

## SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

*Jesus Muñiz v. Norman Etchison, Inc.*

Kern County Superior Court, Case No. BCV-22-101571

This Settlement of Class Action and Release of Claims (“Settlement” or “Agreement”) is made by and between Plaintiff Jesus Muñiz (“Plaintiff” or “Class Representative”), on behalf of himself and the proposed Settlement Class (as defined below), and Defendant Norman Etchison, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

The Parties enter into this Agreement to effect a full and final settlement and dismissal of all claims brought against Defendant in *Jesus Muñiz v. Norman Etchison, Inc.*, Superior Court of the State of California for the County of Kern, Case No. BCV-22-101571.

### 1. **DEFINITIONS.**

- 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Jesus Muñiz v. Norman Etchison, Inc.*, Case No. BCV-22-101571, initiated on June 23, 2022 and pending in Superior Court of the State of California, County of Kern.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement, subject to Court approval.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse all of its reasonable costs, fees and expenses incurred by the Administrator as a result of the procedures and processes required by this Agreement, which are not to exceed \$7,250.00 (Seven Thousand Two Hundred Fifty Dollars) in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Agreement” and “Settlement Agreement” mean this Settlement of Class Action and Release of Claims.
- 1.5. “Class” means the Class Representative and all individuals who are or were employed by Defendant Norman Etchison, Inc. as non-exempt employees in the State of California at any time during the period between June 23, 2018 and the date of preliminary approval of this Agreement (“Approval Date”) by the Court, or March 29, 2024, whichever occurs first.
- 1.6. “Class Counsel” means Nathan J. Reese and Dawn M. Berry of the law firm of GrahamHollis APC, 3555 Fifth Ave., Suite 200, San Diego, California 92103.
- 1.7. “Class Counsel Fees Payment” means such award of reasonable attorneys’ fees as the Court may authorize to be paid to Class Counsel from the Gross Settlement Amount for the services they have rendered and will render to the Class Representative and the Class in this Action. The Class Counsel Fees Payment will not exceed 33.33% of the Gross Settlement Amount or \$116,666.67 (One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents).
- 1.8. “Class Counsel Expenses Payment” means such award of the amounts allocated to Class Counsel for reimbursement of actual and documented litigation expenses, respectively, incurred in prosecuting the Action, which shall not exceed \$13,000.00 (Thirteen Thousand

Dollars) and shall be paid from the Gross Settlement Amount, subject to Court approval.

- 1.9. “Class Data” means Class Members’ identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and the number of Workweeks that he/she worked during the Class Period and the number of PAGA Pay Periods that he/she worked during the PAGA Period.
- 1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as a PAGA Employee).
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12. “Class Notice” means the Notice of Class Action Settlement, to be mailed to Class Members in the form substantially similar, without material variation except as may be ordered by the Court, to the form attached hereto as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Period” means the period from June 23, 2018 through and including the Approval Date, or March 29, 2024, whichever occurs first.
- 1.14. “Class Representative” means Jesus Muñoz, the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as Class Representative.
- 1.15. “Court” means the Superior Court of California, County of Kern.
- 1.16. “Defendant” means Norman Etchison, Inc., the named defendant in the Action.
- 1.17. “Defense Counsel” means T. Scott Belden and Jazmine Flores of Belden Blaine Raytis, LLP, 5016 California Avenue, Suite 3, Bakersfield, California 93309.
- 1.18. “Effective Date” means the date by when all of the following have occurred: (1) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (2) the Judgment on the Court’s Order Granting Final Approval of the Settlement is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member timely objects to the Settlement, or if timely objections have been filed and are then withdrawn, then the day the Court enters Judgment on its Order Granting Final Approval of the Settlement; (b) if one or more Participating Class Member objects to the Settlement, then the day after the deadline for filing a notice of appeal from the Judgment on the Court’s Order Granting Final Approval of the Settlement; or if a timely appeal from the Judgment on the Court’s Order Granting Final Approval of the Settlement is filed, then the day after the date on which the appeal is finally resolved with the Court’s grant of Final Approval unaffected by the appellate court affirming the Judgment and issuing a remittitur.
- 1.19. “Final Approval” means that the Court’s order granting final approval of the Settlement and Judgment have been entered by the Court.

- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Gross Settlement Amount” means the maximum amount of \$350,000.00 (Three Hundred and Fifty Dollars), to be paid by Defendant in full and complete settlement of this matter. The Gross Settlement Amount will be the maximum total amount that Defendant will be required to pay for any and all purposes under the Settlement, with the sole exception being Defendant’s share of applicable employer-side payroll taxes owed on the Wage Portions of any of the Individual Class Payments. The Gross Settlement Amount shall include all payments contemplated by this Agreement including, but not limited to, all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Service Payment, PAGA Penalties and the Administration Expenses Payment, and all other amounts.
- 1.22. “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount, calculated according to the number of Workweeks worked during the Class Period, as further detailed in Sections 3 and 4 below, less any Employee’s Taxes and Required Withholdings. For tax purposes, the Parties agree to allocate such Individual Class Payments as follows: 20% to wages for which an IRS Form W-2 shall issue, and 80% to penalties and interest for which an IRS Form 1099 shall issue.
- 1.23. “Individual PAGA Payment” means a PAGA Employee’s pro rata share of the 25% of the PAGA Penalties, i.e., \$5,000.00 (Five Thousand Dollars) that shall be paid from the Gross Settlement Amount, calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency to receive a share of PAGA Penalties under Labor Code § 2699, subd. (i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties, i.e., \$15,000.00 (Fifteen Thousand Dollars), which shall be paid to the LWDA from the Gross Settlement Amount, under Labor Code § 2699, subd. (i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less all of the following payments in the amounts approved by the Court: All Individual PAGA Payments, LWDA PAGA Payment, Service Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. The Net Settlement Amount is the maximum amount that will be available for distribution to Participating Class Members.
- 1.28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion, as detailed in Section 7.3 below.
- 1.29. “PAGA Employee” means all individuals who are or were employed by Defendant Norman Etchison, Inc. as non-exempt employees in the State of California at any time between June 23, 2021 and the Approval Date, or March 29, 2024, whichever occurs first.

- 1.30. "PAGA Pay Period" means any pay period during the PAGA Period during which a PAGA Employee worked for Defendant as a non-exempt employee in the state of California for at least one day (less any pay periods during which the PAGA Employee was entirely on a leave of absence).
- 1.31. "PAGA Period" means the period between June 23, 2021 and the Approval Date, or March 29, 2024, whichever occurs first.
- 1.32. "PAGA" means the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.33. "PAGA Penalties" or "PAGA Payment" means the total amount of \$20,000.00 (Twenty Thousand Dollars), which the Parties have agreed to allocate for PAGA civil penalties pursuant to the PAGA claims included in the Action, subject to Court approval, and which shall be paid from the Gross Settlement Amount, and allocated and distributed as follows: 25% of the PAGA Payment to the PAGA Employees (\$5,000.00) and 75% of the PAGA Payment to the LWDA (\$15,000.00) in settlement of PAGA claims. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).
- 1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement, as detailed in Section 7.3 below.
- 1.35. "Plaintiff" means Jesus Muñiz, the named plaintiff in the Action.
- 1.36. "Preliminary Approval" means the Court's order granting preliminary approval of the Settlement.
- 1.37. "Released Class Claims" means any and all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, penalties, and legal theories of relief or liability of whatever nature, known or unknown, that were alleged in the Action or Plaintiff's operative Complaint filed in the Action or that could have been alleged or pled in the Action or Plaintiff's operative Complaint, based upon the allegations, facts, legal theories, or causes of action alleged in the Action, including, but not limited to, claims for relief for: (1) failure to timely pay minimum, regular, and/or overtime wages pursuant to Labor Code Sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198, and IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (2) failure to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods pursuant to Labor Code Sections 204, 226.7, 512, 558, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (3) failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods pursuant to Labor Code Sections 204, 226.7, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (4) failure to timely pay all wages earned during employment pursuant to Labor Code Sections 204 and 210, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (5) failure to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties pursuant to Labor Code Sections 201, 202, and 203, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (6) failure to furnish accurate itemized wage statements pursuant

to Labor Code Sections 226, 226.3, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (7) failure to maintain accurate records pursuant to Labor Code Sections 226, 1174, 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; and (8) violation of California's Unfair Competition Law, Business and Professions Code Sections 17200, *et seq.*

- 1.38. "Released PAGA Claims" means all claims pursuant to or under the Private Attorneys General Act (codified in Labor Code Sections 2698, *et seq.*) that were or could have been alleged in the Action based upon the allegations, facts, legal theories or causes of action alleged in the Action, including, but not limited to, claims for relief for: (1) failure to timely pay minimum, regular, and/or overtime wages pursuant to Labor Code Sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (2) failure to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods pursuant to Labor Code Sections 204, 226.7, 512, 558, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (3) failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods pursuant to Labor Code Sections 204, 226.7, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (4) failure to timely pay all wages earned during employment pursuant to Labor Code Sections 204 and 210, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (5) failure to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties pursuant to Labor Code Sections 201, 202 and 203, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (6) failure to furnish accurate itemized wage statements pursuant to Labor Code Sections 226, 226.3, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (7) failure to maintain accurate records pursuant to Labor Code Sections 226, 1174, 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim.
- 1.39. "Released Parties" means Defendant Norman Etchison, Inc. and each of its past, present, and future, direct and indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint ventures, and other related entities.
- 1.40. "Request for Exclusion" means a Class Member's submission of a timely and valid written request to be excluded from the Class Settlement signed by the Class Member, as described in detail in Section 7.3 below.
- 1.41. "Response Deadline" means 60 calendar days after the Administrator mails Notice to Class Members and PAGA Employees and shall be the last date on which Class Members may: (a) mail his or her Request for Exclusion from the Settlement; (b) mail his or her Objection to the Settlement and/or (c) challenge the calculation of Workweeks attributed to him or her.

To be valid, any Request for Exclusion and any Objection to the Settlement must be timely postmarked by the Response Deadline.

- 1.42. "Service Payment" means the payment to the Class Representative, which shall be paid from the Gross Settlement Amount, for initiating the Action and providing services in support of the Action, subject to Court approval. Defendant will not object to the Class Representative's request for Court approval of the Service Payment of up to \$7,500.00 (Seven Thousand Five Hundred Dollars).
- 1.43. "Workweek" means any week during which a Class Member worked for Defendant for at least one day as a non-exempt employee in the State of California during the Class Period.

## 2. **RECITALS.**

- 2.1 On June 23, 2022, Plaintiff Jesus Muñiz, filed a wage and hour class action suit, *Jesus Muñiz v. Norman Etchison, Inc.*, in the Kern County Superior Court, Case No. BCV-22-101571, raising class allegations on behalf of all other Class Members, as well as on behalf of the State of California under the California Labor Code's Private Attorneys General Act of 2004 ("PAGA")
- 2.2 The operative complaint asserts causes of action for: (1) failure to pay minimum, regular and/or overtime wages; (2) failure to provide legally compliant meal periods and/or timely pay wages for non-compliant meal periods; (3) failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods; (4) failure to timely pay all earned wages during employment; (5) failure to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties; (6) failure to furnish accurate itemized wage statements; (7) failure to maintain accurate records; (8) unfair competition; and (9) violation of Labor Code §§ 2699 *et seq.*
- 2.3 Defendant has denied and continues to deny all of the claims and contentions alleged by Plaintiff in the Action. Defendant has repeatedly asserted and continues to assert defenses thereto, and Defendant has expressly denied and continues to deny any wrongdoing or liability of any kind associated with the claims alleged by Plaintiff and/or arising out of any of the facts or conduct alleged in the Action and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it has complied with all California, Federal, Local, and administrative wage and hour laws including, but not limited to, the California Labor Code and Industrial Wage Commission Orders, and has at all times dealt legally and fairly with Plaintiff and the Class Members. Defendant also has denied and continues to deny, inter alia, the allegations that Plaintiff has suffered damage; that Defendant improperly failed to pay wages, including overtime and failed to provide meal and rest periods in accordance with California law; that Defendant engaged in any unlawful, unfair or fraudulent business practices; that Defendant engaged in any wrongful conduct as alleged in the Action; or that Plaintiff was harmed by the conduct alleged in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever.
- 2.4 Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave written notice to Defendant and

the LWDA on January 31, 2022.

- 2.5 The Parties have conducted a detailed and comprehensive investigation of the claims asserted against Defendant including, but not limited to, applicable law, wage orders, and regulations. This discovery, investigation, and prosecution has included, among other things, (a) an analysis of the legal positions taken by Defendant; (b) investigation into the viability of class treatment of the claims asserted in the Action; (c) analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; (d) research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; (e) assembling and analyzing of data for calculating damages; and (f) consideration of information disclosed at and in connection with mediation.
- 2.6 Plaintiff and Class Counsel have vigorously prosecuted this Action, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims asserted and of the defenses to them.
- 2.7 On November 16, 2023, the Parties participated in an all-day private mediation presided over by well-respected wage and hour mediator, Kelly Knight, Esq., which led to this Agreement to settle the Action. The Settlement is the product of arm's-length negotiations by highly skilled and well-informed counsel.
- 2.8 Prior to mediation, Plaintiff obtained, through formal and informal discovery, the identity of and contact information for members of the putative class, Defendant's policies and procedures related to the claims asserted, and timekeeping and payroll records for random sample of pay periods.
- 2.9 The Parties believe that the Class Settlement is fair, reasonable, and adequate. The Class Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

### 3. **MONETARY TERMS.**

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, and without admitting any liability whatsoever and subject to the terms and conditions of this Agreement and in consideration for settlement of the Action and the releases of claims as set forth in this Agreement, including the Released Class Claims, Defendant agrees to pay a maximum total amount of \$350,000.00 (Three Hundred and Fifty Dollars) as the Gross Settlement Amount, which is the total and maximum amount that Defendant will be required to pay for any and all purposes under the Settlement, with the sole exception being that Defendant will separately pay its share of the applicable employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount or any applicable payroll taxes prior to the deadline stated in Section 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to

Defendant.

- 3.1.1 Funding of the Gross Settlement Amount. The Gross Settlement Amount shall be paid by Defendant in a single installment within thirty (30) days of the Effective Date.
- 3.1.2 Payment of Employer-Side Payroll Taxes. Defendant shall pay the applicable employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments within fifteen (15) days after receiving notice of the total amount owed from the Administrator. The Parties understand and agree that Plaintiff and the Class Members who receive any payment pursuant to this Settlement Agreement shall be solely responsible for all other individual tax obligations.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order, within thirty (30) calendar days after Defendant has fully funded the Gross Settlement Amount:
  - 3.2.1 To Plaintiff: A Service Payment to Plaintiff of not more than \$7,500.00 (Seven Thousand Five Hundred Dollars) as approved by the Court (in addition to any Individual Class Payment he is entitled to receive as a Participating Class Member and any Individual PAGA Payment he is entitled to receive) as a service award to Plaintiff for his participation in this Action and in exchange for his execution of general release of all claims against Defendant in his individual capacity and Civil Code section 1542, as outlined in Section 5.3 of this Agreement. Defendant will not oppose Plaintiff's request for Service Payment that does not exceed the total amount of \$7,500.00. If the Court approves a Service Payment less than the amount requested of \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Service Payment from the Gross Settlement Amount, using an IRS Form 1099. Plaintiff assumes full responsibility and liability and shall be solely and legally responsible for the payment of all federal, state, and local taxes and other taxes that apply or may apply to the Service Payment, and shall hold Defendant harmless from any and all claims or liability for taxes, penalties, or interest with regard thereto.
  - 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is \$116,666.67 (One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents), and a Class Counsel Expenses Payment of not more than \$13,000.00 (Thirteen Thousand Dollars) as reimbursement of Class Counsel's actual and documented litigation costs, both as approved by the Court. The Class Counsel Fees Payment and Class Counsel Expenses Payment shall be paid from the Gross Settlement Amount. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff will file a motion for Class Counsel Fees Payment and Class Counsel Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Expenses Payment less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. Neither Plaintiff nor Class Counsel shall not have the right to revoke this Agreement in the event that the Court reduces or does not approve the Class Counsel Fees Payment and/or Class Counsel Expenses

Payment, and the Agreement shall remain binding. Released Parties shall have no liability to Class Counsel arising from any claim to any portion of any Class Counsel Fees Payment and/or Class Counsel Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment from the Gross Settlement Amount, using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability and shall be solely and legally responsible for the payment of all taxes owed on the Class Counsel Fees Payment and the Class Counsel Expenses Payment.

3.2.3 To the Administrator: An Administrator Expenses Payment shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount, not to exceed \$7,250.00 (Seven Thousand Two Hundred Fifty Dollars) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,250.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and PAGA Employees: PAGA Penalties in the amount of \$20,000.00 (Twenty Thousand Dollars) from the Gross Settlement Amount for settlement of claims for civil penalties pursuant to the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) shall be allocated 75% of the PAGA Penalties, which is \$15,000.00 (Fifteen Thousand Dollars), to the LWDA PAGA Payment, and 25% of the PAGA Penalties, which is \$5,000.00 (Five Thousand Dollars), to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the 25% share of PAGA Penalties allocated to PAGA Employees, which is \$5,000.00 (Five Thousand Dollars), from the Gross Settlement Amount, by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's respective PAGA Pay Periods. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4.2 All Individual PAGA Payments shall be allocated as penalties and interest and shall not be considered wages. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. PAGA Employees assume full responsibility and liability and shall be solely and legally responsible for any and all taxes owed on their Individual PAGA Payment.

3.2.5 To Each Participating Class Member: Individual Class Payments shall be paid from the Net Settlement Amount to Participating Class Members and shall be paid pursuant to the formula set forth herein. An Individual Class Payment shall be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.5.1 Tax Allocation of Individual Class Payments. The Parties agree that 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions will be subject to tax withholding and reported on an IRS W-2 Form.

The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions will be subject to all authorized and required withholdings, except they will not be subject to wage withholdings, and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability and shall be responsible for the payment of any employee taxes and required withholdings owed on any portion of his/her/their Individual Class Payment and shall hold Defendant harmless from any and all liability with regard thereto.

- 3.2.6 Tax Treatment and Payment. Prior to final distribution of the Individual Class Payments, the Administrator shall calculate the total of each Participating Class Member's Employee's Taxes and Required Withholding due as a result of the Wage Portion of the Participating Class Members' anticipated Individual Class Payments and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the Administrator shall calculate the total amount of Defendants' share of Employer's Taxes due on the Wage Portion of the Participating Class Members' Individual Class Payments and shall issue instructions to Defendant to separately fund Defendant's share of Employer's Taxes. The Parties understand and agree that Plaintiff and the Participating Class Members who receive any payment pursuant to this Settlement Agreement shall be solely responsible for all other individual tax obligations. The Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Employees and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Agreement. The Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government agency.
- 3.2.7 Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by the Parties in this regard. Plaintiff and the Class Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on any and all payments issued to them under the Settlement, as described herein, and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of such payments.
- 3.2.8 Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (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 or 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.

#### 4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1 **Class Workweeks.** The Gross Settlement Amount was calculated with, and is premised on, the understanding that there are approximately 118 Settlement Class Members who worked approximately 5,016 Workweeks during the Class Period ("Estimated Class Workweeks"). The Parties agree that if at the time of Preliminary Approval of this Settlement by the Court, the total number of Workweeks worked for Defendant by the Settlement Class Members during the Class Period exceeds 10% of the Estimated Class Workweeks, then at the election of Defendant (a) the Gross Settlement Amount will be increased proportionately, or (b) the end of the Class Period will be modified to an earlier date so that the total number of Workweeks is no more than 10% above 5,016 (i.e., not above 5,517 Workweeks).
- 4.2 **Class Data.** Not later than twenty-one (21) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Payments from the Gross Settlement Amount.** Within thirty (30) calendar days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and the Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and the Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
  - 4.3.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and PAGA Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members. The Administrator will send checks for Individual PAGA Payments to all PAGA Employees including Non-Participating Class Members who qualify as PAGA Employees. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.
  - 4.3.2 The Administrator must conduct a Class Member Address Search for all other Participating Class Members and PAGA Employees whose checks are returned

undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to any Participating Class Members and PAGA Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and PAGA Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or PAGA Employee prior to the void date.

4.3.3 If after 180 calendar days of mailing, the checks cashed by Participating Class Members total less than 100% of the Net Settlement Amount, the amount remaining will be redistributed among those Participating Class Members who cashed the checks sent to them (the “Redistribution”) on a pro-rata basis in proportion to their original Individual Class Payment, as long as the costs of Redistribution are less than the amount left for Redistribution.

4.3.3.1 If the costs of Redistribution are less than the amount left for re-distribution, the Redistribution will take place within 30 calendar days after the 180-day check cashing deadline. The Settlement Administrator shall be paid the costs of Redistribution from the amount left for Redistribution. The checks sent as part of the Redistribution must be cashed within 60 calendar days of mailing.

4.3.3.2 If the costs of Redistribution are more than the amount to be redistributed, or any unclaimed amounts remain 60 calendar days after the Redistribution, the unclaimed amounts shall go to the *cy pres* selected by the Parties, Wounded Heroes Fund, subject to Court Approval. Class Members who do not timely cash their Individual Class Payments and/or Individual PAGA Payments and whose checks are cancelled shall nevertheless be bound by all of the terms of the Settlement, including without limitation, the applicable releases set forth herein.

4.3.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. It is expressly understood and agreed that the receipt of any Individual Class Payment and/or Individual PAGA Payment will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Class Payments and the Individual PAGA Payments provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received an Individual Class Payment and/or Individual PAGA Payment (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

## 5. **RELEASES OF CLAIMS.**

- 5.1 **Released Class Claims.** Upon the Effective Date of the Settlement, in consideration for the consideration set forth in this Agreement, Plaintiff and all the Class Members who do not timely and validly request exclusion from the Settlement, including, but not limited to, their heirs, executors, attorneys, agents, representatives, successors, assigns, and spouses (collectively, the “Releasing Parties”), shall and will be deemed to have, and by operation of the Court’s Final Approval Order and Judgment, will expressly have fully, finally, and forever released, settled, compromised, relinquished and discharged Defendant Norman Etchison, Inc. and all the Released Parties (as defined in Section 1.39 above), and each of them, of and from any and all of the Released Class Claims (as defined in Section 1.37 above) to the fullest extent permitted by law. It is the desire of the Parties and the Releasing Parties for the Releasing Parties to fully, finally and forever settle, compromise and discharge the Released Class Claims. The Release Period shall be the designated and Court approved Class Period. Plaintiff and all Participating Class Members will be bound by the release of all claims and causes of action falling within the definition of “Released Class Claims”, whether known or unknown, based on the facts, causes of action and legal theories set forth in the operative complaint. Plaintiff and the Participating Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope of the Released Class Claims, and by virtue of this Agreement, Plaintiff and all Participating Class Members shall be deemed to have fully, finally, and forever settled and released all of the Released Class Claims. The *res judicata* effect of the Court’s Final Approval Order and Judgment will be the same as that of the release. Further, Plaintiff and Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Class Payments constitute payment of all sums allegedly due to them. Plaintiff and Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Class Payments. That Section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

The Parties agree that the scope of the release described in this Section is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this Settlement and without it Defendant would not have agreed to the consideration provided; and is necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged in the Action based on the facts, causes of action and legal theories asserted in the Action.

- 5.2 **Released PAGA Claims:** Upon the Effective Date of the Settlement, in consideration for the consideration set forth in this Agreement, Plaintiff and all other PAGA Employees, including, but not limited to, their heirs, executors, attorneys, agents, representatives, successors, assigns, and spouses (collectively, the “PAGA Releasing Parties”), shall and will be deemed to have, and by operation of the Court’s Final Approval Order and Judgment, will expressly have fully, finally, and forever released, settled, compromised, relinquished and discharged Defendant Norman Etchison, Inc. and all the Released Parties (as defined in

Section 1.39 above), and each of them, of and from any and all of the Released PAGA Claims (as defined in Section 1.38 above) to the fullest extent permitted by law. The Release Period shall be the designated and Court approved PAGA Period. Plaintiff and all PAGA Employees will be bound by the release of all claims and causes of action falling within the definition of “Released PAGA Claims” (as defined in Section 1.38 above), whether known or unknown, based on the facts, causes of action and legal theories set forth in the operative complaint. Plaintiff and the PAGA Employees may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released PAGA Claims, and by virtue of this Agreement, Plaintiff and all PAGA Employees shall be deemed to have fully, finally, and forever settled and released all of the Released PAGA Claims. The *res judicata* effect of the Court’s Final Approval Order and Judgment will be the same as that of the release. The Parties agree that the scope of the release described in this Section is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this Settlement and without it Defendant would not have agreed to the consideration provided; and is necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged in the Action based on the facts, causes of action and legal theories asserted in the Action.

- 5.3 General Release by Plaintiff. As a condition of the Settlement and in exchange for the consideration set forth in this Agreement, upon the Effective Date, Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and does hereby separately waive, release, acquit and forever release, discharge and agree to hold harmless Defendant Norman Etchison, Inc. and all the Released Parties (as defined in Section 1.39 above) from all the Released Class Claims, all the Released PAGA Claims, and any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys’ fees, costs, losses, liabilities, obligations, promises, agreements, controversies, suits, rights, grievances, setoffs, guarantees, indemnities, counterclaims, penalties, costs, losses, debts and expenses, and controversies of any kind or nature whatsoever, whether known or unknown, whether suspected or unsuspected, whether asserted or unasserted, whether at law or in equity, whether sounding in tort, contract, federal, state or local law, statute, ordinance, regulation, common law, or other source of law or contract, which Plaintiff, at any time, had, claimed to have, may now have, or may have after the signing of this Agreement (collectively, the “Claims or Causes of Action”) arising out of, or in any way relating to, or resulting from or connected with Plaintiff’s employment with Defendant or any of the other Released Parties, separation of such employment with Defendant or any of the other Released Parties, or otherwise relating to, any or all of the Released Parties including, but not limited to, the Released Class Claims, the Released PAGA Claims, claims that were asserted or that could have been asserted in the Action, any and all transactions, occurrences, and/or matters between Plaintiff and any or all of the Released Parties occurring prior to the Effective Date of this Settlement Agreement, tort claims, contract claims, claims for wages, premium and other forms of pay, unpaid/unreimbursed costs, penalties (including, without limitation, waiting time penalties and wage statement penalties), general damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys’ fees, litigation and other costs, expenses, restitution, equitable relief, declaratory relief, wrongful

termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, breach of contract claims, breach of implied contract claims, and any and all claims arising under any federal, state, or local law, or other governmental statute, law, regulation or ordinance, including, but in no way limited to, any and all claims under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with Disabilities Act (“ADA”); the Family and Medical Leave Act (“FMLA”) to the extent not prohibited by law; the Employee Retirement Income Security Act (“ERISA”); the California Family Rights Act (“CFRA”) to the extent not prohibited by law; the California Fair Employment and Housing Act (“FEHA”); the Age Discrimination in Employment Act and/or the Older Workers Benefit Protection Act; the Fair Labor Standards Act (“FLSA”); the Equal Pay Act; the California Whistleblower Protection Act; the Uniformed Services Employment and Reemployment Rights Act; the Consolidated Omnibus Budget Reconciliation Act; the Rehabilitation Act of 1973; the Unruh Civil Rights Act; the California Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2699, *et seq.*); the Constitution of the United States; the California Constitution; any and all claims under the California Labor Code or other state wage and hour laws; Business and Professions Code, including but not limited to §§ 17200, *et seq.*; the California Government Code; the California Civil Code; any applicable California Industrial Welfare Commission Wage Orders; any other federal, state, and local statutes, ordinances, regulations, rules and other laws; and all of their implementing regulations and interpretive guidelines; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. This release includes, but is not limited to, Claims or Causes of Action for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorneys’ fees and costs, and Plaintiff, on behalf of himself and his dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and do hereby separately waive, release, acquit and forever release, discharge, and agree to hold harmless Defendant and the other Released Parties from any and all claims for attorneys’ fees and costs arising out of the matters released in this Agreement. It is agreed that this is a general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Nothing in this Agreement prohibits Plaintiff from filing a charge or complaint or communicating with a government agency where, as a matter of law, Defendant may not restrict Plaintiff’s ability to do so. However, Plaintiff hereby waives his right to any monetary benefits or recovery in connection with any such claim, charge or proceeding, except this Agreement does not limit Plaintiff’s right to receive an award for information provided to any government agencies. Nothing in this Agreement waives Plaintiff’s right to testify or prohibits him from testifying in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment when he has been required or requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the California state legislature.

5.4 Waiver of California Civil Code Section 1542 by Plaintiff. Plaintiff intends that this

Agreement be, and is, a general release that shall be effective as a bar to any and all claims against all the Released Parties. Plaintiff understands and expressly agrees that this Agreement extends to claims that he may have against Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of this Agreement. Plaintiff understands and acknowledges that in executing this Agreement, he is knowingly, voluntarily, and expressly waiving any rights or benefits conferred by the provisions of the California Civil Code Section 1542, as well as any other statutes or common law principles of a similar effect. Section 1542 of the California Civil Code reads as follows:

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

Plaintiff acknowledges and agrees that he has had the opportunity to be advised by his own legal counsel, and has done so, with respect to this general release and to this express waiver of California Civil Code Section 1542 and other similar statutes or rules of law.

## **6. MOTION FOR PRELIMINARY APPROVAL.**

- 6.1 Plaintiff's Responsibilities. Class Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699, subd. (f)(2)); and (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement. Class Counsel will provide the drafts in (i) and (ii) to Defense Counsel at least five (5) calendar days before filing for review and comment.
  - 6.1.1 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting and conferring by telephone, and in good faith, to resolve the disagreement or provide information requested by the Court. Class Counsel and Defense Counsel will cooperate with each other and use their best efforts on behalf of the Parties to obtain the Court's approval of the Motion for Preliminary Approval.
  - 6.1.2 Submission to the LWDA. Pursuant to California Labor Code Section 2699(1)(2), at the same time as filing the Motion for Preliminary Approval, Plaintiff shall submit this Agreement to the LWDA.
- 6.2 Certification of the Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein, the conditional class certification (obtained for

any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

## **7. SETTLEMENT ADMINISTRATION.**

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator, subject to Court approval, and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

### **7.2 Notice to Class Members.**

7.2.1 Using best efforts to perform as soon as possible, and in no event later than fifteen (15) calendar days after receiving the Class Data, the Administrator shall determine the number of Workweeks worked by each Class Member; populate the data for each Class Member accordingly; conduct a National Change of Address search to update any addresses provided; and thereafter will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The Class Notice shall contain an easily understood statement alerting the Class Members that, unless they elect to submit a Request for Exclusion from the Settlement, the Class Member shall be bound to the terms and conditions of this Settlement including their release and waiver of all Released Class Claims and all Released PAGA Claims against Defendant and the Released Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. The Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

7.2.2 Not later than three business (3) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time, and upon completion of these steps by the Administrator, the Parties shall be deemed to have satisfied their obligation to provide the Notice to the affected Class Member. The affected Class Member shall remain a Participating Class Member and shall be bound by all the terms of this Agreement and the Court’s Final Approval Order and Judgment.

- 7.2.3 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional ten (10) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.2.4 If the Administrator, Defendant, or Class Counsel are contacted by or otherwise discover any person who believes they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Class Notice requiring them to exercise options under this Agreement not later than ten (10) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.
- 7.2.5 It will be presumed that, if an envelope containing the Class Notice has not been returned within twenty-eight (28) days of the mailing, the Class Member received the Class Notice. Prior to the Final Approval and Fairness Hearing, the Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of Class Members to whom the Class Notice was sent and the number of Class Members to whom the Class Notice was not delivered, as well as information relating to the number of Requests for Exclusions and Objections. Class Counsel shall file this declaration with the Court.

### 7.3 Requests for Exclusion.

- 7.3.1 The Class Notice shall state that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion by the Response Deadline as set forth in this Section. Class Members who fail to submit a valid and timely written Request for Exclusion from Settlement on or before the Response Deadline will be deemed to participate in the Settlement and shall become Participating Class Members without having to submit a claim form or take any other action, and shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. Class Members who wish to exclude themselves from the Class Settlement must send the Administrator, by fax or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional ten (10) calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that clearly communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, telephone number, and signature. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline, and it must state the Class Member's name, address, telephone number, signature, and state something to the effect of: "I wish to be excluded from the Settlement Class in the *Jesus Muñiz v. Norman Etchison, Inc.* lawsuit. I understand that if I ask to be excluded from the Settlement Class, I will not receive any money from the Class Settlement of Lawsuit and will not be releasing

any claims that I might have.”

- 7.3.2 Any Request for Exclusion that is not postmarked by the Response Deadline will be invalid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether it has been timely submitted.
- 7.3.3 The Administrator shall accept any Request for Exclusion as valid if it is postmarked by the Response Deadline and it contains or clearly states the Class Member’s name, address, telephone number, a clear statement by the Class Member electing to opt out or be excluded from the Settlement, and the Class Member’s signature. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member’s identity.
- 7.3.4 If the Administrator determines that a Request for Exclusion returned by a Class Member before the Response Deadline is deficient, then the Administrator shall mail a deficiency letter to that Class Member identifying the problem. If a Class Member submits both a dispute and a Request for Exclusion, the Administrator shall make reasonable attempts to clarify if the Request for Exclusion was deficient. If the Class Member fails to cure the deficiency, the Request for Exclusion shall be disregarded, and the Class Member shall become a Participating Class Member and will be bound by all terms and conditions of this Settlement and any Final Approval Order and Judgment entered in this Action and will be paid in accordance with the terms of this Settlement.
- 7.3.5 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members’ Release under Paragraph 5.1 of this Agreement, and any Final Judgment entered in this Action, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.3.6 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and will not be entitled to any recovery under the Class Settlement, shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement, and shall not be bound by the terms of the Settlement. Non-Participating Class Members who are PAGA Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.3.7 A Request for Exclusion of the Settlement shall not serve to exclude the Class Member from participation as a PAGA Employee. PAGA Employees shall have no right or ability to opt out of the portion of this Settlement Agreement releasing any PAGA claims as set forth herein.
- 7.3.8 Participating Class Members will be bound by the terms and conditions of this Agreement, including the Release of Released Class Claims set forth in the definition of “Released Class Claims” provided in this Settlement Agreement.

- 7.4 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional ten (10) calendar days

for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the administrator via mail by submitting evidence, documentation, and/or information to the Administrator no later than the Response Deadline. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. If there is a dispute, the Administrator will jointly work with and consult the Parties to resolve the dispute in good faith and determine whether an adjustment is warranted. If Plaintiff and Defendant cannot agree over the Workweeks to be credited or adjusted in the event of dispute, the Administrator shall make the final decision based on the information presented by the Class Member and Defendant, of which shall be binding upon the Class Member and the Parties. The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges. Any disputes not resolved by the Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement by the Court, counsel for the Parties will confer in good faith to resolve the disputes without necessity of Court intervention.

## 7.5 Objections to Settlement.

- 7.5.1 Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement and/or the amounts requested for the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and/or the Service Payment.
- 7.5.2 Participating Class Members may send written objections to the Administrator by mail. In the alternative, Participating Class Members may appear in Court (or retain an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional ten (10) calendar days for Class Members whose Class Notice was re-mailed).
- 7.5.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 7.5.4 Any Class Member who wishes to object to the Settlement must submit a written objection to the Administrator no later than the Response Deadline and must file with the Court, and serve on all Parties a written statement of objection ("Notice of Objection"). The date of the postmark of the objection set forth on the Notice of Objection shall be the exclusive means used to determine whether the objection was timely submitted. The Notice of Objection must include (a) the objector's full name, address, telephone number, and signature; (b) a clear reference to the case name and case number; (c) a clear and concise statement of all the reasons why the objector believes that the Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class Settlement should not be approved, including the legal and factual arguments supporting the objection;

(d) copies of any papers, briefs, or other documents upon which the objection is based; and (e) if the objector intends to appear at the Final Approval and Fairness Hearing.

7.5.5 Unless otherwise ordered by the Court, Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval and Fairness Hearing in order to have their objections heard by the Court and may appear through their own attorney at the Class Member's own expense. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file written objections to the Class Settlement or appeal from the Final Approval Order and Judgment.

7.5.6 The Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Counsel shall lodge a copy of the objection with the Court. Class Members may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense whether or not they have submitted a timely written objection and notice of intention to appear pursuant to this Section.

7.5.7 In the event that the Court approves this Settlement notwithstanding the objections of any Class Members, Class Members who object to the Settlement will nonetheless be bound by the Settlement. Class Members who submit a Request for Exclusion from the Settlement shall not have standing to object to the Settlement or to file an appeal.

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

7.6.1 Toll-Free Number. The Administrator will establish and maintain and monitor a toll-free telephone number to receive Class Member calls and faxes.

7.6.2 Requests for Exclusion and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.6.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion received, objections received, and challenges to Workweeks and/or Pay Periods received ("Weekly Report").

7.6.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to

address and make final, decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods, but will jointly work with and consult the Parties to resolve any disputes or challenges in good faith.

- 7.6.5 Administrator's Declaration. Not later than ten (10) calendar days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections, and the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration in Court.
- 7.6.6 Final Report by Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least ten (10) calendar days before any deadline set by the Court, the Administrator will prepare, and will submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## 8. **NULLIFICATION OF THIS SETTLEMENT AGREEMENT.**

- 8.1 Defendant's Right To Withdraw. If either the number of valid Requests for Exclusion exceeds 10% of the total of all Class Members, Defendant has the right to, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws from the Settlement, (a) the Settlement shall be void *ab initio* and shall have no force or effect whatsoever, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification; and (d) neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will be responsible for paying all Settlement Administration Expenses incurred to that point by the Administrator.
- 8.1.1 Defendant must notify Class Counsel and the Court of its election to withdraw no later than seven (7) calendar days of receiving the final Exclusion List from the Administrator.
- 8.2 Non-Approval of the Agreement. This Settlement and conditional class certification shall be considered null and void, and neither the Class, conditional class certification, nor any of

the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court, and any order of judgment entered by the Court in furtherance of the settlement shall be vitiated *nunc pro tunc*, if any of the following occurs: (a) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties; (b) the Court does not enter the Final Approval Order and Judgment as provided for herein or contemplated by this Agreement; (c) the Court should for any reason fail to enter a judgment with prejudice of the Action; (d) the Court does not enter a Final Approval Order and Judgment as provided for herein that becomes final as a result of the occurrence of the Effective Date; (e) the Settlement does not become final for any other reason; or (f) the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects or enter into further negotiations with respect to this Agreement to facilitate approval. Further, in the event that this Agreement is not preliminarily or finally approved by the Court; fails to become effective as set forth herein; voided; or is reversed, withdrawn or modified by the Court or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein: (1) this Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (2) the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (3) none of the Parties to this Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

- 8.3 Invalidation. Invalidation of any material portion of this Agreement shall invalidate this Agreement and the Class Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

## 9. MOTION FOR FINAL APPROVAL.

- 9.1 Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court a motion seeking final approval of the Settlement that includes a request for final approval of the Settlement and the amounts payable for the LWDA PAGA Payment, the Individual PAGA Payments, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Administrative Expenses Payment, and the Class Representative Service Payment, and also seeks entry of a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than five (5) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 9.2 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 9.3 Duty to Cooperate. The Parties and their counsel will cooperate with each other and use their best efforts to obtain the Court's approval of the Motion for Final Approval of the Settlement. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, or the Administrator Expenses Payment shall not constitute a material modification to the Agreement.
- 9.4 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 9.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires any material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void *ab initio* and of no force or effect, and neither this Agreement nor the conditional class certification shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural, and none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification. The Parties may nevertheless attempt in good faith to cure any perceived defects or enter into further negotiations with respect to this Agreement to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
10. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.
11. INTERIM STAY AND STAY ON APPEAL. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, holding the Action in abeyance pending the Final Approval and Fairness Hearing to be conducted by the Court. Further, if an appeal is filed from the Court's Final Approval Order and Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process. Defendant shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Settlement Agreement until all appeal rights have been exhausted by operation of law.
12. ADDITIONAL PROVISIONS.
- 12.1 No Admission of Liability. This Agreement represents a compromise and settlement of disputed claims. Nothing in this Agreement is intended to or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint and/or the LWDA letter have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). To the

contrary, Defendant denies each and every material factual allegation in the Action and all claims alleged therein. Defendant denies any and all liability and/or wrongdoing of any kind associated with the claims alleged by Plaintiff and denies all of the allegations, claims, and contentions alleged by Plaintiff in the Action, and has asserted numerous affirmative defenses. Defendant expressly denies all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendant further contends that, for any purpose other than settling this Action, the Action and the claims asserted therein, are not appropriate for class or representative action treatment. To this end, the Settlement, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in the Action or any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Further, this Agreement and the attached exhibits are settlement documents, and, pursuant to California Evidence Code section 1152, these documents shall be inadmissible in any proceeding except in an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

- 12.2 No Publicity. Neither Plaintiff nor Class Counsel shall hold a press conference or otherwise seek to affirmatively publicize the Settlement in the media or on social media. If contacted by the media regarding the Settlement, Plaintiff and Class Counsel will state only “It was a fair settlement and we are happy with the results,” or something to that effect. Nothing in this Agreement shall prohibit Plaintiff from exercising protected rights under California law, the National Labor Relations Act, or the federal securities laws to the extent that these rights cannot be waived by agreement, or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Further, nothing in this Agreement shall prohibit Plaintiff from providing truthful information as required by law in a legal proceeding or a government investigation or proceeding.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or to appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a

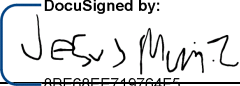
mediator or the Court for resolution.

- 12.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.11 Confidentiality. To the extent permitted by law, all agreements made and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.13 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or California state court legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.14 Attorney Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each of the Parties shall bear his or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Settlement Agreement.
- 12.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

*[Signatures on following page]*

**ACCEPTED AND AGREED:**

Dated: 2/21/2024

DocuSigned by:  
  
8BE60EE749704F5...  
By: \_\_\_\_\_  
Plaintiff Jesus Muniz

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Norman Etchison, Inc.

**APPROVED AS TO FORM:**

Dated: 2/21/2024

GRAHAMHOLLIS APC

By:   
Nathan J. Reese  
Dawn M. Berry  
Attorneys for Plaintiff Jesus Muñiz

Dated: \_\_\_\_\_

**BELDEN BLAINE RAYTIS, LLP**

By: \_\_\_\_\_  
T. Scott Belden  
Attorney for Defendant Norman Etchison, Inc.

**ACCEPTED AND AGREED:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Jesus Muñiz

Dated: 2-29-24

By: *Norman Etchison*  
Defendant Norman Etchison, Inc.

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

**GRAHAMHOLLIS APC**

By: \_\_\_\_\_  
Nathan J. Reese  
Dawn M. Berry  
Attorneys for Plaintiff Jesus Muñiz

Dated: 29 February 2024

**BELDEN BLAINE RAYTIS, LLP**

By: *T. Scott Belden*  
T. Scott Belden  
Attorney for Defendant Norman Etchison, Inc.

# **EXHIBIT A**

## COURT-APPROVED NOTICE OF CLASS ACTION SETTLEMENT

*Jesus Muñiz v. Norman Etchison, Inc.*

Kern County Superior Court, Case No. BCV-22-101571

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

A proposed settlement (“Settlement”) of the above-captioned putative class and representative action lawsuit (“Action”) filed in the Kern County Superior Court (“Court”) has been reached by the parties and has been granted preliminary approval by the Court supervising the Action. The Settlement has been reached on behalf of a proposed “Class”, defined as: All individuals who are or were employed by Defendant Norman Etchison, Inc. as non-exempt employees in the State of California at any time during the period between June 23, 2018 through and including [Preliminary Approval Date] (“Class Period”).

You have received this notice packet because Norman Etchison, Inc.’s business records indicate that you were employed by Norman Etchison, Inc. as a non-exempt employee during the Class Period, and thus, you may be eligible to receive money under the Settlement and because the Settlement affects your legal rights.

The Action was filed by a former employee of Defendant Norman Etchison, Inc. (referred to as “Defendant”), Jesus Muñiz (“Plaintiff”), on June 23, 2022 and alleges claims related to minimum, regular and/or overtime wages, meal periods, rest breaks, wage statements, employment records, and payments to departing or terminated employees, and seeks payment of (1) alleged unpaid wages and other relief on behalf of himself and for a class of all current and former non-exempt employees of Defendant who worked for Defendant in California at any time between June 23, 2018 through and including [Preliminary Approval Date] (“Class Period”); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all current and former non-exempt employees of Defendant who worked in California for any time between June 23, 2021 and [Preliminary Approval Date] (“PAGA Period”) (“PAGA Employees”). This Settlement, if finally approved by the Court, would finally resolve these claims.

Defendant Norman Etchison, Inc. denies all of Plaintiff’s claims and the allegations made in the Action. The Settlement is not an admission of any wrongdoing by Defendant Norman Etchison, Inc., nor an indication that any law was violated. To the contrary, Defendant Norman Etchison, Inc. contends that it has complied at all times with California law and federal law, and Defendant Norman Etchison, Inc. specifically contends that it properly compensated its employees. However, Defendant Norman Etchison, Inc. has chosen to resolve the Action to save legal costs and avoid disruption, without any admission of wrongdoing.

The proposed Settlement has two main components: (1) a Class Settlement and (2) a PAGA Settlement, and you may be entitled to a payment from both components of the Settlement depending on the period you worked for Defendant.

Based on Defendant’s business records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$[AMOUNT] (less applicable tax withholdings), and your Individual PAGA Payment is estimated to be \$[AMOUNT]**. However, the actual amount you receive may be different from the estimated amounts above and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.

The above estimates are based on Defendant’s business records showing that **you worked [NUMBER] workweeks** during the Class Period and **you worked [NUMBER] pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the Response Deadline of [Insert date]. See Section 4 of this Notice for instructions on how to do this.

The Court preliminarily approved the proposed Settlement and this Notice and conditionally certified the Class on [DATE]. The Court has not yet decided whether to grant final approval. Your legal rights are affected depending on what action you take. Read this Notice carefully, as you will be deemed to have read and understood it.

If you are receiving this notice and worked for Defendant during the Class Period, you have two options under the Settlement:

- (1) **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. If you do nothing, you will automatically be included and be a Participating Class Member. By taking no action and thus participating in the Settlement, you will be releasing the Released Class Claims (defined below) and the Released PAGA Claims (defined below).
- (2) **Opt-Out of the Class Settlement.** If you do not want to be part of the Settlement and do not want to receive a settlement payment, you can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion by the Response Deadline of [DATE]. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue any wage claims you may have against Defendant. PAGA Employees cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you in any way for any actions you take with respect to the proposed Settlement or for exercising any rights described in this Notice or for participating in the Settlement.

#### **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Do Not Have to Do Anything to Participate in the Settlement</b>                                                                                         | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). By taking no action and thus participating in the Settlement, you will be releasing the Released Class Claims and the Released PAGA Claims.                                                                                                                                                                                                                                                                                                                               |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is [DATE]</b>                                        | If you do not want to participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion which must be postmarked by the Response Deadline of [DATE]. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment.<br><br>PAGA Employees cannot opt-out of the PAGA portion of the proposed Settlement. If the Court finally approves the Settlement, Individual PAGA Payments will be mailed to all PAGA Employees, and the PAGA Employees will be releasing the Released PAGA Claims. |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by [DATE]</b> | All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. If you want to object to the Settlement, you can submit a written objection to the Administrator which must be postmarked by the Response Deadline of [DATE]. See Section 7 of this Notice for instructions on how to do this. Unless you opt out of the Settlement, you will remain in the Class and subject to the Settlement and resulting judgment. Please note that if you opt out of the Class Settlement, you will not be permitted to object to the Settlement.                        |

|                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Can Participate in the [DATE] Final Approval Hearing</b>                                                                     | The Court's Final Approval Hearing is scheduled to take place on [DATE], at 8:30 a.m., in Division H of the Kern County Superior Court, located at 1215 Truxtun Avenue, Bakersfield, California 93301. You do not have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.                                  |
| <b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b><br><br><b>Written Challenges Must be Submitted by [DATE]</b> | The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [DATE]. See Section 4 of this Notice for instructions on how to do this. |

## 1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant who filed the Action on June 23, 2022, alleging that Defendant violated California labor laws by: (1) failing to timely pay minimum, regular and/or overtime wages; (2) failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods; (3) failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods; (4) failing to timely pay all earned wages during employment; (5) failing to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties; (6) failing to furnish accurate itemized wage statements; (7) failing to maintain accurate records; (8) unfair business practices. Based on the same claims, Plaintiff also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code § 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Nathan J. Reese and Dawn M. Berry of GRAHAMHOLLIS APC ("Class Counsel").

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

The Court has made no determination on whether Defendant or Plaintiff are correct on the merits. There was no trial, and by approving the Settlement and issuing this notice, the Court is not suggesting which side would win or lose the case if it went to trial or whether the claims are suitable for class certification. Instead, with the help of a neutral, third-party mediator, Kelly Knight, Esq., the parties reached a no-fault settlement of the Action, rather than continue the expensive and time-consuming process of litigation and to allow the Class Members to receive compensation from the Settlement. The proposed Settlement is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims made in the Action.

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

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

- A. Defendant Has Agreed to Pay a Total of \$350,000.00 as the Gross Settlement Amount ("Gross Settlement Amount"). Defendant has agreed to pay the Gross Settlement Amount of \$350,000.00 to

fully and finally resolve all claims in the Action. Defendant has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Service Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, the Administrator Expenses Payment, and penalties to be paid to the LWDA as the LWDA PAGA Payment.

B. Court-Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff will ask the Court to approve the following payments, which shall be paid from the Gross Settlement Amount, subject to approval by the Court:

- 1) Class Counsel Fees Payment and Class Counsel Expenses Payment: Up to \$116,666.67 (one-third of the Gross Settlement Amount) as the Class Counsel Fees Payment to Class Counsel for attorneys' fees ("Class Counsel Fees Payment"), and payment up to \$13,000.00 as the Class Counsel Expenses Payment to Class Counsel for Class Counsel's actual and documented litigation expenses ("Class Counsel Expenses Payment"). To date, Class Counsel have worked and incurred expenses on the Action without payment.
- 2) Service Payment: Up to \$7,500.00 as a Service Payment to Plaintiff for filing the Action, working with Class Counsel, and representing the Class. The Service Payment will be the only monies Plaintiff receives other than his Individual Class Payments and any Individual PAGA Payments.
- 3) Administrator Expenses Payment: Up to \$7,250.00 to the Administrator for all of its services administering the Settlement as an Administrator Expenses Payment.
- 4) PAGA Penalties: Up to \$20,000.00 as PAGA Penalties, which shall be allocated as follows: 75% (\$15,000.00) to the California Labor and Workforce Development Agency ("LWDA") as the LWDA PAGA Payment, and 25% (\$5,000.00) to the PAGA Employees as Individual PAGA Payments based on each PAGA Employee's PAGA Period Pay Periods.

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

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the "Net Settlement Amount") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to tax withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer-side payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are not subject to wage withholdings. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Individual Class Payment and/or Individual PAGA Payment are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- E. Need to Promptly Cash Payment Checks. All Participating Class Members will receive an Individual Class Payment and all PAGA Employees will receive an Individual PAGA Payment based on the calculations detailed below, without needing to make a claim. Checks must be cashed within 180 days. The funds from uncashed checks may be redistributed to Class Members who cashed their checks or sent to the *cy pres* selected by the parties, Wounded Heroes Fund, subject to Court approval.
- F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [DATE], that you wish to opt-out. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. To be valid, the Request for Exclusion must be postmarked by the Response Deadline of [DATE], and it must state your name, address, telephone number, signature, and something to the effect of: "I wish to be excluded from the Settlement Class in the *Jesus Muñiz v. Norman Etchison, Inc.* lawsuit. I understand that if I ask to be excluded from the Settlement Class, I will not receive any money from the Class Settlement of Lawsuit and will not be releasing any claims that I might have." Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (i.e., Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

- G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
- H. Administrator. The Court has appointed Phoenix Class Action Administration Solutions (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide any Class Member challenges over Workweeks and/or Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- I. Participating Class Members' Release. After the Judgment is final, Participating Class Members will be legally barred from asserting any of the Released Class Claims released under the Settlement against Defendant or any of the other Released Parties, as described below. This means that unless you opted out by timely submitting a valid Request for Exclusion from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or any of the other Released Parties for the Released Class Claims or claims based on the facts asserted in the Action and resolved by the Settlement.

Participating Class Members will be bound by the following release: Upon the Effective Date of the Settlement, all the Class Members who do not timely and validly request exclusion from the settlement, including, but not limited to, their heirs, executors, attorneys, agents, representatives, successors, assigns, and spouses (collectively, the "Releasing Parties"), shall and will be deemed to have, and by operation of the Court's Final Approval Order and Judgment, will expressly have fully, finally, and forever released, settled, compromised, relinquished and discharged Defendant Norman

Etchison, Inc. and each of its past, present, and future, direct and indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint ventures, and other related entities (“Released Parties”) from any and all of the Released Class Claims to the fullest extent permitted by law.

“Released Class Claims” means any and all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, penalties, and legal theories of relief or liability of whatever nature, known or unknown, that were alleged in the Action or Plaintiff’s operative Complaint filed in the Action or that could have been alleged or pled in the Action or Plaintiff’s operative Complaint, based upon the allegations, facts, legal theories, or causes of action alleged in the Action, including, but not limited to, claims for relief for: (1) failure to timely pay minimum, regular, and/or overtime wages pursuant to Labor Code Sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198, and IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (2) failure to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods pursuant to Labor Code Sections 204, 226.7, 512, 558, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (3) failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods pursuant to Labor Code Sections 204, 226.7, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (4) failure to timely pay all wages earned during employment pursuant to Labor Code Sections 204 and 210, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (5) failure to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties pursuant to Labor Code Sections 201, 202, and 203, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (6) failure to furnish accurate itemized wage statements pursuant to Labor Code Sections 226, 226.3, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; (7) failure to maintain accurate records pursuant to Labor Code Sections 226, 1174, 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff’s claim; and (8) violation of California’s Unfair Competition Law, Business and Professions Code Sections 17200, *et seq.* The Release Period shall be the designated and Court approved Class Period.

- J. PAGA Employees’ PAGA Release. After the Court’s Judgment is final, all PAGA Employees will be barred from asserting any of the Released PAGA Claims against Defendant or any of the other Released Parties, whether or not they exclude themselves from the Settlement. This means that all PAGA Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other lawsuit against Defendant or any of the other Released Parties for the Released PAGA Claims or based on the facts asserted in the Action and resolved by the Settlement.

All PAGA Employees will be bound by the following release: Upon the Effective Date of the Settlement, Plaintiff and all other PAGA Employees, including, but not limited to, their heirs, executors, attorneys, agents, representatives, successors, assigns, and spouses (collectively, the “PAGA Releasing Parties”), shall and will be deemed to have, and by operation of the Court’s Final Approval Order and Judgment, will expressly have fully, finally, and forever released, settled, compromised, relinquished and discharged Defendant Norman Etchison, Inc. and the Released Parties, from any and all of the Released PAGA Claims to the fullest extent permitted by law.

“Released PAGA Claims” means all claims pursuant to or under the Private Attorneys General Act

(codified in Labor Code Sections 2698, *et seq.*) that were or could have been alleged in the Action based upon the allegations, facts, legal theories or causes of action alleged in the Action, including, but not limited to, claims for relief for: (1) failure to timely pay minimum, regular, and/or overtime wages pursuant to Labor Code Sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (2) failure to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods pursuant to Labor Code Sections 204, 226.7, 512, 558, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (3) failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods pursuant to Labor Code Sections 204, 226.7, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (4) failure to timely pay all wages earned during employment pursuant to Labor Code Sections 204 and 210, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (5) failure to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties pursuant to Labor Code Sections 201, 202 and 203, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (6) failure to furnish accurate itemized wage statements pursuant to Labor Code Sections 226, 226.3, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (7) failure to maintain accurate records pursuant to Labor Code Sections 226, 1174, 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim. The Release Period shall be the designated and Court approved PAGA Period.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

- A. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
- B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 (25% of the PAGA Penalties) by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period, and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Employee.
- C. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's business records, are stated in the first page of this Notice. You have until **[DATE]** to challenge the number of Workweeks and/or Pay Periods credited to you. To be valid, your challenge must be postmarked by the Response Deadline of [DATE]. You may submit your challenge by signing and sending a letter to the Administrator via mail and by submitting evidence, documentation, and/or information to the Administrator no later than the Response Deadline. Section 9 of this Notice has the Administrator's contact information.

If you challenge your Workweeks or Pay Periods, you should support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's business records as accurate unless you send copies of records containing contrary information, at which point the Administrator will determine whether an adjustment is warranted. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period

challenges. You cannot appeal or otherwise challenge its final decision.

## 5. HOW WILL I GET PAID?

- A. Participating Class Members. The Administrator will issue checks for the Individual Class Payments and the Individual PAGA Payments. The Administrator will send to every Participating Class Member (i.e., every Class Member who does not opt-out) their respective Individual Class Payment via First Class U.S. Mail. The Administrator will also send to every PAGA Employee their respective Individual PAGA Payment via First Class U.S. Mail.
- B. Non-Participating Class Members. The Administrator will issue checks for the Individual PAGA Payments and will send them to every PAGA Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member), via First Class U.S. Mail.

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

Submit a written and signed letter with your name, address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to sign your request, identify the Action as *Jesus Muñiz v. Norman Etchison, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Your request to be excluded must be postmarked by [DATE], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 court days before the [DATE] Final Approval Hearing, Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Class Counsel Fees Payment, Class Counsel Expenses Payment and Service Payment stating (i) the amount Class Counsel is requesting for Class Counsel Fees Payment and Class Counsel Expenses Payment; and (ii) the amount Plaintiff is requesting as a Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you electronic copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Class Counsel Fees Payment, Class Counsel Expenses Payment, and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [DATE].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Jesus Muñiz v. Norman Etchison, Inc.*, and include your name, current address, telephone number, and approximate dates of employment with Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

## 8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on [DATE] at 8:30 a.m., in Division H of the

Kern County Superior Court (Metropolitan Division Justice Building), located at 1215 Truxtun Avenue, Bakersfield, California 93301. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, the Administrator, and the LWDA. In all Civil Departments and hearing types, the Court has remote video and audio courtroom appearance technology. You may attend (or hire a lawyer to attend) either personally or virtually.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Court's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## 9. HOW CAN I GET MORE INFORMATION?

If you have any questions about the Settlement, you may contact Class Counsel at the address or telephone listed below. You may also contact the Administrator by calling toll free 1-[telephone number], or by writing to the Administrator, at the address shown below.

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to consult the Superior Court website by going to <https://www.kern.courts.ca.gov/online-services/case-information-search>, becoming a registered user and entering the Case Number for the Action, Case No. BCV-22-101571. **Do not telephone the Court to obtain information about the settlement.** You may also get a copy of the Settlement Agreement or the Judgment by contacting Class Counsel.

You may also contact Class Counsel and the Administrator:

### Class Counsel

GRAHAMHOLLIS APC  
Nathan J. Reese  
Dawn M. Berry  
3555 Fifth Avenue, Suite 200  
San Diego, California 92103  
Telephone: (619) 546-4373

### Administrator

[Name]  
[Address]  
Telephone: [X]  
Fax: [X]

## 10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

## 11. WHAT IF I CHANGE MY ADDRESS?

You should immediately notify the Administrator if you move or otherwise change your mailing address. It is your responsibility to ensure that the Settlement Administrator has your current mailing address, as this will be the address to which your Settlement payments will be sent.