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general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ARATH RODRIGUEZ, Individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

ANV INVESTMENTS, INC., a California
Corporation and DOES 1-10, inclusive.

Defendants.

CASE NO. 37-2022-00006121-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: December 12, 2023
Time: 9:00 a.m.
Dept: C-67
Judge: Hon. Eddie C. Sturgeon

1 I, Eric K. Yaeckel, hereby declare as follows:

- 2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for ARATH RODRIGUEZ,
4 Individually, and on behalf of other members of the general public similarly situated in the
5 above-captioned matter. I make this declaration in support of Plaintiff's Notice of Unopposed
6 Motion for Conditional Certification of Settlement Class and Preliminary Approval of Good
7 Faith Determination of Class Action Settlement.
- 8 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
9 witness I could and would do so.

10 **Background and Investigation**

- 11 3. On February 16, 2022, Plaintiff Rodriguez filed the Complaint in this matter. The original
12 Complaint alleged class action claims and representative action ("PAGA") claims, under the
13 California Labor code involving, inter alia, (1) Meal and Rest Period violations; (2) Minimum
14 wage violations; (3) Overtime violations; (4) Wage statement violations; (5) Failure to
15 reimburse business expenses; and (6) Failure to pay wages upon separation.
- 16 4. On March 14, 2022, Plaintiff propounded discovery requests on each of Defendants, including
17 requests for admission, special interrogatories, requests for production of documents, and
18 general and employment form interrogatories. Through these requests, Plaintiff sought, among
19 other information and documents, the identities of putative class members, Defendant's
20 compensation policies, meal and rest period policies, employee handbooks, wage statements,
21 payroll records, time records, job descriptions, and reimbursement policies.
- 22 5. Defendant provided discovery responses, documents, and objections to Plaintiff's requests.
23 After a meet and confer processes, Defendants produced, *inter alia*, Plaintiff's time and wage
24 records, copies of the relevant employee handbooks, copies of all other relevant employee
25 policies, the contents of Plaintiff's employee file, Plaintiff's time records, and itemized wage
26 statements
- 27 6. Defendant also agreed to participate in a "Belaire" West process to allow Plaintiff to get the
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- 1 contact information and time and wage records for other members of the putative class.
- 2 7. In total it appears there were at least 6 sets of written discovery exchanged between the parties.
- 3 8. Following substantive discovery, Defendant (through its counsel), reached out to attempt to
- 4 explore early resolution of this matter. As part of the settlement discussions, Defendant agreed
- 5 to voluntarily produce and verify thousands of pages of documents. The production included
- 6 all relevant policies and procedures. It also included large sampling of other class members'
- 7 time and wage data.
- 8 9. Plaintiff also requested Defendant provide additional informal discovery so that the parties
- 9 could experience a meaningful mediation. Defendant provided informal discovery which
- 10 consisted of, *inter alia*, the number of current and former employees who worked for
- 11 Defendant during the limitations period, meal and rest period premiums paid, pay periods at
- 12 issue, a redacted sampling of employee time records and wage statements, as well as
- 13 confirmation that various policies and agreements were standard as to the class.
- 14 10. On April 6, 2023, the Parties attended a full day mediation before the experienced "Wage and
- 15 Hour" mediator, Doug Glass. Prior to the mediation, counsel for both parties agreed to the
- 16 informal exchange of information pertinent to a class-wide settlement. Both parties prepared
- 17 and exchanged detailed mediation briefs. At the conclusion of mediation, the parties agreed
- 18 on the key terms of a settlement that would globally resolve all class and representative wage
- 19 and hour claims asserted in the operative Complaint in this Action. As of July 21, 2023, the
- 20 parties agreed on all final terms of the settlement which was memorialized in the
- 21 STIPULATION OF CLASS ACTION AND PAGA REPRESENTATIVE ACTION
- 22 SETTLEMENT AND RELEASE (hereinafter "the Agreement"). A true and correct copy of
- 23 the agreement is attached as **Exhibit A**.

24 **Terms of the Agreement**

- 25 11. The parties agreed to use CAC Services, LLC, as the "Settlement Administrator" for purposes
- 26 of providing the Notice to Settlement Class Members, issuing payments pursuant to the
- 27 Agreement, and to administer the claims. CAC's sole business has been the administration of
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class action settlements and class action notices, an area in which it has extensive experience.

12. The Agreement provides for an automatic cash payment to the members of the Class. No claims need be submitted. Class Members will be entitled to an average share of approximately **\$400.56**. This number was calculated by taking out all contingent costs on page 1 on the memorandum and dividing the remainder equally between the estimated 300 class members.
13. Defendant also agrees to pay Plaintiff Rodriguez Seven Thousand and Five Hundred Dollars (\$7,500.00), as an enhancement award in consideration for his service as Class Representative. The enhancement award was decided pursuant to good faith negotiations and is intended to recognize that it was the class representatives who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to his attorneys, and worked with his attorney to respond to and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to himself, but to hundreds of other employees.

Claims Analysis and Potential Recovery

14. Plaintiffs' unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work that was not paid (1) due to the fact that the timekeeping system "rounded" or edited employee time entries and as a result also lead to liability for lack of accurate record keeping. Plaintiffs alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay. Defendant argued that rounding of total hours worked has been recognized under California law. Defendant also denied that any unpaid work occurred, and even if some did occur, Defendant claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be accurately recorded. Defendant asserted proof of these alleged violations would require individualized inquiries, which could preclude class certification and make any PAGA claims unmanageable.
15. Based on Class Counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial of class certification) or as much as \$87,243.75 (See paragraph 24, below for the

- specific calculations).
16. Plaintiffs were able to identify numerous examples of missing or late meal periods without the provision of a meal period penalty payment. However, Defendant argued that these records do not conclusively show whether (1) it actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of ANV's written meal period policy, Defendant contended there was no uniform policy or practice, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable. Plaintiffs also alleged the written policies were missing required language pursuant to California law. Defendant pointed out that despite any missing language Defendant's practice was to provide all meal and rest breaks in compliance with California law. Defendants also contended individualized inquiries will abound as to why individual employees may have failed to take appropriate meal periods or rest breaks.
17. Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial of class certification) or as much as \$465,300.00. (See paragraph 24, below for the specific calculations).
18. As to Wage Statement claims, these claims are largely derivative, in that both the gross and net wages could be found to be inaccurate, due to the above-referenced claims. ANV argued that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no "knowing and intentional failure" to list information, which is required to prove liability under Labor Code §226(e).
19. Defendants (as with the underlying meal and rest period claims) maintained individualized inquiries would abound as to why breaks were missed and whether meal period premiums should have been paid in the first place, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable.
20. This claim was valued at as little as \$0.00 and as much as \$231,000.00. (See paragraph 24, below for the specific calculations).

21. Plaintiff contends that ANV violated Labor Code section 2802 by failing to reimburse its employees for certain costs, including primarily cellular phone costs. ANV countered that employees were not “required” to use their personal cell phone for any of their job functions.
22. This claim was valued at as little as \$0.00 and as much as \$3,000.00. (See paragraph 24, below for the specific calculations).
23. Based on Class Counsel's analysis, the PAGA and Labor Code § 203 claims were worth as little as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as \$148,500.00. and \$820,800.00 respectively. (See paragraph 24, below for the specific calculations).

Damage Calculations

24. The following estimated damage calculations were completed after review of the sampling of class member time and wage records, and after interviews with Plaintiff, and other class members. The breakdown of the damage and penalties calculation is as follows:

Unpaid Compensation Violations: 55 (employee positions) x \$18.00 (average Hourly Rate) x 1.5 (min. overtime premium owed) x 0.25 (average number of unpaid Overtime hours, per employee, per workweek) x 47 (workweeks per year) 5.0 (years in Limitations Period) = **\$87,243.75.**

Meal Period Policy Violations: 55 (employee positions) x \$18.00 (average Hourly Rate) x 1.0 (average number of meal period violations per employee, per workweek) x 47 (workweeks per year) 5.0 (years in Limitations Period) = **\$232,650.00**

Rest Period Policy Violations: 55 (employee positions) x \$18.00 (average Hourly Rate) x 1.0 (average number of rest period violations per employee, per workweek) x 47 (workweeks per year) 5.0 (years in Limitations Period) = **\$232,650.00**

Labor Code § 226 Penalties: 55 (employee positions) x \$50.00 (statutory penalty) x 120 (pay periods during the one year limitations period) x 70% (amount of pay periods showing at least 1 violation) = **\$231,000.00**

Labor Code §2802 Penalties: 300 (total number of employees) x **\$10** (estimated average

amount of reimbursement due per employee) = **\$3,000.00**

Labor Code § 203 Penalties: 190 (number of ex-employees) x **\$18.00** (average Rate of Pay) x **8.0** (average number of work hours, per day) x **30** (days for recovery, per statute) = **\$820,800.00**

“PAGA” Violations: 6 (separate Labor Code violations based on the above claims) x **55** (number of employee positions) x **\$50** (per violation) x **36** (pay periods in one year limitations period) = **\$594.00.00**. The aggrieved employees are only entitled to s 25% share of this amount, which is **\$148,500.00**.

25. Based on the above, a best case recovery (which would be admittedly highly unlikely, given the factors set forth below) would be a total judgment of \$1,753,143.75.

Relevant Case Law Supports a Further Reduction on any Recovery

26. It is my opinion that it would be *highly* unlikely to ever be awarded any amount approaching the maximum damages set forth above. To wit, the majority of the damages above are “derivative” penalties under PAGA, Labor Code § 203 and Labor Code § 226.

27. Please see the analysis of the relevant caselaw cited in the memorandum (pp. 10-11) which allows significant mitigation of PAGA penalties, which prohibits stacking of multiple penalties for the same underlying conduct and declines to automatically award §§ 203 and 226 penalties for meal and rest break violations without a further evidentiary showing.

28. Our office believes a mitigation of the damages and potential PAGA penalties would be warranted here. Defendant agreed to discuss early resolution upon conducting discovery on the claims. Also, as in the *Carrington* case (which was handled by this office), there is evidence that Defendant attempted to provide meal and rest periods *in practice*, even where the breaks were missed. Given this, it is likely that any violations by Defendant were not “willful.” Finally, given the defenses raised by Defendant to maintaining this matter as a class or representative action, there was a significant risk that many of the claims would not have even been able to survive to a trial.

29. As to the ex-employee claim pursuant to Labor Code § 203, the parties agree the failure to pay

“ex-employees” claim is derivative of the other claims. As Defendant is able to assert a “good faith dispute” for withholding any unpaid wages, it would be difficult to establish any liability for a “willful” failure to pay wages owed.

30. Given my experience, I believe it would be likely that PAGA penalties would be reduced to approximately \$5 a violation, and the Court would decline to impose Labor Code § 203 and Labor Code § 226 penalties.

31. If this happened, the realistic anticipated “best case” judgment following trial would be approximately \$612,243.75. Discounting approximately \$50,000 for contingent costs (enhancement bonus, administration, etc.), the average class member’s share of this recovery would be **\$1874.15** (\$562243.75 divided by 300 class members). Given our office’s analysis, I submit this number is the most likely “best case” recovery per class member.

32. However, a “best case” outcome at trial is exceedingly rare. It would also be appealed causing long delays and possible reductions. Given all the risks on each claim the estimated \$400.56 average recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation.

Class Certification and Other Preliminary Approval Requirements Are Met

33. The numerosity requirement is met if the class is so large that joinder of all members would be impracticable Here, Defendant’s records show that approximately **300 class members** worked for the company during the class period.

34. Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve the same questions of law and fact. Namely, all class members were subject to the same employment policies and practices of Defendant.

35. Plaintiff has claims substantially the same as all the other Class Members. He and his counsel are not aware of any adverse interests.

36. Plaintiff will be compensated based on the same “pay period” formula as all other members of the Class.

37. Any Class Member who wishes to “opt out” of the Settlement may do so and retain all of their

- individual rights. There is therefore no conflict of interest between the Class Representatives and the Class Members. Thus, at least for settlement purposes, the adequacy prong is met.
38. It would be preferable to resolve all of the Class Members' claims by means of a class-wide settlement than to require each Class Member to litigate individual claims.
39. When negotiating the settlement, both sides took into account the strengths and weaknesses of their opponent's positions as pointed out by the mediator, the data available to evaluate liability and damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations resulting in a unique compromise that permits all parties to move forward and bring this action to close. In spite of a mutual desire to resolve this action, the negotiations remained at all times adversarial.
40. Counsel for both parties have extensive experience in litigating wage and hour class action lawsuits. Based on this experience, counsel have determined that the settlement is fair, adequate, and reasonable.
41. Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary and non-monetary benefits for the Settlement Class Members in the following respects: **(1)** a guaranteed favorable result; **(2)** guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly waiting additional years for a potentially worse result; and **(3)** significant savings in attorneys' fees and costs, which would have increased had the case progressed through trial and possible appeals.
42. Without entering into the Agreement, there existed a significant chance that Defendant would prevail on the merits of some or all claims and that Class Members would receive nothing. Through the Agreement, participating Class Members receive guaranteed cash, and this action has also been the catalyst for programmatic relief.
43. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated, the parties may be required to hire multiple experts each (as many as 6 total). This

1 would result in not only the production of six expert reports, but six depositions as well. And,
2 based on previous discussions between counsel regarding the remaining claims (including the
3 PAGA claims), the parties anticipated at least one motion to compel, a motion for class
4 certification and two dueling motions for summary judgment / adjudication (one from each
5 side).

6 44. Importantly, even after engaging in all of the potential continued and protracted litigation set
7 forth above, the putative class would continue to have no guarantee of success on any of the
8 claims advanced in this case. Thus, the parties and their counsel believe in good faith that the
9 proposed resolution is a fair, reasonable, and adequate compromise.

10 45. Plaintiffs had not filed a Motion for Class Certification at the time settlement was reached.
11 Defendants presented multiple different defenses to certification during mediation and
12 throughout litigation. Even assuming Plaintiff did obtain class certification of the claims, each
13 claim is subject to substantial risk of a Defense verdict at trial.

14 46. Based on the current proposed figures, each Participating Class Member will receive an
15 average of \$400.56, although the actual amount will vary based on the amount of pay periods
16 s they were employed. The Class Notice will list each individual class member's actual
17 expected share. A true and correct copy of the class notice is attached to this declaration as
18 **Exhibit B**. I maintain this recovery was significant in light of the circumstances of the case.

19 47. Plaintiffs' counsel has also interviewed at least 4 other Class Members in the course of
20 investigating and litigating this matter. Counsel has also reviewed thousands of pages of
21 documents produced by Defendants, Plaintiffs, and Class Members. This information, along
22 with documents and information obtained through formal discovery and from Class Members,
23 allowed Plaintiffs' counsel to prepare a detailed Mediation Brief. The Brief was provided to
24 opposing counsel and contained a breakdown of potential damages based on all of the
25 information obtained.

26 48. Class Counsel has considerable experience in wage and hour and class action litigation. My
27 partner, William Sullivan has over 28 years of experience, 27 years of which has been devoted
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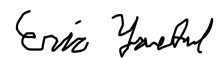
1 to both prosecuting and defending class action litigation. I have over 12 years of experience
2 in “class litigation.”

3 49. Our office considers the Agreement to represent a fair, adequate and reasonable settlement that
4 is well within the accepted range of recoveries for similar cases. Counsel further believes the
5 Agreement is in the best interests of the Settlement Class Members.

6 50. Consideration has been made to compensate to Labor Workforce Development Agency
7 (“LWDA”) in the amount of \$18,000, even though the LWDA declined to prosecute the claims
8 itself. To confirm, 75% of the total allocation of \$24,000 amount, or **\$18,000.00**, is being paid
9 to the LWDA, and 25%, or **\$6,000.00**, being distributed amongst the class members who
10 worked during the PAGA Period. Counsel for the parties believe this is a fair, reasonable, and
11 adequate allocation.

12 51. Prior to preliminary approval, what can be said of the reaction the class members is limited.
13 However, Plaintiff’s counsel has spoken to some Class Members since the parties reached a
14 proposed settlement agreement, and all were in favor of the settlement.

15
16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct. Executed this 10th day of August, 2023 at San Diego, California.

18
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20 ERIC K. YAECKEL

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ARATH RODRIGUEZ, Individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

ANV INVESTMENTS, INC., a California
Corporation and DOES 1-10, inclusive,

Defendant.

Case No. 37-2022-00006121-CU-OE-CTL

**STIPULATION OF CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

1 This Stipulation of Class Action and PAGA Representative Action Settlement and Release
2 (“Settlement” or “Settlement Agreement”) is entered into by and between Plaintiff ARATH
3 RODRIGUEZ (“Class Representative” or “Plaintiff”), individually and on behalf of the Settlement
4 Class and PAGA Employees (both terms defined below), , and the State of California, on the one hand,
5 ,and Defendant ANV INVESTMENTS, INC. (“Defendant”) on the other hand. The Settlement
6 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

7 **I. DEFINITIONS**

8 The following definitions are applicable to this Settlement Agreement. Definitions contained
9 elsewhere in this Settlement Agreement will also be effective:

10 **A. “Action”**

11 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant
12 captioned *Arath Rodriguez v. ANV Investments, Inc. et. al.*, Case No. 37-2022-00006121-CU-OE-CTL,
13 initiated on February 16, 2022, and pending in Superior Court of the State of California, San Diego
14 County.

15 **B. “Class Member Address Search”**

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

20 **C. “Class Representative” or “PAGA Representative” or “Plaintiff”**

21 “Class Representative” means the named Plaintiff, Arath Rodriguez, in the operative complaint
22 in the Action seeking Court approval to serve as a Class Representative and/or PAGA Representative.

23 **D. “Court”**

24 “Court” means the San Diego County Superior Court or any other court taking jurisdiction of
25 the Action.

26 **E. “Defendant”**

27 “Defendant” means named Defendant ANV Investments, Inc.
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1 **F. “Defendant’s Counsel”**

2 “Defendant’s Counsel” means Kyle Maland of Lewis, Brisbois, Brisgaard & Smith LLP.

3 **G. “Effective Date”**

4 “Effective Date” means when all of the following events have occurred: (1) the Settlement
5 Agreement has been executed by all Parties, Settlement Class Counsel, and Defendant's Counsel; (2)
6 the Court has held a Final Approval Hearing and has given Final Approval to the Settlement; (3) the
7 Court has entered its Final Approval Order and Judgment, approving the Settlement; (4) the Judgment
8 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating
9 Settlement Class Member objects to the Settlement, the day the Court enters the Final Judgment; (b) if
10 one or more Participating Settlement Class Members objects to the Settlement, the day after the
11 deadline for filing a notice of appeal from the Final Judgment; or (c) if a timely appeal from the Final
12 Judgment is filed, the day after the appellate court affirms the Final Judgment and issues a remittitur.

13 **H. “Final Approval”**

14 “Final Approval” means the Court’s order granting final approval of the Settlement Agreement.

15 **I. “Final Approval Hearing”**

16 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the
17 Settlement.

18 **J. “Final Judgment” or “Final Approval Order”**

19 “Final Judgment” or “Final Approval Order” means the judgment entered by the Court upon
20 granting Final Approval of the Settlement.

21 **K. “Gross Settlement Amount”**

22 “Gross Settlement Amount” means Two Hundred Fifty Thousand Dollars and Zero Cents
23 (\$250,000.00) to be paid by Defendant ANV Investments, Inc. in full satisfaction of all Released
24 Claims, which includes all Individual Class Settlement Payments to Participating Settlement Class
25 Members, any Incentive Award, the Cost of Administration, the LWDA PAGA Payment, the
26 Individual PAGA Settlement Amount, Settlement Class Counsel Costs, and , Settlement Class Counsel
27 Fees. Defendant’s share of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) taxes will
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not be deducted from the Gross Settlement Amount. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

L. "Incentive Award"

"Incentive Award" means an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to be paid to Plaintiff in recognition of his efforts and work in prosecuting the Action on behalf of Settlement Class and PAGA Members, and his execution of a general release, subject to Court approval.

M. "Individual Class Settlement Payment"

"Individual Class Settlement Payment" means the Participating Settlement Class Member's *pro rata* share of the Net Settlement Fund calculated according to the number of Workweeks worked during the Class Period.

N. "Individual PAGA Settlement Amount"

"Individual PAGA Settlement Amount" means the PAGA Member's *pro rata* share of twenty-five percent (25%), or Six Thousand Dollars and Zero Cents (\$6,000.00), of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

O. "Last Known Address"

"Last Known Address" means the most recently recorded mailing address for a Class Member, which information is contained in employment, payroll, or personnel records maintained by Defendant.

P. "LWDA"

"LWDA" means the California Labor and Workforce Development Agency, the agency entitled to receive seventy-five percent (75%) of the PAGA Penalties under Labor Code section 2699, subd. (i).

Q. "LWDA PAGA Payment"

"LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

R. "Net Settlement Fund"

"Net Settlement Amount" means the portion of the Gross Settlement Amount remaining after deducting the Court approved: (i) Settlement Class Counsel Costs, (ii) Settlement Class Counsel Fees,

1 (iii) Settlement Administration Costs, (iv) Incentive Award, (iv) LWDA PAGA Payment, and (v)
2 Individual PAGA Settlement Amounts. The Net Settlement Amount is the portion of the Gross
3 Settlement Amount that is to be paid to Participating Class Members as Individual Class Settlement
4 Payments.

5 **S. “Non-Participating Settlement Class Member”**

6 “Non-Participating Settlement Class Member” means any Settlement Class Member who opts
7 out of the Settlement by sending the Settlement Administrator a valid and timely Request for
8 Exclusion.

9 **T. “Notice of Objection”**

10 “Notice of Objection” means a Settlement Class Member’s valid and timely objection to the
11 Settlement Agreement. Any written objection must include: (a) the objector’s full name, signature,
12 address, and telephone number; (b) a written statement of all grounds for the objection; (c) copies of
13 any papers, briefs, or other documents upon which the objection is based; and (d) be faxed or
14 postmarked before the Response Deadline. The date of the email, fax, or postmark on the return
15 mailing envelope will be the exclusive means to determine whether an objection has been timely
16 submitted. Objections may also be made in person at the Final Approval hearing.

17 **U. “Notice Packet”**

18 “Notice Packet” means the notice entitled COURT APPROVED NOTICE OF CLASS
19 ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed
20 to Class Members in English with a Spanish translation in the form, without material variation,
21 attached as **Exhibit A** and incorporated by reference into this Agreement. The Notice Packet shall
22 constitute the class notice pursuant to California Rule of Court 3.769(f) and, once approved by the
23 Court, shall be deemed compliant with California Rule of Court 3.766(d).

24 **V. “PAGA”**

25 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
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1 **W. “PAGA Members” or “Aggrieved Employees”**

2 “PAGA Members” or “Aggrieved Employees” means all current and former hourly or non-
3 exempt employees of Defendant within the State of California who were employed at any time during
4 the PAGA Period.

5 **X. “PAGA Notice”**

6 “PAGA Notice” means Plaintiff’s December 14, 2021 letter to Defendant and the LWDA
7 providing notice pursuant to California Labor Code section 2699.3, subd.(a).

8 **Y. “PAGA Pay Period”**

9 “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for
10 Defendant for at least one day during the PAGA Period. PAGA Pay Periods may be based on either or
11 a combination of the following: (1) pay periods during which at least one day was worked; or (2) hire
12 dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of
13 leave, and dates of any transition between nonexempt and exempt status.

14 **Z. “PAGA Penalties”**

15 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross
16 Settlement Amount in the settlement and release of claims brought pursuant to the California Labor
17 Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, et seq. The Parties have agreed
18 that Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00) of the Gross Settlement Amount will
19 be allocated to the resolution of claims arising under the PAGA. Pursuant to the PAGA, seventy-five
20 percent (75%), or Eighteen Thousand Dollars and Zero Cents (\$18,000.00), of the PAGA Penalties will
21 be paid to the LWDA, and twenty-five percent (25%), or Six Thousand Dollars and Zero Cents
22 (\$6,000.00), will be paid to the Aggrieved Employees.

23 **AA. “PAGA Period”**

24 “PAGA Period” means the period from December 13, 2020, through the date of settlement or
25 the date of Preliminary Approval (whichever occurs first).

26 **BB. “Participating Settlement Class Member”**

27 “Participating Settlement Class Members” means a Settlement Class Member who does not
28 submit a valid and timely Request for Exclusion from the Settlement.

1 **CC. “Preliminary Approval” or “Preliminary Approval Order”**

2 “Preliminary Approval” or “Preliminary Approval Order” mean the Court’s order granting
3 preliminary approval of this Settlement Agreement.

4 **DD. “Released Claims”**

5 “Released Claims” shall collectively mean all claims, rights, demands, liabilities, and causes of
6 action against Defendant and Released Parties of any nature or description arising from the facts,
7 theories of liability and claims asserted in the Action and/or the claims that could have been asserted in
8 the Action based on the facts ascertained or alleged in the Action, including without limitation, any and
9 all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs,
10 penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, and equitable or
11 other relief based on the following categories: (a) any and all claims involving any alleged violations of
12 applicable IWC Wage Orders, Labor Code §§ 510, 558, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197,
13 and 1198 by failing to pay any and all minimum wages, contractual/assignment wages, and overtime
14 wage; (b) any and all claims arising under state or federal law involving any alleged failure to pay
15 employees for all hours worked, including but not limited to any claim for minimum, contractual/
16 assignment, straight time, or overtime wages; (c) any and all claims arising under California or federal
17 law involving any alleged failure to pay wages, including but not limited to any claim involving “off
18 the clock” work, “rounding,” or the failure to pay for all time under the employer’s control; (d) any and
19 all claims involving payment of wages based on ANV INVESTMENTS, INC. defined workday or
20 workweek; (e) any and all claims involving the failure to correctly calculate or include bonuses, other
21 incentive pay, or compensation of any kind in the “regular rate” of pay or compensation; (f) applicable
22 IWC Wage Orders, Labor Code §§ 226.7, 512, 558, 1194.5, and Cal. Code Civ. Proc. § 1021.5 by
23 failing to provide legally compliant meal periods and rest periods and failing to pay meal and rest
24 period premium wages; (g) any and all claims involving any alleged violations of applicable IWC
25 Wage Orders, Labor Code §§ 1174, 1174.5, and 1194.5 by failure to maintain accurate employment
26 records; (h) any and all claims involving any alleged failure to timely pay wages due upon separation
27 of employment, including but not limited to any claim of violation of Labor Code §§ 201 or 202, and
28 any claim for waiting time penalties under Labor Code § 203; (i) any and all claims involving any

1 alleged violations of Labor Code §§1194.5 and 2802 by failing to reimburse or indemnify work related
2 expenses and losses; (j) any and all claims involving applicable IWC Wage Orders by making unlawful
3 deductions or requiring a reimbursement for any shortage, breakage, or loss; (k) any and all claims
4 involving any alleged violations of Labor Code §§ 226, 226.3, 226.4, 558, 1174, 1174.5, and 1194.5 by
5 failing to provide itemized and accurate wage statements; (l) any and all claims for unfair business
6 practices in violation of Business and Professions Code sections 17200, et seq.; and (m) any and all
7 penalties pursuant to the Private Attorneys General Act (“PAGA”) of 2004 (collectively, the “Released
8 Claims”). The Released Claims include, but are not limited to, all claims arising under the California
9 Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 227.3, 246, 432,
10 256, 510, 512, 558, 1021.5, 1174, 1174.5, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
11 1198.5, 1199, 2800, 2802, 2698, 2699, 2699.3; the Wage Orders of the California Industrial Welfare
12 Commission; California Business and Professions Code section 17200 et seq.; the California common
13 law of contract; and federal common law. The release excludes the release of claims not permitted by
14 law. The Released Claims cover the time period of February 16, 2018 through June 1, 2023, or the
15 date of Preliminary Approval (whichever occurs first).

16 **EE. “Released PAGA Claims”**

17 “Released PAGA Claims” shall collectively mean all claims for penalties under the California
18 Private Attorneys’ General Act, California Labor Code sections 2698, et seq., alleged in the PAGA
19 Notice filed by Plaintiff on December 14, 2021, with the LWDA, along with claims which could be
20 asserted based on the facts already alleged in the PAGA Notice, including but not limited to, for
21 violations of applicable IWC Wage Orders, Labor Code §§ 510, 558, 1193.5, 1193.6, 1194, 1194.2,
22 1194.5, 1197, and 1198 by failing to pay any and all minimum wages, contractual/assignment wages,
23 and overtime wages; applicable IWC Wage Orders, Labor Code §§ 226.7, 512, 558, and 1194.5 by
24 failing to provide legally compliant meal periods and rest periods and failing to pay meal and rest
25 period premium wages; applicable IWC Wage Orders, Labor Code §§ 1174, 1174.5, and 1194.5 by
26 failure to maintain accurate employment records; Labor Code §§ 1194.5, 2802, and 2699 by failing to
27 reimburse and indemnify work related expenses and losses; applicable IWC Wage Orders by making
28

1 unlawful deductions or requiring a reimbursement for any shortage, breakage, or loss; Labor Code §§
2 226, 226.3, 226.4, 558, 1174, 1174.5, and 1194.5 by failing to provide itemized and accurate wage
3 statements; and Labor Code §§ 201, 202, and 203 for failure to pay all wages due upon separation of
4 employment. All claims asserted through California Labor Code §§ 2698, et seq., that arise out of or
5 are related to the Released Claims during the PAGA Period.

6 **FF. “Released Parties”**

7 “Released Parties” means: Defendant ANV INVESTMENTS, INC. and as applicable, each of
8 their respective past, present, and future agents (including any investment bankers, consultant,
9 accountants, insurers, reinsurers, attorneys and any past, present, or future officers, directors, and
10 employees), employees, officers, directors, partners, trustees, representatives, shareholders,
11 stockholders, owners, members, parents, members, subsidiaries, equity sponsors, related corporations
12 and/or partnerships (defined as a corporation and/or partnership that is, directly or indirectly, under
13 common control with Defendant ANV INVESTMENTS, INC.), management companies, joint
14 venturers, divisions, predecessors, successors, assigns, employee benefit plans and fiduciaries thereof,
15 and all affiliates and affiliated organizations, and the respective successors and assigns of any of the
16 foregoing persons.

17 **GG. “Request for Exclusion”**

18 “Request for Exclusion” means a timely written request submitted by a Settlement Class
19 Member requesting to be excluded from the Settlement Agreement. The Request for Exclusion must be
20 signed by the Settlement Class Member, be returned by fax, email, and/or mail to the Settlement
21 Administrator and be emailed, faxed, or postmarked on or before the Response Deadline. The date of
22 the email, fax, or postmark on the return mailing envelope will be the exclusive means to determine
23 whether a Request for Exclusion has been timely submitted. A Settlement Class Member who does not
24 request exclusion from the Settlement will be deemed to be a Participating Settlement Class Member
25 and will be bound by all terms of the Settlement Agreement if the Court grants Final Approval of the
26 Settlement, meaning that the Participating Settlement Class Member’s Released Claims will be deemed
27 released, barred, and extinguished by the Court’s Final Approval Order and by the operation of law.
28

1 **HH. “Response Deadline”**

2 “Response Deadline” means the deadline by which Settlement Class Members must postmark,
3 email, and/or fax to the Settlement Administrator valid Requests for Exclusion or Notices of Objection
4 to the Settlement. The Response Deadline will be thirty (30) calendar days from the Settlement
5 Administrator’s initial mailing of the Notice Packet, unless the 30th day falls on a Sunday or federal
6 holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal
7 Service is open. The Response Deadline for Requests for Exclusion will be extended ten (10) calendar
8 days for any Class Member who is re-sent a Notice Packet by the Settlement Administrator due having
9 been returned undeliverable to the Settlement Administrator, unless the 10th day falls on a Sunday or
10 federal holiday, in which case the Response Deadline will be extended to the next day on which the
11 U.S. Postal Service is open. Under no circumstances will the Settlement Administrator have the
12 authority to unilaterally extend the deadline for Settlement Class Members to submit a Request for
13 Exclusion or Notice of Objection to the Settlement.

14 **II. “Settlement”**

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

17 **JJ. “Settlement Administrator”**

18 “Settlement Administrator” means CAC Services, LLC, the neutral entity the Parties have agreed to
19 appoint to administer the Settlement. The Parties each represent that they do not have any financial
20 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
21 Administrator that could create a conflict of interest.

22 **KK. “Settlement Administration Costs”**

23 “Settlement Administration Costs” means the amount the Settlement Administrator will be paid
24 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with
25 the Settlement Administrator’s “not to exceed” bid submitted to the Court in connection with
26 Preliminary Approval of the Settlement. The costs payable from the Gross Settlement Amount to the
27 Settlement Administrator for administering this Settlement Agreement, include, but is not limited to,
28 printing, distributing, and tracking documents for this Settlement; calculating estimated Individual

1 Class Settlement Payments; tax reporting and payments; distributing the Individual Class Settlement
2 Payments, the LWDA PAGA Payment, any Incentive Award and Attorneys' Fees and Costs; and
3 providing necessary reports and declarations, and other duties and responsibilities set forth herein to
4 process this Settlement Agreement, and as requested by the Parties.

5 **LL. "Settlement Class," "Class," "Class Member," or "Settlement Class Members"**

6 "Settlement Class Members" or "Class" or "Class Member" or "Settlement Class Members"
7 mean all current and former nonexempt employees of Defendant who were employed in California
8 between February 16, 2018 through June 1, 2023 or the date of Preliminary Approval (whichever
9 occurs first), as either a Participating Class Member or Non-Participating Settlement Class Member
10 (including a Non- Participating Class Member who qualifies as an Aggrieved Employee). Defendant
11 represents that, as of March 30, 2023, there were approximately 290 Class Members. If, it turns out that
12 as of this date, the number of Class Members ends up increasing by more than 15 percent Defendant
13 shall increase the Total Gross Settlement Amount proportionally (i.e. for an increase of 16 percent in
14 employees, Defendant shall add an extra 1 % to the Gross Settlement Amount, for a 18 percent increase
15 in employees Defendant shall add an extra 3% to the Gross Settlement Amount).

16 **MM. "Settlement Class Counsel"**

17 "Settlement Class Counsel" means Eric K. Yaeckel and Ryan T. Kuhn of Sullivan & Yaeckel
18 Law Group, APC.

19 **NN. "Settlement Class Counsel Costs"**

20 "Settlement Class Counsel Costs" means the amounts allocated by the Court to Settlement
21 Class Counsel for reimbursement of reasonable costs and expenses incurred to prosecute and resolve
22 the Action as supported by declaration.

23 **OO. "Settlement Class Counsel Fees"**

24 "Settlement Class Counsel Fees" means the amounts allocated by the Court to the Settlement
25 Class Counsel for the reimbursement of attorneys' fees incurred to prosecute and resolve the Action.
26 The Settlement Class Counsel will request attorneys' fees not to exceed thirty-three and one third
27 percent (33 & 1/3%) of the Gross Settlement Amount.
28

1 **PP. “Settlement Class List Data”**

2 “Settlement Class List Data” means Settlement Class Member identifying information in
3 Defendant’s possession including the Settlement Class Member’s full name, Last Known Address,
4 Social Security number, and number of Workweeks and PAGA Pay Periods. A complete list of all
5 Settlement Class Members that Defendant will diligently and in good faith compile from its records
6 and provide to the Settlement Administrator within ten (10) calendar days after Preliminary Approval
7 of this Settlement. The Settlement Class List will be provided directly to the Settlement Administrator
8 formatted in a Microsoft Office Excel spreadsheet.

9 **QQ. “Settlement Class Period” or “Class Period”**

10 The period from February 16, 2018 through June 1, 2023 or the date of Preliminary Approval
11 (whichever occurs first).

12 **RR. “Workweek(s)”**

13 “Workweek(s)” means any week during which a Settlement Class Member actively worked for
14 Defendant during the Class Period. Workweeks may be based on either or a combination of the
15 following: (1) weeks during which at least one day was worked; or (2) hire dates and, where applicable,
16 last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any
17 transition between non-exempt and exempt status.

18 **II. RECITALS**

19 **A. The Parties To This Settlement Agreement**

20 This Settlement Agreement (with the associated exhibits) is made and entered into by and
21 among the following parties (collectively, the “Parties”): (i) the Class and PAGA Representative Arath
22 Rodriguez (on behalf of himself and each of the members of the Class and the PAGA Members), with
23 the assistance and approval of his respective counsel of record in the Action (“Settlement Class
24 Counsel”); and (ii) Defendant ANV Investments, Inc., with the assistance of their counsel of record in
25 the Action (“Defendant’s Counsel”). The Settlement Agreement is intended by the Parties to result in a
26 Final Judgment, and to fully, finally, and forever resolve, discharge, and settle the Released Claims
27 upon and subject to the terms and conditions hereof.
28

1 **B. Procedural Posture**

2 Pursuant to Labor Code section 2699.3, subd.(a), on December 14, 2021, Plaintiff filed a timely
3 written notice (the “PAGA Notice”) with the California Labor and Workforce Development Agency
4 (“LWDA”) alleging that Defendant violated the Private Attorneys General Act (“PAGA”). In the
5 PAGA Notice, Plaintiff seeks civil penalties under the PAGA for violations of California Labor Code
6 Sections 201-203, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197.1, 1198.5 and 2802, as well as IWC
7 Wage Order 9, and any other applicable wage orders, codified as Title 8, California Code of
8 Regulations, section 11090 et seq. by failing to pay any and all minimum wages, contractual/
9 assignment wages, and overtime wages; by failing to provide legally compliant meal periods and rest
10 periods and failing to pay meal and rest period premium wages; by failing to reimburse and indemnify
11 work related expenses and losses; by failing to provide all compensation upon termination of
12 employment; and by failing to provide itemized and accurate wage statements.

13 On February 16, 2022, Plaintiff filed a Class and PAGA representative action Complaint,
14 entitled *Arath Rodriguez v. ANV Investments, Inc. et. al.*, San Deigo Superior Court, Case No. 37-2022-
15 00006121-CU-OE-CTL (the “Action”). The Complaint alleges the following causes of action against
16 Defendant: (1) Meal and Rest Period Violations Pursuant to Labor Code § 226.7 and 512 (Individual
17 and Proposed Class Claim); (2) Minimum Wage and Overtime Violations Pursuant to Labor Code §
18 510, 1194 and 1197 (Individual and Proposed Class Claim); (3) Wage Statement Violations Pursuant to
19 Labor Code § 226 (Individual and Proposed Class Claim); (4) Failure to Reimburse Pursuant to Labor
20 Code § 2802 (Individual and Proposed Class Claim); (5) Waiting Time Penalties Pursuant to Labor
21 Code § 203 (Individual and Proposed Class Claim); (6) Violation Of Business And Professions Code §
22 17200 et seq. (Individual and Proposed Class Claim); and (7) Violation Of Labor Code § 2698
23 (Representative Claim). The Complaint is the operative complaint in the Action (the “Operative
24 Complaint.”)

25 The parties have engaged in extensive written discovery and document exchange. Prior to the
26 mediation, the discovery provided by Defendant to Plaintiff included Defendant’s relevant policies and
27 procedures, a sampling of Defendant’s time and payroll records, Defendants’ event lists, and other
28 relevant documents and information. Plaintiff’s investigation was sufficient to satisfy the criteria for

1 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
2 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

3 On April 6, 2023, the Parties attended a full-day mediation with experienced wage and hour mediator,
4 Doug Glass. in which the parties reached an agreement to settle the Litigation on a class-wide and
5 PAGA basis for a non-reversionary sum of Two Hundred Fifty Thousand Dollars and Zero Cents
6 (\$250,000.00).

7 **C. Defendant’s Denial Or Wrongdoing Or Liability**

8 Defendant denies all of the claims and contentions alleged by the Class/PAGA Representative
9 in the Litigation. Nonetheless, Defendant has concluded that to continue the Action would be
10 protracted and expensive and that it is desirable that the Action be fully and finally settled in the
11 manner and upon the terms and conditions set forth in this Settlement Agreement. In addition,
12 Defendant has taken into account the uncertainty and risks inherent in any litigation, particularly class
13 action litigation, as well as the difficulties and delays inherent in such litigation. Defendant has,
14 therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and
15 upon the terms and conditions set forth in this Settlement Agreement.

16 **D. Claims Of The Class/PAGA Representative And Benefits Of Settlement**

17 The Class/ PAGA Representative believes that the claims asserted in the Action have merit and
18 that evidence developed to date supports the claims. The Class/ PAGA Representative and Class
19 Counsel recognize and acknowledge, however, the expense and length of the type of continued
20 proceedings necessary to prosecute the Action against Defendant through trial and through appeals.
21 The Class/ PAGA Representative and Class Counsel have also taken into account the uncertain
22 outcome and the risk of any litigation, especially in putative class actions such as this Action, as well as
23 the difficulties and delays inherent in such litigation. The Class/ PAGA Representative and Class
24 Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential
25 defenses to the claims asserted in the Action. In light of these considerations, the Class/ PAGA
26 Representative and Class Counsel believe that the settlement set forth in the Settlement Agreement,
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1 including the monetary payments and prospective relief, confers substantial benefits, and is in the best
2 interests of the Class Representative and the Class.

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

5 **III. TERMS OF AGREEMENT**

6 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between
7 Plaintiff, on behalf of himself and on behalf of all members of the Settlement Class and PAGA
8 Members, with the assistance of their respective counsel of record, that, that the Action, Released
9 PAGA Claims and the Released Claims shall be finally and fully compromised, settled and released,
10 subject to the terms and conditions of the Settlement Agreement and the Final Judgment.

11 **1. Stipulation to Class Certification for Settlement Purposes Only.**

12 The Court has not granted class certification. The Parties agree that, for settlement purposes
13 only, the Court shall certify a Settlement Class consistent with this Settlement Agreement. The Parties
14 agree that nothing in this Settlement Agreement, including the Parties' agreement regarding
15 certification and representative treatment for settlement purposes only, is in any way an admission that
16 class certification is proper and that evidence of this limited stipulation for settlement purposes only
17 will not be deemed admissible in this or any other proceeding for any reason (except for proceedings to
18 enforce or effectuate the Settlement and this Settlement Agreement).. If for any reason the Court does
19 not grant Preliminary Approval, Final Approval, or enter Final Judgment, Defendant reserves the right
20 to contest certification of any class for any reasons, and Defendant reserves all available defenses to the
21 claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds
22 available and to contest Defendant's defenses.,.

23 **2. Gross Settlement Amount.**

24 As consideration, Defendant agrees to pay Two Hundred Fifty Thousand Dollars and Zero
25 Cents (\$250,000.00) and no more than the Gross Settlement Amount. and, as to that portion of the Net
26 Settlement Fund paid to Participating Settlement Class Members , Defendant will be responsible for
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1 any or all of the employer's portion of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes)
2 and must be separately paid by Defendant in addition to the Gross Settlement Amount.

3 Except for the Settlement Administrator Costs, if required by the Settlement Administrator, the
4 Gross Settlement Amount shall be deposited by Defendant into a Qualified Settlement Fund ("QSF") to
5 be established as a trust set up by the Settlement Administrator for the benefit of Participating
6 Settlement Class Members and PAGA Members. Defendant agrees to deposit the Gross Settlement
7 Amount and the required employer-side taxes with the Settlement Administrator within thirty (30)
8 calendar days after the "Effective Date" which is defined as the latter of: (a) if no Participating
9 Settlement Class Member objects to the Settlement, the day the Court enters the Final Judgment; (b) if
10 one or more Participating Settlement Class Members objects to the Settlement, the day after the
11 deadline for filing a notice of appeal from the Final Judgment; or (c) if a timely appeal from the Final
12 Judgment is filed, the day after the appellate court affirms the Final Judgment and issues a remittitur.
13 The Settlement Administrator will disburse the entire Gross Settlement Amount without asking or
14 requiring Participating Settlement Class Members or Aggrieved Employees to submit any claim as a
15 condition of payment.

16 Defendant will pay no other amounts in connection with this Settlement Agreement.

17 **3. Payments from the Gross Settlement Amount**

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

20 **a) To Plaintiff**

21 Incentive Award to the Class Representative of not more than Seven Thousand Five Hundred Dollars
22 and Zero Cents (\$7,500.00) (in addition to any Individual Class Settlement Payment and any Individual
23 PAGA Settlement Amount the Class Representative is entitled to receive as a Participating Settlement
24 Class Member). Defendant will not oppose Plaintiff's request for an Incentive Award that does not
25 exceed this amount. As part of the motion for Settlement Class Counsel Costs and Settlement Class
26 Counsel Expenses, Plaintiff will seek Court approval for any Incentive Award no later than sixteen (16)
27 court days prior to the Final Approval Hearing. If the Court approves an Incentive Award less than the
28

1 amount requested, the Settlement Administrator will retain the remainder in the Net Settlement
2 Amount. The Settlement Administrator will pay the Incentive Award using IRS Form 1099. Plaintiff
3 assumes full responsibility and liability for employee taxes owed on the Class Representative Service
4 Payment.

5 **b) To Settlement Class Counsel**

6 A payment of Settlement Class Counsel Fees of not more than thirty-three and one third percent (33 &
7 1/3 %) of the Gross Settlement Amount, which is currently estimated to be Eighty-Three Thousand
8 Three Hundred and Thirty-Three Dollars and Zero Cents (\$83,333.33) and Settlement Class Counsel
9 Costs of not more than \$11,000. Defendant will not oppose requests for these payments provided that
10 do not exceed these amounts. Plaintiff and/or Settlement Class Counsel will file a motion for
11 Settlement Class Counsel Fees and Settlement Class Counsel Costs no later than sixteen (16) court
12 days prior to the Final Approval Hearing. If the Court approves a Settlement Class Counsel Fees and/or
13 a Settlement Class Counsel Costs less than the amounts requested, the Settlement Administrator will
14 allocate the remainder to the Net Settlement Fund. The Settlement Administrator will pay the
15 Settlement Class Counsel Fees and Settlement Class Counsel Costs using one or more IRS 1099
16 Forms. Settlement Class Counsel assumes full responsibility and liability for taxes owed on the
17 Settlement Class Counsel Fees and Settlement Class Counsel Costs and holds Defendant harmless, and
18 indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of
19 these payments.

20 **c) To The Settlement Administrator**

21 The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement
22 and distribution of payments under the Settlement The Settlement Administration Costs are not to
23 exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) except for a showing of good cause and as
24 approved by the Court. To the extent the Administration Expenses are less or the Court approves
25 payment less than Ten Thousand Dollars and Zero Cents (\$10,000.00), the Settlement Administrator
26 will retain the remainder in the Net Settlement Fund. All Settlement Administration Costs, including
27 the cost of paying uncashed or returned checks to the State Controller's Unclaimed Property Fund,
28

1 shall be paid from the Gross Settlement Amount. Defendant shall not be required to pay additional
2 funds toward Administration Expenses.

3 **d) To Each Participating Class Member**

4 An Individual Class Settlement Payment calculated by (a) dividing the Net Settlement Fund by the total
5 number of Workweeks worked by all Participating Settlement Class Members during the Class Period
6 and (b) multiplying the result by each Participating Settlement Class Member's Workweeks. For the
7 purposes of calculating the Individual Class Settlement Payments, Workweeks shall be calculated to
8 the hundredth (i.e., two decimal places).

9 **e) Tax Allocations of Individual Class Settlement Payments**

10 Twenty-Five percent (25%) of each Settlement Class Member's Individual Class Settlement
11 Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are
12 subject to employer payroll taxes and will be reported on an IRS W-2 Form by the Settlement
13 Administrator. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The
14 remaining Seventy- Five percent (75%) of each Settlement Class Member's Individual Class Payment
15 will be allocated as penalties, interest, and non-wage damages (collectively the "Non-Wage Portions").
16 The Individual PAGA Settlement Amount are counted as penalties rather than wages for tax purposes.
17 The Non-Wage Portions and Individual PAGA Settlement Amount are not subject to Employment and
18 Payroll Taxes and will be reported on IRS 1099 Forms by the Settlement Administrator. Settlement
19 Class Members assume full responsibility and liability for employee's share of the employment and
20 payroll taxes owed on their Individual Class Settlement Payment and Individual PAGA Settlement
21 Amount.

22 **f) Effect of Non-Participating Settlement Class Members on Calculation**
23 **of Individual Class Settlement Payments**

24 Non-Participating Settlement Class Members will not receive any Individual Class Settlement
25 Payments. The Settlement Administrator will retain amounts equal to their Individual Class Settlement
26 Payments in the Net Settlement Fund for distribution to Participating Settlement Class Members on a
27 *pro rata* basis.
28

1 **g) To the LWDA and Aggrieved Employees**

2 PAGA Penalties in the amount of Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00) to be
3 paid from the Gross Settlement Amount, with 75%, or Eighteen Thousand Dollars and Zero Cents
4 (\$18,000.00), allocated to the LWDA PAGA Payment and 25%, or Six Thousand Dollars and Zero
5 Cents (\$6,000.00), allocated to the Individual PAGA Settlement Amount. The Settlement
6 Administrator will calculate each Individual PAGA Settlement Amount by (a) dividing the amount of
7 the Aggrieved Employees' 25% share of PAGA Penalties (\$18,000.00) by the total number of PAGA
8 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
9 result by each Aggrieved Employee's PAGA Pay Periods. For purposes of calculating the Individual
10 PAGA Settlement Amounts, Pay Periods will be calculated to the hundredth (i.e., two decimal places).
11 Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual
12 PAGA Settlement Amount. If the Court approves PAGA Penalties of less than the amount requested,
13 the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
14 report the Individual PAGA Settlement Amounts on IRS 1099 Forms.

15 **4. Payments to the Settlement Class**

16 Settlement Class members are not required to submit a claim form to receive a payment
17 ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:
18 The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts
19 approved by the Court for Settlement Class Counsel's Fees, Settlement Class Costs, Incentive Award,
20 the Settlement Administrator's Costs, LWDA PAGA Payment, and Individual PAGA Settlement
21 Amount. The remaining amount shall be known as the "Net Settlement Amount."

22 **5. Funding of the Gross Settlement Amount.**

23 Within thirty (30) calendar days after the Effective Date, Defendant will deposit the Gross
24 Settlement Amount into a Qualified Settlement Fund ("QSF") to be established as a trust by the
25 Settlement Administrator. The Settlement Administrator shall then distribute the Individual Class
26 Settlement Payments, the PAGA Penalties, Settlement Class Counsel's Attorneys' Fees and Costs,
27 Plaintiff's Incentive Award, and a payment to itself for Court-approved services performed in
28

1 connection with the Settlement. The Parties agree that the amounts held in the QSF will always be
2 treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, et seq. The
3 Parties further agree that for purposes of Section 468B of the Internal Revenue Code of 1986, as
4 amended (the “Code”) and the Treasury Regulations promulgated thereunder, Defendant shall be
5 treated as the “transferor” within the meaning of Treasury Regulation § 1.468B-1(d)(1), and that the
6 Settlement Administrator shall be the “administrator” of the QSF within the meaning of Treas. Reg. §
7 1.468B-2(k)(3). The Parties agree that the Settlement Administrator shall, in establishing the trust,
8 make any such elections as necessary or advisable to carry out the “relation back election” (as defined
9 in Treas. Reg. § 1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections shall be comply
10 with the procedures and requirements contained in such regulations. It shall be the Settlement
11 Administrator’s responsibility to timely and properly prepare and deliver the necessary documentation
12 for signature by all necessary Parties, and to cause the appropriate filing to occur. The Parties intend
13 that the transfers to the trust described in this section will satisfy the “all events test” and the
14 “economic performance” requirement of Code Section 461(h)(1) and Treasury Regulation Section
15 1.461-1(a)(2). The Settlement Administrator shall be responsible for filing tax returns for the trust, if
16 appropriate, including application for employer identification numbers in accordance with Treasury
17 Regulation Section 1.468B-2(k)(4). It will be considered a material breach of the agreement if
18 Defendant fails to fund by the Effective Date. If that occurs, Defendant will pay interest on the total
19 Gross Settlement Amount for each day that the settlement is late at the rate of 5% per annum.
20 Additionally, in the event of failure to make payment by the Effective Date, Plaintiff may immediately
21 petition the Court for settlement enforcement, and will be entitled to an award of all fees and costs
22 incurred in conjunction with settlement enforcement.

23 **6. Settlement Class Counsel Fees and Settlement Class Counsel Costs.**

24 Defendant agrees not to oppose or impede any application or motion by Settlement Class
25 Counsel for a total award of attorneys’ fees of thirty three and one third percent (33 & 1/3%) of the
26 Gross Settlement Amount, which is currently estimated to be \$83,333.33. Additionally, Settlement
27 Class Counsel will request an award of actual costs and expenses as supported by declaration, in an
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1 amount not to exceed \$11,000.00 from the Gross Settlement Amount. These amounts will cover any
2 and all work performed and any and all costs incurred in connection with this litigation, including
3 without limitation: all work performed and all costs incurred to date; and all work to be performed and
4 costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement,
5 including any objections raised and any appeals necessitated by those objections. Settlement Class
6 Counsel will be issued IRS Forms 1099 by the Settlement Administrator when the Settlement
7 Administrator pays the fee award and cost award approved by the Court. The Settlement Class Counsel
8 Fees and Settlement Class Counsel Costs will be paid from the Gross Settlement Amount provided that
9 such application or motion is consistent with this Settlement Agreement, and approved by the Court.
10 The Court's approval of the Settlement Class Counsel Fees is not a material term this Settlement
11 Agreement. If the Court does not approve or approves only a lesser amount than that requested by
12 Settlement Class Counsel, the other terms of this Settlement Agreement shall apply. The Court's
13 refusal to approve the Settlement Class Counsel Fees as requested by Settlement Class Counsel does
14 not give Plaintiff, Class Members, PAGA Members, or Class Counsel any basis to abrogate this
15 Settlement. Any amount of the Settlement Class Counsel Fees as requested by Settlement Class
16 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

17 **7. Incentive Award.**

18 Defendant agrees not to oppose or impede any application or motion for an Incentive Award of
19 \$7,500.00 to Plaintiff in recognition of his efforts and work in prosecuting the Action on behalf of
20 Settlement Class and PAGA Members, and his execution of a general release. The Incentive Award
21 will be paid from the Gross Settlement Amount, provided that such application or motion is consistent
22 with this Settlement Agreement and that it is approved by the Court. This Incentive Award shall be
23 reported on an IRS Form 1099 issued by the Settlement Administrator. Plaintiff will be solely and
24 legally responsible to pay all applicable taxes on the payments made pursuant to this section and will
25 indemnify and hold Defendant and the Released Parties harmless from any claim or liability for taxes,
26 penalties, or interest arising as a result of the payment. The Court's approval of the Incentive Award is
27 not a material term this Settlement Agreement. If the Court does not approve or approves only a lesser
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1 amount than that requested by Settlement Class Counsel, the other terms of this Settlement Agreement
2 shall apply. The Court's refusal to approve the Incentive Award as requested by Settlement Class
3 Counsel does not give Plaintiff, Class Members, PAGA Members, or Class Counsel any basis to
4 abrogate this Settlement, and the Settlement will remain binding. Any amount of the Incentive Award
5 as requested by Settlement Class Counsel but unapproved by the Court shall be allocated to the Net
6 Settlement Amount.

7 **8. Settlement Administration Costs.**

8 The Settlement Administrator will be paid for the reasonable costs of administration of the
9 Settlement and distribution of payments from the Gross Settlement Amount, which have been quoted
10 by the settlement administrator as not to exceed Ten Thousand Dollars (\$10,000). These costs, which
11 will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on
12 the Individual Class Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing the
13 Notice Packet, calculating and distributing the Gross Settlement Amount and Individual Class
14 Settlement Payments, administering the QSF, and providing necessary reports and declarations.

15 **9. Labor and Workforce Development Agency Payment.**

16 Subject to Court approval, the Parties agree that \$24,000 from the Gross Settlement Amount
17 will be designated for satisfaction of Plaintiff's and Class Members' PAGA claims for civil penalties.
18 Pursuant to the PAGA, 75%, or \$18,000, of the Individual PAGA Settlement Amount will be paid to
19 the LWDA; and 25%, or \$6,000, of the Individual PAGA Settlement Amount will be included in the
20 Net Settlement Amount. The LWDA shall be notified of the existence of the Settlement. If the LWDA
21 objects to the amount of its payment and the Court sustains the objection, or if the Court denies
22 approval of the Settlement Agreement based on the sufficiency of the Individual PAGA Settlement
23 Amount or LWDA PAGA Payment, the Parties will negotiate a different portion of the Gross
24 Settlement Amount to be allocated to the PAGA Settlement Payment. In no event will the allocation
25 result in an increase in the Gross Settlement Amount. Pursuant with controlling California law, class
26 members who were employed during the applicable PAGA period will not be able to opt-out of receipt
27 of his or her PAGA penalty payment and his/her PAGA rights will be extinguished.
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1 **10. Net Settlement Amount.**

2 The Net Settlement Amount will be used to satisfy Individual Class Settlement Payments to
3 Participating Settlement Class Members from the Settlement Class in accordance with the terms of this
4 Settlement. No portion of the Net Settlement Amount will revert or be retained by Defendant.

5 **11. Calculation of Individual Class Settlement Payment.**

6 Individual Class Settlement Payments will be calculated and apportioned from the Net
7 Settlement Amount based on the number of pay periods a Participating Settlement Class Member is
8 calculated to have worked during the Class Period. A Class Member's Settlement Share will equal the
9 Net Settlement Amount times the ratio of: (i) the number of pay periods worked by the Class Member
10 for Defendant during the Settlement Class Period (ii) the total number of pay periods worked by all
11 such Class Members during the Settlement Class Period (other than those who elected not to participate
12 in the Settlement).

13 The entire Net Settlement Amount will be disbursed to all Class Members who do not submit a
14 timely and valid Request for Exclusion. If there are any valid and timely Requests for Exclusion, the
15 Settlement Administrator shall remove the number of pay periods worked by the excluded individual
16 for Defendant during the Class Period from the total number of pay periods worked by all Class
17 Members, such that 100% of the Net Settlement Amount is distributed.

18 **12. Calculation of the Individual PAGA Settlement Payment.**

19 Class Members who are also PAGA Members will be entitled to receive a portion of the
20 Individual PAGA Settlement Amount, in accordance with the formula set forth below:

21 A PAGA Members' Settlement Share will equal the Individual PAGA Settlement Amount
22 times the ratio of: (i) the number of pay periods worked by the PAGA Member for Defendant during
23 the PAGA Period in California as a non-exempt hourly employee to (ii) the total number of pay periods
24 worked by all such PAGA Members during the PAGA Period.

25 **13. No Credit Towards Benefit Plans.**

26 The Individual Class Settlement Payments made to Participating Settlement Class Members
27 under this Settlement, as well as any other payments made pursuant to this Settlement, will not be
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1 utilized to calculate any benefits under any employee benefit plans to which any Settlement Class
2 Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans,
3 stock purchase plans, vacation plans, sick leave plans, PTO plans, or any other benefit plan. Rather, it
4 is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or
5 amounts to which any Settlement Class Members may be entitled under any employee benefit plans.

6 **14. Administration Process.**

7 The Parties agree to cooperate in the administration of the Settlement and to make all
8 reasonable efforts to control and minimize the costs and expenses incurred in the administration of the
9 Settlement.

10 **15. Delivery of the Settlement Class List Data.**

11 Within 10 calendar days of Preliminary Approval, Defendant will provide the Settlement Class
12 List to the Settlement Administrator. The Settlement Class List Data shall only be used by the
13 Settlement Administrator to notify the Settlement Class Members of the Settlement. This information
14 shall not be disclosed to Class Counsel, Plaintiff, any Class Members or their counsel, or any other
15 third party.

16 **16. Notice by First-Class U.S. Mail.**

17 Within 10 calendar days after receiving the Settlement Class List from Defendant, the
18 Settlement Administrator will mail a Notice Packet to all Settlement Class Members via regular First-
19 Class U.S. Mail, using the most recently known mailing addresses identified in the Class List or any
20 updated addresses found by the Settlement Administrator.

21 **17. Confirmation of Contact Information in the Settlement Class List.**

22 Prior to mailing the Notice Packets, the Settlement Administrator will perform a search based
23 on the National Change of Address Database for information to update and correct for any known or
24 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-
25 deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail
26 to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of
27 such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
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1 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search
2 using the name, address and/or Social Security Number of the Class Member involved, and will then
3 perform a single re-mailing. Those Settlement Class Members who receive a re-mailed Notice Packet,
4 whether by skip-trace or by request, will have the later of: (a) an additional 10 calendar days from the
5 date of re-mailing or (b) the Response Deadline, to postmark a Request for Exclusion or Notice of
6 Objection to the Settlement. Unless the Settlement Administrator receives a Notice Packet returned
7 from the United States Postal Service as non-deliverable, the Settlement Class Notice shall be deemed
8 mailed and received by the Settlement Class Member to whom it was sent 5 days after mailing.

9 **18. Notice Packets.**

10 All Settlement Class Members will be mailed a Notice Packet containing the Notice attached as
11 Exhibit B. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary
12 of the Settlement's principal terms; (c) the Settlement Class definition; (d) the total Gross Earnings
13 each respective Settlement Class Member received working as a Class Member during the Settlement
14 Class Period; (e) each Settlement Class Member's estimated Individual Class Settlement Payment and
15 the general formula for calculating Individual Class Settlement Payments; (f) the dates which comprise
16 the Settlement Class Period; (h) instructions on how to submit Requests for Exclusion or Notices of
17 Objection; (i) the deadlines by which the Settlement Class Member must postmark, email, and/or fax
18 Requests for Exclusions or postmark, email, and/or fax Notices of Objection to the Settlement; (j) the
19 claims to be released, as set forth herein; and (k) the date for the Final Approval Hearing.

20 **19. Disputed Claims.**

21 All disputes by Class Members regarding the Gross Earnings or Individual Class Settlement
22 Payment must be addressed to the Settlement Administrator and postmarked on or before the Response
23 Deadline. Such disputes will be resolved by the time of the Final Approval Hearing. Defendant's
24 records, however, are presumed to be correct unless a Settlement Class Member proves otherwise with
25 documentary evidence. The Settlement Administrator will evaluate the evidence submitted by the
26 Settlement Class Member and will make the final decision as to the dispute. The decision shall be
27 binding on the Settlement Class Member and no additional rights of appeal shall exist.
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1 **20. Request for Exclusion Procedures.**

2 Any Settlement Class Member wishing to opt out from the Settlement Agreement must sign and
3 postmark, email, and/or fax a written Request for Exclusion to the Settlement Administrator on or
4 before the Response Deadline. The postmark date on the return mailing envelope or fax receipt
5 confirmation will be the exclusive means to determine whether a Request for Exclusion has been
6 timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who
7 will certify jointly to Settlement Class Counsel and Defendant's Counsel the Requests for Exclusion
8 that were timely submitted. All Settlement Class Members who do not submit a valid and timely
9 Request for Exclusion will be deemed a Participating Settlement Class Member and will be entitled to
10 receive an Individual Class Settlement Payment.

11 If a Settlement Class Member's Request for Exclusion is defective as to the requirements listed
12 herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement
13 Administrator will mail the Settlement Class Member a cure letter within three (3) business days of
14 receiving the defective submission to advise the Settlement Class Member that his or her submission is
15 defective, the reason(s) why it is defective and that the defect(s) must be cured to render the Request
16 for Exclusion valid. The Settlement Class Member will have until the later of: (a) the Response
17 Deadline or (b) ten (10) calendar days from the date of the cure letter, whichever date is later, to
18 postmark, email, and/or fax a corrected Request for Exclusion. If the corrected Request for Exclusion is
19 not postmarked or received by fax within that period, it will be deemed untimely.

20 **21. Confidentiality and Publicity.**

21 Neither Plaintiff nor Settlement Class Counsel, directly or indirectly, shall issue a press release
22 or hold a press conference, publish information about the Settlement on any website, or otherwise
23 publicize the Settlement with the exception that Settlement Class Counsel may post the Settlement
24 Class Notice on its website. Plaintiffs' counsel also agrees to provide to Defendant' counsel a copy of
25 any such information that will be posted on their website seven days in advance of the posting. Plaintiff
26 and Settlement Class Counsel agree not to respond to any press inquiries concerning the Settlement
27 except to state, if necessary, that the matter was resolved.
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1 **22. Revocation of Settlement Agreement.**

2 Only Defendant has the right to withdraw from or rescind the Settlement Agreement, and
3 Defendant shall only have the right to do so if, prior to the Final Approval hearing: (a) 10% or more of
4 all Settlement Class Members submit a valid and timely Requests for Exclusion; (b) the Settlement is
5 construed in such a fashion that Defendant is required to pay more than the Gross Settlement Amount
6 as described herein; or (c) the Court does not certify the Settlement Class or does not certify a class
7 releasing the claims set forth herein, or otherwise makes an order inconsistent with any of the material
8 terms of this Settlement Agreement. If Defendant withdraws or rescinds the Settlement, it will be
9 responsible for paying for all of the Claims Administrator costs incurred, including the costs for any
10 notice that the Court orders be sent to the Settlement Class Members to inform them of Defendant's
11 withdrawal or rescission.

12 **23. Settlement Terms Bind All Settlement Class Members Who Do Not Opt Out.**

13 Any Settlement Class Member who does not affirmatively opt out of the Settlement Agreement
14 by submitting a timely and valid Request for Exclusion will be a Participating Settlement Class
15 Member and will be bound, on their own behalf and on behalf of their respective heirs, administrators,
16 executors, estates, agents, representatives, successors and assigns, by all of the terms of the Settlement
17 Agreement, including those pertaining to the Released Claims, as well as any Judgment that may be
18 entered by the Court if it grants final approval to the Settlement.

19 **24. Objection Procedures.**

20 To object to the Settlement Agreement in writing, a Settlement Class Member should postmark
21 a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The
22 Settlement Class Member must sign the Notice of Objection, and the Notice of Objection must contain
23 all information this Settlement Agreement requires. The postmark date will be deemed the exclusive
24 means for determining that the Notice of Objection is timely. Settlement Class Members may also
25 appear at the Final Approval Hearing to have their objections heard by the Court. None of the Parties or
26 their counsel will seek to solicit or otherwise encourage Class Members to submit objections to the
27 Settlement Agreement or appeal from the Final Approval Order. Class Counsel will not represent any
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1 Class Members with respect to any such objections to this Settlement. Plaintiff will neither submit a
2 Request for Exclusion nor Notice of Objection to the Settlement.

3 **25. Certification Reports Regarding Individual Class Settlement Payment Calculations.**

4 The Settlement Administrator will provide Defendant's counsel and Settlement Class Counsel a
5 weekly report which certifies the number of Settlement Class Members who have submitted valid
6 Requests for Exclusion, any Objections, and whether any Settlement Class Member has submitted a
7 challenge to any information contained in their Notice Packet. Additionally, the Settlement
8 Administrator will provide to counsel for both Parties any updated reports regarding the administration
9 of the Settlement Agreement as needed or requested.

10 **26. Settlement Checks.**

11 If a Class Member is entitled to both an Individual Net Settlement Payment and an Individual
12 PAGA Settlement Payment, the Individual Net Settlement Payment and the Individual PAGA
13 Settlement Payment will be combined and distributed as one single check.

14 **27. Uncashed Settlement Checks.**

15 Any checks the Settlement Administrator issues to Participating Settlement Class Members will
16 be negotiable for 120 calendar days, after which they will become void. Those funds represented by
17 settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more
18 than 120 calendar days after issuance will be delivered to the California Controller's Unclaimed
19 Property Fund in the name of the Participating Settlement Class Member as listed on the settlement
20 check.

21 **28. Certification of Completion.**

22 Upon completion of administration of the Settlement, the Settlement Administrator will provide
23 a written declaration under oath to certify such completion to the Court and counsel for all Parties.

24 **29. Tax Treatment of Individual Class Settlement Payments.**

25 All Individual Class Settlement Payments will be allocated as follows: 25% of each Individual
26 Class Settlement Payment will be allocated as wages, 75% of each Individual Class Settlement
27 Payment will be allocated to penalties, interest and expenses. The portion allocated to wages will be
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1 reported on an IRS Form W-2 and the portions allocated to non-wages will be reported on an IRS
2 Form-1099 by the Settlement Administrator.

3 **30. Administration of Taxes by the Settlement Administrator.**

4 The Settlement Administrator will be responsible for issuing to Plaintiff, Participating
5 Settlement Class Members, PAGA Members, and Settlement Class Counsel any W-2, 1099, or other
6 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
7 Administrator will also be responsible for forwarding all payroll taxes to the appropriate government
8 authorities.

9 **31. Tax Liability.**

10 Defendant and Settlement Class Counsel make no representation as to the tax treatment or legal
11 effect of the payments called for in this Settlement Agreement, and Plaintiff and Participating
12 Settlement Class Members and PAGA Members are not relying on any statement, representation, or
13 calculation by Defendant, Settlement Class Counsel or by the Settlement Administrator in this regard.
14 Plaintiff and Participating Settlement Class Members and PAGA Members understand and agree that,
15 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
16 described herein.

17 **32. Circular 230 Disclaimer.**

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

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

33. No Prior Assignments.

The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

34. Nullification of Settlement Agreement.

If: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement and all the terms and agreements contained therein, and any documents generated to bring it into effect, will be null and void, and all amounts deposited into the QSF will be returned to Defendant with the exception of the Claims Administrators' costs incurred. Any order or judgment the Court enters in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

35. Preliminary Approval Hearing.

Plaintiff will obtain a hearing before the Court to request Preliminary Approval of the Settlement Agreement and the entry of a Preliminary Approval Order that: (a) conditionally certifies the Settlement Class for settlement purposes only, (b) preliminarily approves the Settlement Agreement, and (c) sets a date for a Final Approval Hearing.

The Preliminary Approval Order will provide for the Notice Packet to be sent to all Settlement Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet, *i.e.*, the proposed Notice of Class Action Settlement documents. Settlement Class Counsel will be responsible for drafting all documents necessary to obtain

1 Preliminary Approval with review by and in consultation with Defendant's Counsel. Settlement Class
2 Counsel will also be responsible for sending this Settlement Agreement to the LWDA.

3 **36. Final Approval Hearing and Entry of Judgment.**

4 Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the
5 Settlement Agreement, and with the Court's permission, a Final Approval Hearing will be conducted to
6 determine whether to grant final approval of the Settlement Agreement along with the amounts
7 properly payable for: (a) Individual Class Settlement Payments; (b) the PAGA Penalties; (c) Settlement
8 Class Counsels' Attorneys' Fees and Costs; (d) the Incentive Award; and (e) all Settlement
9 Administration Costs. Settlement Class Counsel will be responsible for drafting all documents
10 necessary to obtain final approval. Settlement Class Counsel will also be responsible for drafting the
11 attorneys' fees and costs and Incentive Award application to be heard at the Final Approval Hearing.

12 **37. Judgment and Continued Jurisdiction.**

13 Upon final approval of the Settlement by the Court or after the Final Approval Hearing, the
14 Parties will present the Judgment (Exhibit C) to the Court for its approval. After entry of the Judgment,
15 the Court will have continuing jurisdiction until all payments and obligations provided for in the
16 Settlement have been fully executed solely for purposes of addressing: (a) the interpretation and
17 enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
18 Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

19 **38. Release by Participating Settlement Class Members.**

20 Upon the Effective Date, the Participating Settlement Class Members will be deemed to have
21 released and forever discharged the Released Parties of the Released Claims.

22 **39. Exhibits Incorporated by Reference.**

23 The terms of this Settlement include the terms set forth in any attached Exhibits, which are
24 incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an
25 integral part of the Settlement.
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1 **40. Entire Agreement.**

2 This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties'
3 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed
4 binding on the Parties. Except as otherwise provided herein, each party shall bear its own costs and
5 attorneys' fees.

6 **41. Amendment or Modification.**

7 This Settlement Agreement may be amended or modified only by a written instrument, to be
8 signed either by authorized representatives of all Parties or their respective successors-in-interest.

9 **42. Authorization to Enter into Settlement Agreement.**

10 Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom
11 they represent to negotiate this Settlement Agreement and to take all appropriate action required or
12 permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and
13 to execute any other documents required to effectuate the terms of this Settlement Agreement.

14 **43. Use of Best Efforts.**

15 The Parties and their counsel will cooperate with each other and use their best efforts to effect
16 and implement all terms and conditions of the Settlement and to exercise their best efforts to
17 accomplish the foregoing terms and conditions of the Settlement. If the Parties are unable to reach
18 agreement on the form or content of any document needed to implement the Settlement, or on any
19 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
20 Parties may seek the Court's assistance to resolve such disagreement.

21 **44. Binding on Successors and Assigns.**

22 This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or
23 assigns of the Parties, as previously defined.

24 **45. California Law Governs.**

25 All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted
26 according to the laws of the State of California.
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1 **46. Execution and Counterparts.**

2 The Settlement Agreement may be executed in one or more counterparts. All executed
3 counterparts and each of them, including facsimile and scanned copies of the signature page, will be
4 deemed to be one and the same instrument provided that counsel for the Parties will exchange among
5 themselves original signed counterparts upon request.

6 **47. Acknowledgement that the Settlement Is Fair and Reasonable.**

7 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of
8 the Action and have arrived at this Settlement after extensive arm's-length negotiations and in the
9 context of adversarial litigation, considering all relevant factors, present and potential. The Parties
10 further acknowledge that they have had an opportunity to consult with their counsel regarding the
11 fairness and reasonableness of this Settlement. Plaintiff agrees not to opt-out or object to the
12 Settlement.

13 **48. No Admission of Liability.**

14 Defendant and the Released Parties deny all claims asserted or that could have been asserted on
15 behalf of the Settlement Class and deny all wrongdoing whatsoever. This Settlement Agreement is not
16 a concession or admission, and will not be used against Defendant or any of the Released Parties as an
17 admission or indication with respect to any claim of any fault, concession, or omission by Defendant or
18 any of the Released Parties. Regardless of whether the Settlement Agreement is finally approved,
19 neither the Settlement Agreement, nor any document, statement, proceeding, or conduct related to this
20 Settlement Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered
21 or admitted in evidence as, received as, or deemed to be, evidence of a presumption, concession,
22 indication, or admission by Defendant, or any of the Released Parties of any liability, fault,
23 wrongdoing, omission, concession, or damage.

24 **49. Communications about Settlement.**

25 The Parties and their counsel will keep the Settlement negotiations confidential and will not
26 disclose that information to any third party (including the press) except as set forth herein or unless the
27 Parties otherwise agree in writing. For purposes of this section, third parties shall not include other
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1 attorneys, if any, representing Plaintiff in this matter. Except as provided herein, the Parties will keep
2 the Settlement confidential until the filing of the Motion for Preliminary Approval. To the extent any
3 Settlement Class Members inquire regarding the status of the case, the Parties and their counsel may
4 indicate that a tentative settlement has been reached subject to preliminary approval by the Court (or
5 that a settlement has been preliminarily approved, if applicable) but may not disclose the terms prior to
6 the filing of the Motion for Preliminary Approval. Notwithstanding the foregoing, Defendant shall have
7 the right to disclose the terms of the Settlement for accounting, tax, or public filing purposes. Plaintiff
8 and his counsel agree that at no time will they, verbally or in writing, defame or make disparaging
9 remarks or encourage, solicit, induce or entice others to make disparaging remarks about Defendant or
10 the Released Parties unless the Court denies approval of this Settlement and the Parties are unable to
11 negotiate a different settlement.

12 **50. Data and Documents Produced by Defendant.**

13 Plaintiff and Settlement Class Counsel agree to keep confidential all data and documents
14 produced by Defendant as “confidential” during discovery or in connection with the mediation and/or
15 settlement of this matter. Unless otherwise ordered by a court or permitted in writing by Defendant,
16 Plaintiff agrees to not disclose the confidential information or documents, and Settlement Class
17 Counsel agrees to not disclose the confidential information or documents under any circumstances
18 except as necessary if threatened with or named in a lawsuit alleging malpractice and/or if their
19 respective malpractice carriers request to see the file or as required by law. Notwithstanding any other
20 provision in this paragraph, Settlement Class Counsel may use the information that they received from
21 Defendant in the motions for preliminary and final approval of the Settlement or if it is needed to
22 uphold the Settlement.

23 **51. Full Payment of Attorneys’ Fees and Costs.**

24 Plaintiff and Settlement Class Counsel understand and agree that any attorneys’ fees and costs
25 payments made under this Settlement will be the full, final, and complete payment of all attorneys’ fees
26 and costs related to the Action, including all attorneys’ fees and costs arising from or relating to the
27 representation of Plaintiff, the Settlement Class Members, the LWDA, the State of California, or any
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1 other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of the
2 claims released under the Settlement Agreement. Plaintiff's counsel will release any claim they may
3 have against Defendant and the Released Parties for attorneys' fees or costs arising from or relating to
4 the representation of Plaintiff, the Settlement Class Members, the LWDA, the State of California, or
5 any other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of
6 the claims released by the Settlement Agreement and the Action. Defendant's sole obligations to
7 Settlement Class Counsel and the Settlement Administrator are set forth in this Settlement. Class
8 Counsel shall not seek to recover any fees or costs awarded in excess of the terms in this Settlement if
9 this Settlement is approved and the Effective Date occurs.

10 **52. Invalidity of Any Provision.**

11 Before declaring any provision of this Settlement Agreement invalid, the Court will first
12 attempt to construe the provision as valid to the fullest extent possible consistent with applicable
13 precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 **53. Waiver of Certain Appeals.**

15 The Parties agree to waive appeals and to stipulate to class certification for purposes of this
16 Settlement only. Either party may appeal any court order that materially alters the Settlement
17 Agreement's terms.

18 **54. Captions.**

19 The captions and section numbers in this Settlement Agreement are inserted for the reader's
20 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of
21 this Settlement Agreement.

22 **55. Waiver.**

23 No waiver of any condition or covenant contained in this Settlement Agreement or failure to
24 exercise a right or remedy by any of the Parties will be considered to imply or constitute a further
25 waiver by such party of the same or any other condition, covenant, right or remedy.
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1 **56. Mutual Preparation.**

2 The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement
3 Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one
4 party than another merely by virtue of the fact that it may have been prepared by counsel for one of the
5 Parties, it being recognized that, because of the arms'-length negotiations between the Parties, all
6 Parties have contributed to the preparation of this Settlement Agreement.

7 **57. Representation by Counsel.**

8 The Parties acknowledge that they have been represented by counsel throughout all negotiations
9 that preceded the execution of this Settlement Agreement and that this Settlement Agreement has been
10 executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Settlement
11 Class Counsel warrant and represent that there are no liens on the Settlement Agreement or on any
12 amounts to be paid to them under the Settlement Agreements' terms.

13 **58. All Terms Subject to Final Court Approval.**

14 All amounts and procedures described in this Settlement Agreement will be subject to final
15 Court approval.

16 **59. Cooperation and Execution of Necessary Documents.**

17 All Parties will cooperate in good faith and sign all documents to the extent reasonably
18 necessary to effectuate the terms of this Settlement Agreement.

19 **60. Binding Agreement.**

20 The Parties warrant that they understand and have full authority to enter into this Settlement,
21 further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and
22 agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms,
23 notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or
24 state law.
25
26
27
28

1 **61. Notice to Parties.**

2 Whenever this Settlement requires or contemplates that one party, the Court, or the Settlement
3 Administrator shall or may give notice to another, notice shall be provided by email facsimile and/or
4 next-day (excluding Sundays and Court holidays) express delivery service as follows:

5 **If to Defendant, then to:**

6 Kyle Maland
7 kyle.maland@lewisbrisbois.com
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 550 West C Street, Suite 1700
10 San Diego, California 92101
11 (619)233-1006; (619)233-8627 FAX

12 **If to Plaintiff, then to:**

13 Eric K. Yaeckel
14 yaeckel@sullivanlawgroupapc.com
15 Ryan T. Kuhn
16 ryan@sullivanlawgroupapc.com
17 **SULLIVAN & YAECKEL LAW GROUP, APC**
18 2330 Third Avenue
19 San Diego, California 92101
20 (619) 702-6760; (619) 702-6761 FAX

21 [REMAINDER OF PAGE LEFT BLANK]

SIGNATURES - READ CAREFULLY BEFORE SIGNING

Dated: 7-13-23



ARATH RODRIGUEZ on behalf of himself and
all others similarly situated

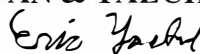
Dated: _____

On behalf of Defendant ANV INVESTMENTS,
INC.

APPROVED AS TO FORM

Dated: _____

SULLIVAN & YAECKEL LAW GROUP, APC



By: _____

Eric K. Yaeckel
Attorneys for Plaintiff Arath Rodriguez

Dated: 8/10/23

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

Kyle Maland
Attorneys for Defendant ANV
INVESTMENTS, INC.

SIGNATURES - READ CAREFULLY BEFORE SIGNING

Dated: _____

ARATH RODRIGUEZ on behalf of himself and
all others similarly situated

Dated: 07/21/2023



Carlos J. Arguilo Villa
President

On behalf of Defendant ANV INVESTMENTS,
INC.

APPROVED AS TO FORM

Dated: _____

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____

Eric K. Yaeckel

Attorneys for Plaintiff Arath Rodriguez

Dated: August 10, 2023

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:  _____

Kyle Maland

Attorneys for Defendant ANV
INVESTMENTS, INC.

EXHIBIT B

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

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

ARATH RODRIGUEZ, Individually, and on behalf of
other members of the general public similarly situated,
Plaintiff,

vs.

ANV INVESTMENTS, INC., a California Corporation
and DOES 1-10, inclusive.

CASE No. 37-2022-00006121-CU-OE-CTL
JUDGE: Honorable Eddie C Sturgeon
DEPARTMENT: C-67

NOTICE OF CLASS AND PAGA ACTION
SETTLEMENT AND RELEASE

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Arath Rodriguez v. ANV Investments Inc., et al*, Case No. 37-2022-00006121-CU-OE-CTL (the “Action”).

This notice is to inform you of the proposed settlement of the Action. The notice is also intended (i) to describe the settlement, including how the settlement monies will be allocated and how the settlement may affect you; and (ii) to advise you of your rights and options with respect to the settlement.

You are receiving this notice by order of the Court because the records of ANV Investments, Inc. (hereinafter “Defendant”), indicate that you are a current or former employee who worked for ANV Investments, Inc in California during the time period of March 1, 2019 to January 1, 2023 (the “Class”). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the settlement will **not** affect your employment with ANV Investments, Inc in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In February 16, 2022, Arath Rodriguez, a former ANV Investments, Inc. employee in California, filed a lawsuit in which he alleged violations of California wage- and-hour laws on a class and representative basis as to all of Defendant’s current and former non-exempt employees in California.

The Class Action alleges that the Class was not paid regular, minimum, or overtime wages or final wages upon separation from employment, as required by California law; was not provided meal and rest periods under the California Labor Code and Wage Orders; was not reimbursed for all business-related expenses; and, was not provided pay statements with information specified in the California Labor Code. The Class Action also alleges violations under the California Business and Professions Code §§ 17200 et. seq. based on these state law claims. The lawsuit also seeks penalties under California’s Private Attorneys General Act (“PAGA”) and the California Labor Code.

The individual who is suing is referred to in this document as “Plaintiff.” Plaintiff’s attorneys, Sullivan & Yaeckel Law Group, APC, have been litigating the Action since filing it.

Defendant has denied and continue to deny the factual and legal allegations in the case and believe that they have strong defenses to all of Plaintiff’s claims. Defendant also claims that the Class has been paid all monies due, and maintain that they have complied with all California wage-and-hour laws. This settlement is **not** an admission of any liability and is **not** evidence of any wrongdoing, nor does it indicate that any of Defendant’s policies are unlawful.

The Court has not ruled on whether Plaintiff’s allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, the parties have negotiated a settlement whereby Defendants have agreed to pay a total of \$250,000.00. As a Class Member, you are eligible to receive a portion of this amount.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All current and former non-exempt employees who worked for ANV INVESTMENTS, INC. in California from February 16, 2018 through June 1, 2023. This is the “Class Period”.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. A settlement administrator has been appointed by the Court to administer the settlement. The claims administrator will pay: (1) Plaintiff’s counsel’s attorneys’ fees, up to \$83,333.33; (2) Plaintiff’s costs of litigation, up to the amount of \$11,000.00; (3) The expenses of administering the settlement, up to the amount of \$10,000; (4) An enhancement award of up to \$7,500.00 for Plaintiff’s role in pursuing the litigation; (5) A payment of \$18,000 to the California Labor & Workforce Development Agency; and (7) A payment of \$6,000 to be divided between employees who worked during the PAGA Period. It will be indicated in paragraph C below, if your employment fell within the PAGA Period.

B. The amount remaining after those deductions is estimated to be \$ [REDACTED], and will be divided among all Class Members and PAGA Members based on the estimated number of pay periods worked for ANV INVESTMENTS, INC. as a non-exempt employee in California by each Class Member.

C. According to Defendants’ records, you worked for the Defendants in the State of California for approximately [INSERT NUMBER OF pay periods] during the Class Period, which runs from February 16, 2018 through June 1, 2023 or the date of Preliminary Approval (whichever occurs first). Your estimated class settlement amount is <<AMOUNT>>. This is only an estimate. Your actual share may change depending on the Court’s final ruling and the final number of participating Class Members.

[IF APPLICABLE] Because you worked for Defendants during the “PAGA Period” between December 14, 2020, through June 1, 2023 or the date of Preliminary Approval (whichever occurs first), you will also receive a payment for PAGA claims based on the number of pay periods worked during that period. According to Defendants’ records, [INSERT NUMBER OF pay periods] during this PAGA Period. Your estimated PAGA settlement amount is \$ [REDACTED]. If you are eligible to receive a PAGA settlement amount and a portion of the class settlement, those amounts will be combined into one check.

If you believe the information above is incorrect, you may dispute this information by sending your corrections and any supporting documentation to the Settlement Administrator via U.S. Mail, at 6420 Flying Cloud Dr., Ste. 100, Eden Prairie, MN 55344 or by email to [REDACTED]. Please be advised that the information listed above is presumed to be correct unless you prove otherwise.

D. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release ANV Investments, Inc. and as applicable, each of their respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations and/or partnerships, divisions, predecessors, successors, insurers, consultants, employee benefit plans and fiduciaries thereof, and affiliated organizations, and their respective successors and assigns of any of the foregoing persons/entities (the “Released Parties”) from all wage and hour claims, rights, demands, liabilities and causes of action of any nature or description arising from the facts, theories of liability and claims asserted in or contemplated by the Action and/or the claims that could have been asserted in the Action based on the facts ascertained or alleged in the Action, including without limitation, any and all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, and equitable or other relief based on the following categories: (a) any and all claims involving any alleged failure to pay the wages required by state or federal law; (b) any and all claims arising under state or federal law involving any alleged failure to pay employees for all hours worked, including but not limited to any claim for minimum, straight time, or overtime wages; (c) any and all claims arising under state or federal law involving any alleged failure to pay wages, including but not limited to any claim involving “off the clock” work, “rounding,” or the failure to pay for all time under the employer’s control; (d) any and all claims involving payment of wages based on ANV Investment’s Inc. defined workday or workweek; (e) any and all claims involving the failure to correctly calculate or include bonuses, other incentive pay, or compensation of any kind in the “regular rate” of pay or compensation; (f) any and all claims arising under state law involving any alleged failure to properly provide meal periods and/or authorize and permit rest periods, to pay premiums for missed, late, short, unprovided, on-duty, or interrupted meal and/or rest periods, or to pay such premiums at the regular rate of compensation; (g) any and all claims involving any alleged failure to keep accurate records or to issue proper wage statements to employees; (h) any and all claims involving any alleged failure to timely pay wages, including but not limited to any claim of violation of Labor Code §§ 201 or 202, and any claim for waiting time penalties under Labor Code § 203; (i) any and all claims involving any alleged failure to reimburse for necessary business expenses under Labor Code §§2800 or 2802, including but not limited to any claim for the failure to provide and/or reimburse necessary business expenses; (j) any and all claims for unfair business practices in violation of Business and Professions Code sections 17200, et seq.; and (k) any and all penalties pursuant to the Private Attorneys General Act (“PAGA”) of 2004 (collectively, the “Released Claims”). The Released Claims include, but are not limited to, all claims arising under the California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246, 432, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2698, 2699, 2699.3; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California common law of contract; and federal common law. The release excludes the release of claims not permitted by law (the “Released Claims”).

V. WHAT ARE MY OPTIONS?

A. *You may accept your share of the settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the settlement administrator. Your check will remain valid and negotiable for one hundred twenty (120) days from the date on which it is issued. After those one hundred eighty (120) days expire, the check will become void and your settlement amount will be deposited with the California Controller’s Unclaimed Property Fund in your name for future retrieval; *or*

B. *You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement.* If you choose to be excluded, by no later than _____ (30 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to

the settlement administrator, CAC Services located at 6420 Flying Cloud Dr. Ste. 100, Eden Prairie, MN 55344 or by email to [REDACTED]. In order to be considered valid, your request for exclusion **must** include your name, your address, a request for exclusion, and your signature. However, even if you choose Option B, you will still release the Released PAGA Claims and will receive payment from the PAGA settlement amount if you are deemed to be a PAGA Member.

C. You may object to the settlement. The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The settlement administrator will calculate your share of the settlement and will issue you a check.

B. Twenty Five (25%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining seventy five percent (75%), which is allocated to penalties, interest and expenses. You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the settlement administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on [REDACTED], 2023, at [REDACTED] a.m., in Department C-72 of the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Sullivan & Yaeckel Law Group, APC (contact information below), counsel for Plaintiff and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Procedures for making remote appearances at the hearing are allowed, but are subject to change. However, those procedures are posted on the Court's website at: <https://www.sdcourt.ca.gov/virtualhearings>. You should check the Court website for up-to-date information before attempting to make a remote appearance.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the settlement and telling the Court that you don't agree with the settlement or some part of it. The Court will consider your views. To object, you may send a letter, which you must sign, saying that you object to the settlement of *Rodriguez v. ANV Investments, Inc.. et al.*, Case No. 37-2022-00006121-CU-OE-CTL. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number, your address, your telephone number, the specific reasons you object to the terms of the settlement, and your signature. Mail the objection to the settlement administrator address at 6420 Flying Cloud Dr. Ste. 100, Eden Prairie, MN 55344 or fax to (888) 495-9746 or email to [REDACTED] on or before [REDACTED], 2023 (30 calendar days after mailing of this notice). A written objection is optional. You may also appear at the Final Approval Hearing, as described in Section VII, above, to have any objections heard by the Court.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This notice summarizes the settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 37-2022-00006121-CU-OE-CTL. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the San Diego County Superior Court, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. You may also review the settlement agreement, along with other court records regarding this case, on the Court's website, <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>, through the link to the "Register of Actions" and then searching by the case number above.

If you have any questions, you can call the Claims Administrator at (888) 602-2260 or Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING PLAINTIFF AND THE CLASS

SULLIVAN & YAECKEL LAW GROUP, APC
Eric K. Yaeckel [yaeckel@sullivanlawgroupapc.com]
Ryan T. Kuhn [ryan@sullivanlawgroupapc.com]
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 ; (619) 702-6761 FAX

ATTORNEYS REPRESENTING ANV INVESTMENTS, INC.

Kyle Maland [CSB No. 292210]
kyle.maland@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
550 West C Street, Suite 1700
San Diego, California 92101
(619)233-1006; (619)233-8627 FAX

**PLEASE DO NOT CALL THE COURT, ANV INVESTMENTS, INC. OR
THEIR CORPORATE OFFICE, MANAGERS, NOR ANV INVESTMENTS,
INC.'S ATTORNEYS REGARDING THIS SETTLEMENT.**
