AGREED AS TO FORM BY COUNSEL:

Dated: 6/20/2025


Shannon Liss-Riordan
Lichten & Liss-Riordan, P.C.
Attorneys for Plaintiff Jon Waldrep and the Class and
PAGA Members

Dated: 6/24/25


JAIME B. LAURENT
SUSAN T. YE
Littler Mendelson, P.C.
Attorneys for Defendant Cambly Inc.

EXHIBIT E

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND FINAL APPROVAL HEARING**

Waldrep v. Cambly Inc., Case No. 34-2022-00314360 (Sacramento Sup. Ct.)

The Court authorized this notice. This is not a solicitation from a lawyer.

Pursuant to the Order of the Superior Court for the State of California for the County of Sacramento, you are hereby notified that a proposed settlement has been reached in the above-referenced case brought on behalf of the following individuals:

The Settlement Class: all current and former individuals who provided services in connection with Cambly's platform in the State of California at any time during the period November 9, 2020 to May 26, 2022.

You have been identified by Cambly records as a member of the Settlement Class. **Please read this entire notice carefully. It may affect your legal rights to money you may be owed.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Participate in the Settlement	If you wish to receive a share of the Settlement proceeds, you must submit a Claim Form, which you can do electronically or by mail, as explained below in paragraph 12. [A hyperlink will be included here that will take class members down to paragraph 12.] <i>In order to receive your share of the Settlement if the Court grants final approval of the Settlement, please return this form no later than [REDACTED], 2024.</i> If you do not submit a claim form and you do not opt out of the settlement, then you will be bound by the Settlement but will not receive a share of the settlement proceeds.
Exclude Yourself from the Settlement (Opt-Out)	If you do not want to participate in the Settlement, you must mail or email a written Request for Exclusion to the Settlement Administrator postmarked no later than [REDACTED], 2024, or else you will be bound by the Settlement and the Release if the Court grants final approval of the Settlement. Please refer to paragraph 13 below for instructions on excluding yourself.
Object to the Settlement	If you wish to object to the Settlement, you may mail or email a written objection to the Settlement Administrator postmarked or emailed no later than [REDACTED], 2024, or make your objection at the Fairness Hearing. However, if you choose to object, you will remain bound by the Settlement and will release your claims against Cambly if the Settlement is ultimately approved. A Settlement Class Member can object and submit a Claim Form, but a Settlement Class Member cannot object and opt out of the Settlement. Please refer to paragraph 14 below for instructions on objecting.
Participate in the Hearing	If you submit a written objection to the Settlement, you may also indicate in the objection whether you wish to appear and be heard at the time of the Fairness Hearing. You may also appear and be heard at the Fairness Hearing without submitting a written objection. Remember that Settlement Class Members who object remain part of the settlement class and shall be bound by the Settlement.

Do Nothing	If you do nothing with respect to this notice, and the Court grants final approval of the Settlement, you will not receive a share of the Settlement and you will be bound by the terms of the Settlement, including the Release of Claims against Cambly.
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Which option you choose is entirely up to you.

YOUR RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE.

www.[WEBSITE].com

TABLE OF CONTENTS

GENERAL INFORMATION REGARDING THIS NOTICE	4
WHAT IS THIS NOTICE ABOUT?	4
WHAT IS THIS LAWSUIT ABOUT?	4
SUMMARY OF THE SETTLEMENT	5
WHO IS INCLUDED IN THE SETTLEMENT?	5
WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?	5
WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?	7
CLASS COUNSEL	10
FINAL SETTLEMENT APPROVAL HEARING	10
GETTING MORE INFORMATION	11
CLAIM FORM	12

GENERAL INFORMATION REGARDING THIS NOTICE

WHAT IS THIS NOTICE ABOUT?

A proposed settlement (the “Settlement”) has been reached in the case entitled *Waldrep v. Cambly Inc.*, Case No. 34-2022-00314360, Sacramento County Superior Court (the “Action”). This case alleges that Cambly has misclassified its California-based tutors and violated the Labor Code as a result. As described further below, the First Amended Complaint in this case, filed only for settlement purposes, includes claims for expense reimbursement, minimum wage and overtime, willful misclassification, failure to provide meal and rest breaks, failure to provide itemized wage statements, waiting time penalties, failure to provide all wages when due, unfair competition, requiring tutors to sign illegal contracts, and claims under the Private Attorneys General Act (“PAGA”). The Court has preliminarily approved the Settlement and has directed the parties to notify the Settlement Class Members of the Settlement.

You have received this notice because Cambly’s records indicate that you are a Settlement Class Member. This notice is designed to inform you of how you can claim a share of the Settlement payment, elect not to participate in the Settlement, or object to the Settlement.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff claims he and others who used the Cambly platform to provide ESL tutoring services have been improperly classified as independent contractors by Cambly and have sought relief under various California Labor Code provisions, Section 17200 of the California Business and Professions Code, and the Private Attorneys General Act of 2004 (“PAGA”) on behalf of the state of California and California Cambly tutors. Plaintiff primarily seeks reimbursement of his necessary business expenses, which he contends is required by California law, as well as minimum wage for all hours worked, overtime, and numerous other wage violations.

Cambly denies Plaintiff’s allegations and instead contends, among other things, that those who used the Cambly platform to provide services were correctly classified as independent contractors.

The Court has not ruled whether either party is correct.

After good-faith negotiations with an experienced, neutral mediator, in which both sides recognized the substantial risk of an uncertain outcome, the parties agreed to settle their dispute pursuant to the terms and conditions of a negotiated Settlement. The parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Class.

The Settlement represents a compromise and settlement of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Cambly that Plaintiffs’ claims have merit or that it has any liability to Plaintiff or the proposed Settlement Class on the claims in

the Action.

SUMMARY OF THE SETTLEMENT

WHO IS INCLUDED IN THE SETTLEMENT?

You have received this notice and are included in the Settlement because Cambly's records show that you fall within the following definition:

The Settlement Class: all current and former tutors who provided services in connection with Cambly's platform in the State of California at any time during the period November 9, 2020 to May 26, 2022.

WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?

1. The Settlement Fund is \$393,000. The Settlement Fund will fund payments to Settlement Class Members who submit a valid Claim Form. To be valid, a Claim Form must be filled out completely and submitted by the deadline of [REDACTED], 2024 as described further in **paragraph 12**.
2. From this Settlement Fund, amounts will be deducted for attorneys' fees and costs in the amount that the Court approves, up to 33% of the total Settlement Fund (\$129,690); Class Representative Service Award for the named Plaintiff, in the amount the Court approves, estimated to be \$10,000; a payment to the Settlement Administrator for the costs of administering the Settlement that is not to exceed \$14,000 without leave of court; and a payment to the State of California for PAGA penalties, in the amount of \$22,500.
3. The remaining approximately **\$230,810** will be distributed to those Settlement Class Members who submit a Claim. **Only those who submit a valid Claim Form will receive payment from the Settlement Fund.** The Settlement Fund will be allocated to Class Members proportionally to their total minutes spent teaching through the Cambly platform, with no claimant who submits a claim receiving less than \$25. **Settlement Class Members who do not submit a valid Claim Form will still be bound by this Settlement unless they opt out, meaning they will release their claims against Cambly for the period covered by the Settlement. If you want to participate in the Settlement and receive your payment, be sure to file your claim!**
4. Unclaimed funds will be re-distributed to all those Settlement Class Members who submit Claim Forms and whose second payment would be more than \$40; no amount of the Settlement Fund will revert to Cambly. After this redistribution of residual funds to all Settlement Class Members, any funds that are not claimed by the Settlement Class Members (for example, if an individual does not timely cash his or her check) will be donated to California Controller's Unclaimed Property Fund, which allows financial institutions, insurance companies, corporations, businesses, and certain other entities to report and submit their customers' property to the State Controller's Office when there has been no activity for a period of time, in compliance with California law governing unclaimed property.
5. You **will be bound** by this Settlement if it is given final approval by the Court unless you submit a written Request for Exclusion to the Settlement Administrator, postmarked or emailed

by the deadline of [REDACTED], 2024. If you do mail a Request for Exclusion by the deadline in accordance with the instructions for submitting a Request for Exclusion, you will be excluded from the Settlement and **will not receive a Settlement share, but you will retain the right you may have, if any, to arbitrate your claim against Cambly.**

6. If the Court does not grant final approval of the Settlement, does not enter the Final Approval Order, or if the Court's Final Approval Order is reversed in whole or in part on appeal, the parties have no obligations under the Settlement, and Settlement Class Members will not receive payments. In other words, it will be as if this Settlement were never reached; Cambly will not have to pay any funds or keep any of the promises made as part of the Settlement, and Settlement Class Members will not release their claims against Cambly.
7. The Court has appointed Simpluris to act as the Settlement Administrator to administer the Settlement. The Settlement Administrator serves as a neutral, third-party who collects claim forms, requests for exclusion, and objections, adjudicates disputes, calculates payments, mails and reissues checks, and performs other tasks necessary to administer the Settlement.
8. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Settlement Class Members who have not opted out, and the judgment will bar all Settlement Class Members from bringing any claims released in the Settlement, including but not limited to, claims related to allegations of independent contractor misclassification (the "Released Claims"). The release is described below:

any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, pursuant to any theory of recovery against Cambly arising from March 1, 2020 through May 26, 2022, whichever comes first, for any type of relief that can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief (with the exception of any claims which cannot be released as a matter of law), that could be brought based on the allegations in the Action, including but not limited to any claims or factual allegations set forth in the Labor Workforce Development Agency letter, Complaint, and/or First Amended Complaint, namely, Cambly's alleged misclassification of the Settlement Class as independent contractors. The claims released pursuant to this paragraph specifically include, without limitations, a release of claims under Cal. Labor Code, §§ 1194, 1197, 510, 554, 1194, 1198, 1174, 226.8, 432.5, 2802, 226.7, 512, 201-203, 226, 204, and 210 and IWC Wage Order No. 9-2001, the Private Attorneys General Act, Cal. Lab. Code, § 2698, *et seq.*, unlawful and/or unfair business practices (Cal. Bus. Prof. Code, § 17200, *et seq.*), in connection with claims related to independent contractor misclassification; as well as any other claims under the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders; and all of their implementing regulations and interpretive guidelines, as well as any other similar state, local, or common law claims that relate to independent contractor misclassification. The release does not include claims that, as a matter of law, cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims filed with the appropriate agency for the recovery of workers' compensation benefits.

All Settlement Class Members who do not timely and formally opt out of the Settlement by requesting exclusion as described below shall be bound by this release for all claims, except that all Settlement Class Members (even those who do opt out) will still release their PAGA claims through May 26, 2022. To be valid, a Claim Form must be signed without any deletion or amendment to its language.

If you wish to contact the Settlement Administrator, you may do so at (8XX) [] - [] or []@[].com

9. Plaintiff, as Class Representative, and Class Counsel, support the Settlement. Their reasons include the risk of being unable to pursue this case as a class action on behalf of all Class Members, the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and the possibility that the Class is not entitled to any recovery. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case would be uncertain. As an alternative to participating in the Settlement, Settlement Class Members who opt out and who have arbitration agreements with Cambly may still pursue individual arbitration against Cambly to potentially recover alleged damages for the violations; however, Class Counsel recognizes that this may not be an appealing option for many Settlement Class Members. Therefore, upon careful consideration of all the facts and circumstances of this case, as well as the potential damages that could be recovered, Class Counsel believes that the Settlement is fair, reasonable, and adequate.
10. If more than five percent (5%) of Settlement Class Members exercise their right to opt out of the Settlement, Cambly can decide to terminate the Settlement, meaning that it will be as if this Settlement were never reached; Cambly will not have to pay any funds or comply with any obligations made as part of the Settlement, and Class Members will not release their claims against Cambly.

WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

11. Participating in the Settlement:

To submit a claim electronically, **click on this link**, or go to **www.[WEBSITE].com** and enter your Claimant ID and Verification Number, provided below. [Website name will be linked to website where claims can be submitted; Claimant ID and Verification Number will be automatically entered for Class Members who enter the website through this link.] This will take you to a webpage to submit your Claim online by providing your name, address, telephone number, email, and Social Security or Tax ID Number. You can submit a claim in under five minutes.

Claimant ID: []

Verification Number: []

To submit a claim by paper, please complete and return the enclosed claim form (which you will have received if you are receiving this notice by mail). If you need a paper claim form, please contact the Settlement Administrator at (8XX) [] - [] or []@[].com.

In order to receive a monetary payment from this Settlement, please submit your claim no later than [].

12. **Receiving a Settlement Payment:** If you wish to receive payment from this Settlement,

please submit a valid and timely Claim Form no later than [REDACTED], 2024.

Settlement Class Members' shares will be calculated based on the total number of minutes spent teaching during the Settlement Class Period through Cambly's online platform, as determined by Cambly.

According to Cambly's records, you have taught an estimated [REDACTED] minutes during the relevant period.

These minutes do not have a value fixed at a particular dollar amount; that amount will vary depending upon many factors, including how many Settlement Class Members submit a claim and are receiving payments under this Agreement and the amount ultimately awarded in attorneys' fees and Class Representative Service Award to the named Plaintiff.

If you do not agree with your estimated minutes taught, you can inform the Settlement Administrator. To contest your number of minutes taught, you must provide documentation showing that you taught more minutes than estimated in this Notice.

If the Court approves the Settlement, checks will be sent to all Settlement Class Members who submitted valid claims. **These checks will expire after approximately six months (181 days) from the date they were mailed. You must cash your check prior to this expiration date.** If you misplace your check prior to the expiration date, please notify the Settlement Administrator at (8XX) [REDACTED] - [REDACTED] or [REDACTED]@[REDACTED].com.

With respect to PAGA penalties, 25% of the PAGA penalties (totaling \$7,500) will be distributed pro rata to each individual tutor who submits a claim, in addition to their settlement share, set forth above.

13. **Excluding Yourself from the Settlement (Opt-Out):** If you do not wish to participate in the Settlement, you must mail or email a Request for Exclusion to the Settlement Administrator. The Request for Exclusion must include: (1) the Settlement Class Member's name, address, and telephone number; (2) a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and (3) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member (who is not the class member's counsel). Signatures may be physical ("wet ink") signatures or electronic signatures, provided that there is an electronic certificate authenticating the signature and IP address, such as that provided by DocuSign. Alternatively, if the Request for Exclusion is emailed from the email address associated with the Settlement Class Member's Cambly account, the requirement to sign the request is waived. Nothing about the Settlement's opt-out procedure prevents counsel (a) from reviewing the Settlement with the client; (b) from advising the client on whether participating in or opting out of the Settlement is in the client's (as opposed to counsel's) best interest; or (c) from preparing the opt-out request for their client to sign (e.g., including the requisite information such as the Settlement Class Member's name, address, and telephone number, and a clear and unequivocal statement that the individual wishes to be excluded).

The Request for Exclusion must be completed, signed, and mailed or emailed to the Settlement Administrator at the address identified below, postmarked or emailed no later than [REDACTED], 2024. **A Settlement Class Member who fails to return a Request for Exclusion in the**

manner and by the deadline specified above will be bound by all terms and conditions of the Settlement and the Judgment, regardless of whether he or she has objected to the Settlement. Requests for Exclusion must be exercised individually by the Settlement Class Member (or their Legally Authorized Representative who is not the Settlement Class Member's counsel), even if the Settlement Class Member is represented by counsel. Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.

Any person who files a complete and timely Request for Exclusion will, upon receipt, no longer be a member of the Settlement Class and will not be eligible to receive a payment. Any such person will retain the right, if any, to pursue at his or her own expense a claim against Cambly. A Request for Exclusion that does not fulfill the requirements above will be deemed invalid.

If a Settlement Class Member submits both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected. If a Settlement Class Member submits both a Claim and a Request for Exclusion from the Settlement, the Settlement Class Member will be given an opportunity to clarify his or her response. If the Settlement Class Member does not respond after the Administrator requests clarification, the Parties will honor the request that was later in time.

Please note that Requests for Exclusion do not apply to the release of PAGA claims contemplated by the Settlement. Settlement Class Members who validly and timely submit a Request for Exclusion will nevertheless be bound by the settlement and release of PAGA claims, and therefore any PAGA claims that any Settlement Class Member may possess for the Settlement Class Period shall be extinguished if the Court approves the Settlement.

There will be no retaliation or adverse action taken against any Class Member who participates in the Settlement, elects not to participate in the Settlement, or objects to the settlement.

14. **Objecting to the Settlement:** If you think the settlement is unfair and should not be given final approval, you may mail or email an objection to the Settlement Administrator. You may also attend the Fairness Hearing and make your objection to the Court at that time, without submitting an objection to the Settlement Administrator. If you choose to object to any aspect of the Settlement (including to the Settlement itself, the request for attorney's fees, or the Class Representative Service Awards), you can still submit a Claim Form; however, you cannot object and opt out of the Settlement. If a Settlement Class Member submits both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

If you choose to object, you will remain a Settlement Class Member and will be deemed to have waived the right to pursue any independent remedy against Cambly for the claims being released in the Settlement.

If the Court does not give final approval to the Settlement, no settlement payments will be sent out and the lawsuit will continue.

All written objections and supporting papers must be mailed or emailed to the Settlement Administrator at the Settlement Administrator's address or email address below and be postmarked on or before [REDACTED], 2024. All objections must be in writing and contain at least the following: (1) a clear reference to the case, which is *Waldrep v. Cambly Inc.*, Case No. 34-2022-00314360 in the Superior Court of the State of California, County of Sacramento;

(2) your name, current address, and telephone number; (3) a description of why you believe the settlement is unfair; and (4) a signature by the objecting class member if the request is being mailed. A signature is not required on an emailed objection provided that it is sent from the email address associated with the Settlement Class Member's Cambly account.

15. **Participating in the Final Approval Hearing:** You may appear and object at the Final Approval Hearing in person or appear through counsel of your choice, paid at your own expense, and be heard at the time of the Final Approval Hearing, if you wish to do so. **If the Court overrules your objection and gives final approval to the Settlement, you will be bound by the terms of the Settlement and receive a Settlement Payment if you submitted a Claim.**
16. **Keep Your Information Up to Date:** It is your obligation to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Payment is received, should final approval of the Settlement be granted. Failing to provide the Settlement Administrator with any change of your mailing address may prevent you from receiving your Settlement Payment.
17. **The Settlement Administrator's Address & Email Address.** You may send a paper/hard copy Claim Form, Request for Exclusion, or Objection to the Settlement Administrator at the following mailing address:

[Address]
[Address]
[Email Address]

CLASS COUNSEL

Contact information for Class Counsel is provided below:

Shannon Liss-Riordan
Adelaide H. Pagano
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
www.llrlaw.com
Phone: (617) 994-5800
claims@llrlaw.com, Firm Settlement Administrator

FINAL SETTLEMENT APPROVAL HEARING

The Court has scheduled the Settlement Fairness Hearing for [REDACTED] on [REDACTED], 2024, in the Superior Court for the County of Sacramento, Department 54, 813 6th Street, Room 212, 2nd Floor Sacramento, CA 95814, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Service Award and the Class Counsel Award and Costs.

The hearing may be postponed without further notice to the Class. **It is not necessary for you to**

appear at this hearing. If you plan to attend the Fairness Hearing, you may contact Class Counsel to confirm the date and time or check the settlement website, as the hearing may be rescheduled without further notice.

GETTING MORE INFORMATION

This notice summarizes the proposed settlement. For more precise terms and conditions of the Settlement, please contact Class Counsel (contact information above), visit the Settlement website at [www.\[WEBSITE\].com](http://www.[WEBSITE].com), or contact the Settlement Administrator at XXX-XXX-XXXX. Notice of entry of final judgment will be provided on the Settlement website.

PLEASE DO NOT TELEPHONE THE COURT, CAMBLY OR CAMBLY'S COUNSEL FOR INFORMATION!

YOU MAY CALL THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL LISTED ABOVE.

Dated: _____, 2024.
By Order of the Court

Claimant ID: [#####]
Control Number: [#####]

CLAIM FORM

Waldrep v. Cambly Inc.
Sacramento County Superior Court Case No. 34-2022-00314360

To claim your share of the Settlement from the *Waldrep v. Cambly Inc.* class action settlement, you must complete and return this Claim Form to the Settlement Administrator no later than [REDACTED], 2024. Alternatively, you may complete and submit, by this deadline, the online version of the Claim Form that can be found at [www.\[website\].com](http://www.[website].com). You can also use the website to sign up for digital payment of your share of the Settlement, e.g., Venmo, PayPal. Otherwise, your payment will be made by check and mailed to you.

Settlement Administrator
ADDRESS
CITY, STATE, ZIP
Tel: (617) XXX-XXXX
email@email.com

The Undersigned declares under penalty of perjury under the laws of the state of California that I provided services in connection with Cambly's platform in the State of California (during the period from November 9, 2020, to May 26, 2022) and submit to the jurisdiction of the Superior Court for the County of Sacramento, California in connection with the Settlement.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

(please use the number associated with your Cambly account)

Email address: _____

(please use email address associated with your Cambly account)

Social Security Number/Tax Identification Number: _____

(only needed for claims over \$600; if not provided, taxes may be withheld)

TO RECEIVE YOUR SETTLEMENT PAYMENT, YOU MUST SIGN AND DATE BELOW.

BY SIGNING BELOW, you are agreeing to the terms of the settlement.

(Signature)

(Date)

EXHIBIT F

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Johnson vs. VCG-IS, LLC, et al.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2015-00802813-CU-CR-CXC

I certify that I am not a party to this cause. I certify that the following document(s), dated , have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on July 18, 2018, at 10:18:33 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

AEGIS LAW FIRM, PC
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SLISS@LLRLAW.COM

Clerk of the Court, by:  , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 07/18/2018

TIME: 10:00:00 AM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Barbara Allen

CASE NO: **30-2015-00802813-CU-CR-CXC** CASE INIT.DATE: 08/05/2015

CASE TITLE: **Johnson vs. VCG-IS, LLC, et al.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Civil Rights

EVENT ID/DOCUMENT ID: 72809838

EVENT TYPE: Motion - Other

APPEARANCES

There are no appearances by any party.

Tentative Ruling e-served upon the parties.

All parties telephonically submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows: The Court's ruling is attached hereto and incorporated herein by reference.

Court orders clerk to give notice.

The instant PAGA case involves, among other things, the issue of whether exotic dancers working at Imperial Showgirls in Anaheim, California qualify as independent contractors. The entity which directly engages the dancers is Defendant VCG-IS, LLC dba Imperial Showgirls. Defendants VCG Holding Corp. and International Entertainment Consultants, Inc. are affiliated companies which, according to Plaintiffs, are jointly liable for the alleged Labor Code violations.

On May 10, 2018, during a status conference preceding an upcoming motion for summary judgment and the trial, the parties jointly requested that the Court provide clarification on whether the California Supreme Court's recent decision in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal. 5th 903 will be applied and relied upon in deciding the case. The case is significant in that it altered the previous test (*see S.G. Borello v. & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal. 3d 341) utilized to determine whether individuals qualify as independent contractors or employees in any given situation. Although the question before the Court is essentially a question of law, the guidance being provided herein is in the context of a motion in limine. For the parties' benefit and planning, the Court's intention is to apply the following ruling to subsequent motions and the trial.

1. Is Dynamex Retroactive?

In *Dynamex*, a putative class of delivery drivers contended that their employer misclassified them as independent contractors. The lawsuit in that case sought to certify a class of drivers who purportedly had been misclassified since 2005. By the time that *Dynamex* was decided—April 30, 2018—the case had been going on for 13 years. Ultimately the California Supreme Court ruled that previous multi-factor tests to determine misclassification, including the "economic realities" test of the FLSA and the *Borello* test, leave "both businesses and workers in the dark with respect to basic questions relating to wages and working conditions that arise regularly," and were subject to abuse because they permit "a hiring business greater opportunity to evade its fundamental responsibilities under a wage and hour law by dividing its work force into disparate categories and varying

the working conditions of individual workers within such categories with an eye to the many circumstances that may be relevant under the multifactor standard." (*Dynamex, supra* at 954-55.) The Court therefore sought to create a brighter line, citing favorably to Massachusetts cases holding workers to be employees when they performed their work within the usual course of a hiring entity's business. (*Id.* at 963.)

To satisfy these aims, the *Dynamex* Court held that it is appropriate to (1) place the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the IWC wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish each of the three factors embodied in simpler test known as the ABC test. (*Id.* at 957.) The Court embraced the ABC test because it would "provide greater clarity and consistency, and less opportunity for manipulation than a test or standard that invariably requires the consideration and weighing of a significant number of disparate factors on a case-by-case basis." (*Id.* at 964.)

Even though *Dynamex* established a new standard for evaluating independent contractor/employee issues (at least as to claims brought under the IWC wage orders), it did not state that its decision applied only prospectively. Given the age of the claims in the *Dynamex* case, and given the Court's longstanding acknowledgment of its authority to make such a statement (see *Newman v. Emerson Radio Corp.* (1989) 48 Cal. 3d 973, 978), the lack of such a pronouncement suggests that the decision should apply retroactively. Although not necessarily determinative, the Court's later decision (on June 20, 2018) to deny requests to modify its decision to state that *Dynamex* will only be applied prospectively supports this conclusion. In light of "the general rule that judicial decisions are given retroactive effect" (*Newman, supra* at 978), and because it is up to the Supreme Court to declare an exception to this rule (see *Barr v. ADandS, Inc.* (1997) 57 Cal. App. 4th 1038, 1053), this Court will apply *Dynamex* retroactively.

2. Does Dynamex Only Apply to Claims Seeking to Enforce California's Wage Orders?

Defendants argue that the ABC standard enunciated in *Dynamex*, even if applied retroactively, is limited to claims brought under the IWC wage orders. Indeed, the Supreme Court stated at the beginning of its opinion as follows: “Dynamex's petition for review challenged only the Court of Appeal's conclusion that the trial court properly determined that the wage order's definitions of “employ” and “employer” may be relied upon in determining whether a worker is an employee or an independent contractor for purposes of the obligations imposed by the wage order. We granted the petition for review to consider that question.” (*Dynamex*, *supra* at 925.)

In light of this and other statements by the Supreme Court emphasizing that its analysis focused on specific language found in the wage orders, Defendants argue that *Dynamex* does not apply to PAGA claims since such claims are premised on Labor Code violations, not wage order violations. Instead, according to Defendants, PAGA claims must be considered using the *Borello* test. Not surprisingly, Plaintiffs disagree with this position.

The PAGA claims in this case are all based on alleged violations of Labor Code provisions. These violations include:

- (a) Failure to pay all wages owed, including minimum wage (Violation of Labor Code §§ 201-204, 210, 558, 1194, 1194.2, 1197 and 1198);
- (b) Failure to provide meal breaks (Violation of Labor Code §§ 226.7 and 512);
- (c) Failure to provide rest breaks (Violation of Labor Code § 226.7);
- (d) Failure to provide accurate itemized wage statements (Violation of Labor Code § 226);
- (e) Failure to keep accurate records of hours worked (Violation of Labor Code §§ 1174, 1174.5 and 1175);
- (f) Failure to reimburse all expenses incurred for Defendants' benefit (Violation of Labor Code § 2802);
- (g) Improper deductions from wages (Violation of Labor Code § 221); and
- (h) Failure to permit Plaintiffs and aggrieved employees to retain all gratuities (Violation of Labor Code § 351).

As it turns out, the applicable wage order (IWC Order No. 10) also covers each of these violations except for the gratuity claim pursuant to Labor Code § 351. Thus, a failure to pay minimum wages is covered by Section 4 of the wage order, meal periods are governed by Section 11, rest periods are covered by Section 12, accurate wage statements and records of hours work are required by Section 7, and reimbursement of expenses and improper deductions are covered by Sections 8 and 9. Further, these wage order requirements are tied into the Labor Code by, among others, Labor Code § 1194 (failure to pay minimum wages which, per Labor Code § 1197, are set in the wage orders), § 1198 which makes unlawful “employment of any employee . . . under conditions of labor prohibited by the [wage] order,” and Labor Code §§ 512 and 516 pertaining to meal periods and rest breaks.

Notwithstanding these close, if not inseparable ties between the applicable Labor Code sections and the wage order provisions, Defendants insist that different tests should be used to determine employee v. independent contractor status depending on the statutory basis for the particular claims. Stated differently, Defendants contend that a violation of the requirement to pay minimum wages under Labor Code § 1194 should be analyzed under *Borello*, while a violation of Section 4 of the wage order should be decided under *Dynamex*.

In this Court’s view, this position misses the mark. For one thing, there is a huge practical problem. Considering wage and hour claims based on state laws, how is a trial court supposed to apply one standard to a claim grounded in the Labor Code and a different test for essentially the same claim premised on a wage order? More significantly, how are employers and employees/independent contractors supposed to determine their rights if they are unable to figure out what test applies? Indeed, the suggestion that multiple tests should apply to state law wage and hour claims runs counter to the purpose of *Dynamex*—providing greater clarity and consistency in analyzing this issue. (*Dynamex, supra* at 964.)

More to the point, there is no private right of action under the wage orders. As stated by the court in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal. App. 4th 1112, 1132: “The IWC has not created, and has no power to create, a private right of action for violation of a wage order, and we are aware of no statute that creates a private right of action for a violation of an IWC wage order when the violation at issue is not also a violation of the Labor Code.”

The foregoing statement makes clear that in lawsuits such as the one at hand, where an individual is suing for violation of the minimum wage laws, etc., he or she is actually enforcing the Labor Code which, by its own terms, incorporates the wage orders. “[An employee] who sues to recover unpaid minimum wages under Section 1194 [of the Labor Code] actually sues to enforce the applicable wage order. Only by deferring to wage orders’ definitional provisions do we truly apply Section 1194 according to its terms by enforcing the ‘legal minimum wage.’” *Martinez v. Combs* (2010) 49 Cal. 35, 62.

Indeed, that is exactly what happened in *Dynamex*. There, the plaintiffs filed a complaint that set forth alleged Labor Code violations based on, among other things, Dynamex’s alleged failure to pay overtime compensation. Given this pleading and the fact that overtime pay requirements are set by the wage orders, the Court’s holding that the ABC test should be applied to determine employee status under the wage orders can only mean that that test also had to be applied to Labor Code claims seeking to enforce the wage order requirements.

Because all of the claims (except for the gratuities claim) in the instant case are rooted in the wage orders, the Court concludes that *Dynamex*’s ABC test should be utilized to determine the employee/independent contractor issues in this case. The fact that the case is brought under PAGA does not compel a different result. PAGA claims are based on violations of the Labor Code which, in turn, requires compliance with the wage orders. As such, “PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage order or employment under conditions prohibited by a wage order).” *Thurman, supra* at 1132 (emphasis in original).

Defendants' contention that the Supreme Court specifically approved different tests for determining employee status in the context of wage and hour litigation also misses the mark. While Defendants correctly point out that the *Dynamex* court acknowledged the possibility of a "two-test approach" to "disparate claims under different labor statutes brought by the same individual" (*Dynamex, supra* at 948), there is no indication that the court approved such an approach when it comes to state wage and hour law. In referencing different wage and hour standards under the federal FLSA, the Court appropriately lumped together the protections afforded by both state wage and hour laws and the wage orders: "The federal context demonstrates that California is not alone in adopting a distinct standard that provides broader coverage of workers with regard to *the very fundamental protections afforded by wage and hour laws and wage orders.*" (*Id.*; emphasis added)

While the *Dynamex* court did not cite specific examples of non-wage and hour labor statutes for which the *Borello* test would continue to apply, it is likely that the workers compensation and unemployment compensation laws would fit into this category. It is those types of laws, which are not directly based on the wage orders and which do not fall into the generic category of "wage and hour laws" that, in this Court's view, would not yet be analyzed under the ABC test.

3. Labor Code Section 351--Gratuities

Labor Code §§ 350-356 is the state law pertaining to gratuities or tips. Because of the nature of this form of compensation, the statute includes a unique definition of "Employee" in § 350(b):

"Employee" means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

The plain language of this provision establishes that, for purposes of gratuities, the determination of who qualifies as an employee is different (and arguably broader) than the definition found in the wage orders. “Rendering actual service,” including doing so “gratuitously,” supports the conclusion that the Legislature recognized that tips often are provided to individuals who do not fit into traditional definitions (or even the *Dynamex* version) of employee. Because of this specialized definition, there is no basis to apply the *Dynamex* analysis in determining issues relating to the gratuities issue in this case.

This conclusion is reinforced by the fact that there is no reference to gratuities in the wage orders. Indeed, an argument can be made that Labor Code §§ 350 et seq. are not “wage and hour laws” given that gratuities or tips are usually not determined by the employer, but rather by the customer.

4. Joint Employer Issues

The final issue for resolution in connection with this motion in limine is whether *Dynamex’s* ABC test also applies to the determination of joint employer status as to VCG Holding (the owner of VCG-IS, LLC--the club where the dancers worked) and IEC (the consulting company). For now, the answer is relatively simple. In *Curry v. Equilon Enterprises* (2018) 23 Cal. App. 5th 289, the court of appeal concluded that it was not the intention of the Supreme Court to apply this new test to joint employment issues: “In conclusion, the “ABC” test set forth in *Dynamex* is directed toward the issue of whether employees were misclassified as independent contractors. Placing the burden on the alleged employer to prove that the worker is not an employee is meant to serve policy goals that are not relevant in the joint employment context. Therefore, it does not appear that the Supreme Court intended for the “ABC” test to be applied in joint employment cases.” *Id.* at 314.

Plaintiff argues that this Court should not follow *Curry* inasmuch as that decision conflicts with *Dynamex* and because a petition for review has been filed in that case. As to the first point, this Court is not inclined to second guess the court of

appeal which considered and rejected Plaintiff's argument. As to the second point, until such time as the Supreme Court overrules or depublishes the case, this Court is bound to follow it.