

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Edwin Kamarzarian (SBN 327830)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
E-mail: edwin.kamarzarian@moonyanglaw.com

Attorneys for Plaintiff Marco Antonio Zaragoza

McCormick, Barstow, Sheppard, Wayte & Carruth LLP
Christina C. Tillman, #258627
christina.tillman@mccormickbarstow.com
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300

Attorneys for THE ROMAN CATHOLIC BISHOP OF FRESNO dba SACRED HEART
CHURCH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MERCED

MARCO ANTONIO ZARAGOZA,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

THE ROMAN CATHOLIC BISHOP OF
FRESNO, a California corporation dba
SACRED HEART CHURCH; and DOES 1
through 10 inclusive,

Defendants.

Case No.: 22CV-00282

CLASS AND REPRESENTATIVE ACTION

[Hon. Brian McCabe, Dept. 8]

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

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Marco Antonio Zaragoza (“Plaintiff”) and defendant The Roman Catholic Bishop of Fresno dba Sacred Heart Church, (“Defendant”). The Agreement refers to Plaintiff and Defendant jointly as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Zaragoza v. The Roman Catholic Bishop of Fresno dba Sacred Heart Church*, initiated on January 25, 2022, Case Number 22CV-00282.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant in California and classified as non-exempt who worked for Defendant during the Class Period.
- 1.6. “Class Counsel” means Kane Moon, Allen Feghali, Edwin Kamarzarian of Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the “Notice of Proposed Class Action Settlement”, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from January 25, 2018 to the date the Court preliminarily approves of the Settlement.
- 1.13. “Class Representative” means Marco Antonio Zaragoza, the named Plaintiff in the Action seeking Court approval to serve as Class Representatives.
- 1.14. “Class Representative Service Payment” means the up to \$7,500 payment to each of the named Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Merced.
- 1.16. “Defendant” means named Defendant The Roman Catholic Bishop of Fresno dba Sacred Heart Church.
- 1.17. “Defense Counsel” means Christina C. Tillman of McCormick, Barstow, Sheppard, Wayte & Carruth LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, or if an objection is made but withdrawn prior to the Final Approval Hearing, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the

1 deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the
2 Judgment is filed, the day after the appellate court affirms the Judgment and issues a
3 remittitur.

4 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

5 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of
6 the Settlement.

7 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval
8 of the Settlement.

9 1.22. "Gross Settlement Amount" means One Million Five Hundred Thousand Dollars and Zero
10 Cents (\$1,500,000) which is the total amount Defendant agrees to pay under this
11 Settlement. In no event shall Defendant be obligated to pay more than the Gross
12 Settlement Amount except as provided in Paragraphs 4.3 and 8 below (employers' share
13 of payroll taxes and escalator provision). The Gross Settlement Amount will be used to
14 pay (i) Individual Class Payments, (ii) Individual PAGA Payments, (iii) the LWDA PAGA
15 Payment, (iv) Class Counsel Fees, (v) the Class Counsel Litigation Expenses, (vi) Class
16 Representative Service Payment, (vii) and the Administration Expense Payment.

17 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the
18 Net Settlement Amount calculated according to the number of Workweeks worked during
19 the Class Period.

20 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
21 the PAGA Penalties calculated according to the number of Workweeks worked during the
22 PAGA Period.

23 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

24 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency
25 entitled, under Labor Code § 2699(i).

26 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code § 2699(i).

28 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following

1 payments in the amounts approved by the Court: (i) Individual PAGA Payments, (ii) the
2 LWDA PAGA Payment, (iii) Class Representative Service Payments, (iv) Class Counsel
3 Fees Payment, (v) Class Counsel Litigation Expenses Payment, and (vi) the
4 Administration Expenses Payment. The remainder is to be paid to Participating Class
5 Members as Individual Class Payments.

6 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
7 Settlement by sending the Administrator a valid and timely Request for Exclusion.

8 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked
9 for Defendant for at least one day during the PAGA Period.

10 1.31. “PAGA Period” means the period from January 20, 2021, to the date the Court
11 preliminarily approves of the Settlement.

12 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

13 1.33. “PAGA Notice” means Plaintiff’s January 20, 2022 letter to Defendant and the LWDA
14 providing notice pursuant to Labor Code § 2699.3(a).

15 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
16 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$25,000) and the
17 75% to LWDA (\$75,000) in settlement of PAGA claims.

18 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
19 timely Request for Exclusion from the Settlement.

20 1.36. “Plaintiff” means Marco Antonio Zaragoza, the named plaintiff in the Action.

21 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
22 Settlement.

23 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval
24 and Approval of PAGA Settlement.

25 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2
26 below.

27 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3
28 below.

- 1.41. "Released Parties" means: Defendant and any parent, subsidiary, affiliate, predecessor or successor entity, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. **RECITALS.**

- 2.1. On January 25, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) failure to pay minimum wages; 2) failure to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize and permit rest breaks; 5) failure to indemnify necessary business expenses; 6) failure to timely pay final wages at termination; 7) failure to provide accurate itemized wage statements; and 8) unfair business practices. On April 25, 2022, Plaintiff filed a First Amended Complaint adding a Ninth Cause of Action against Defendant for PAGA civil penalties under California Labor Code § 2699 *et seq.*
- 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice, including by way of the January 20, 2022 PAGA Notice.

- 2.3. On February 3, 2023, the Parties participated in an all-day mediation presided over by experienced employment mediator Michael Dickstein, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, information sufficient to meaningfully evaluate the claims at issue, including applicable policy documents and a sample of time and pay records for the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 4.3 and 8 below, Defendant promise to pay the total amount of One Million and Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00). Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 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 and Judgement:
- 3.2.1. To Plaintiff: Class Representative Service Payment to each of the named Class Representative of not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (in addition to any Individual Class Payment and any Individual

PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three and one third percent (33 1/3%) of the Gross Settlement Amount (i.e., Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Defendant will not oppose requests for these payments provided that the payments do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses

1 Payment and holds Defendant harmless, and indemnifies Defendant, from any
2 dispute or controversy regarding any division or sharing of any of these Payments.

3 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
4 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) except for a showing
5 of good cause and as approved by the Court. To the extent the Administration
6 Expenses are less or the Court approves payment less than \$25,000.00, the
7 Administrator will retain the remainder in the Net Settlement Amount.

8 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
9 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
10 by all Participating Class Members during the Class Period and (b) multiplying the
11 result by each Participating Class Member's Workweeks.

12 3.2.4.1. Tax Allocation of Individual Class Payments. Thirty-Three and One-Third
13 percent (33.33%) of each Participating Class Member's Individual Class
14 Payment will be allocated to settlement of wage claims (the "Wage
15 Portion"). The Wage Portions are subject to tax withholding and will be
16 reported on an IRS W-2 Form. The remaining Sixty-Six and Two-Thirds
17 (66.66%) of each Participating Class Member's Individual Class Payment
18 will be allocated to settlement of claims for interest and penalties with
19 Thirty-Three and One-Third percent (33.33%) being allocated to interest
20 and Thirty-Three and One-Third percent (33.33%) being allocated to
21 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not
22 subject to wage withholdings and will be reported on IRS 1099 Forms.
23 Participating Class Members assume full responsibility and liability for any
24 employee taxes owed on their Individual Class Payment.

25 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
26 Class Payments. Non-Participating Class Members will not receive any
27 Individual Class Payments. The Administrator will retain amounts equal to
28 their Individual Class Payments in the Net Settlement Amount for

distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to be paid from the Gross Settlement Amount, with 75% (i.e., Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00)) allocated to the LWDA PAGA Payment and 25% (i.e., Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., \$25,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 991 Class Members who collectively worked a total of 144,710 Workweeks, and 641 Aggrieved Employees who worked a total of approximately 21,000 PAGA Pay Periods.

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data

to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Nothing in this confidentiality provision shall be construed or work to preclude Class Counsel from performing their fiduciary duties to the Class. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, no later than thirty (30) days after the Court signs the Preliminary Approval Order. Defendant will be responsible for the employer's share of payroll taxes, separate and apart from the Gross Settlement Amount. This amount shall be held in trust by the Settlement Administrator until after the Effective Date. If the Court does not grant Final Approval within three months of a Motion for Final Approval, at Defendant's election, this amount will be returned to Defendant within 10 business days of Defendant's written demand to the Settlement Administrator that the funds be returned to Defendant.

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

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the

1 date (not less than 180 days after the date of mailing) when the check will be
2 voided. The Administrator will cancel all checks not cashed by the void date. The
3 Administrator will send checks for Individual Settlement Payments to all
4 Participating Class Members (including those for whom Class Notice was returned
5 undelivered). The Administrator will send checks for Individual PAGA Payments
6 to all Aggrieved Employees including Non-Participating Class Members who
7 qualify as Aggrieved Employees (including those for whom Class Notice was
8 returned undelivered). The Administrator may send Participating Class Members a
9 single check combining the Individual Class Payment and the Individual PAGA
10 Payment. Before mailing any checks, the Settlement Administrator must update
11 the recipients' mailing addresses using the National Change of Address Database.

12 4.4.2. The Administrator must conduct a Class Member Address Search for all other
13 Class Members whose checks are returned undelivered without USPS forwarding
14 address. Within seven (7) days of receiving a returned check the Administrator
15 must re-mail checks to the USPS forwarding address provided or to an address
16 ascertained through the Class Member Address Search. The Administrator need
17 not take further steps to deliver checks to Class Members whose re-mailed checks
18 are returned as undelivered. The Administrator shall promptly send a replacement
19 check to any Class Member whose original check was lost or misplaced, requested
20 by the Class Member prior to the void date.

21 4.4.3. For any Class Member whose Individual Class Payment check or Individual
22 PAGA Payment check is uncashed and cancelled after the void date, the
23 Administrator shall transmit the funds represented by such checks to the California
24 Controller's Unclaimed Property Fund in the name of the Class Member thereby
25 leaving no "unpaid residue" subject to the requirements of California Code of Civil
26 Procedure § 384(b).

27 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
28 not obligate Defendant to confer any additional benefits or make any additional

1 payments to Class Members (such as 401(k) contributions or bonuses) beyond
2 those specified in this Agreement.

3 **5. RELEASES OF CLAIMS.**

4 Effective on the date when Defendant fully fund the entire Gross Settlement Amount and the Court
5 enters an order granting Final Approval of this Settlement, Plaintiff, Class Members, and Class Counsel
6 will release claims against all Released Parties as follows:

7 5.1. Plaintiff's Release.

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

24 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
25 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
26 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
27 reads:

28 **A general release does not extend to claims that the creditor or**

1 releasing party does not know or suspect to exist in his or her favor
2 at the time of executing the release, and that if known by him or her
3 would have materially affected his or her settlement with the debtor
4 or Released Party.

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
6 themselves and their respective former and present spouses, family members,
7 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
8 Released Parties from (i) all claims that were alleged, or reasonably could have been
9 alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g.,
10 any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5,
11 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable
12 Industrial Welfare Commission Wage Orders based on any alleged failure to pay
13 minimum wage; failure to pay overtime compensation; failure to pay paid time off
14 wages; failure to provide meal periods; failure to authorize and permit rest periods;
15 failure to indemnify necessary business expenses; failure to timely pay final wages;
16 failure to timely pay wages during employment; failure to provide accurate wage
17 statements; failure to keep adequate records; and unfair business practices arising under
18 California Business and Professions Code section 17200 *et seq.* Excluded from this
19 portion of the release are claims for PAGA penalties that were alleged, or reasonably could
20 have been alleged, based on the PAGA Period facts stated in the Operative Complaint and
21 the Plaintiff's PAGA Notice. Except as set forth in Section 5.3 of this Agreement,
22 Participating Class Members do not release any other claims, including claims for vested
23 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
24 unemployment insurance, disability, social security, workers' compensation, or claims
25 based on facts occurring outside the Class Period.

5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
26 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
27 former and present spouses, family members, representatives, agents, attorneys, heirs,
28 administrators, successors, and assigns, the Released Parties from all claims for PAGA

penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; and/or failure to keep adequate records.

6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

6.1. Plaintiff's Responsibilities. Plaintiff will prepare 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(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve as Class Representative; (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), , this Agreement (Labor Code § 2699(l)(2)); (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator.

6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full

1 execution of this Agreement; obtaining a prompt hearing date for the Motion for
2 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for
3 Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
4 Approval Order to the Administrator.

5 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
6 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
7 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
8 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
9 not grant Preliminary Approval or conditions Preliminary Approval on any material
10 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
11 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
12 modify the Agreement and otherwise satisfy the Court's concerns.

13 **7. SETTLEMENT ADMINISTRATION.**

14 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
15 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
16 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
17 this Agreement in exchange for payment of Administration Expenses. The Parties and
18 their Counsel represent that they have no interest or relationship, financial or otherwise,
19 with the Administrator other than a professional relationship arising out of prior
20 experiences administering settlements.

21 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
22 Identification Number for purposes of calculating payroll tax withholdings and providing
23 reports to the state and federal tax authorities.

24 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
25 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
26 468B-1.

27 7.4. Notice to Class Members.

28 7.4.1. No later than three (3) business days after receipt of the Class Data, the

1 Administrator shall notify Class Counsel that the list has been received and state
2 the number of Class Members, Aggrieved Employees, Workweeks, and Pay
3 Periods in the Class Data.

4 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
5 fourteen (14) days after receiving the Class Data, the Administrator will send to all
6 Class Members identified in the Class Data, via first-class United States Postal
7 Service ("USPS") mail, the Class Notice with Spanish translation, substantially in
8 the form attached to this Agreement as Exhibit A. The first page of the Class
9 Notice shall prominently estimate the dollar amounts of any Individual Class
10 Payment and Individual PAGA Payment (if applicable) payable to the Class Member,
11 and the number of Workweeks and PAGA Pay Periods (if applicable) used to
12 calculate these amounts. Before mailing Class Notices, the Administrator shall
13 update Class Member addresses using the National Change of Address database.

14 7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class
15 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
16 Class Notice using any forwarding address provided by the USPS. If the USPS
17 does not provide a forwarding address, the Administrator shall conduct a Class
18 Member Address Search, and re-mail the Class Notice to the most current address
19 obtained. The Administrator has no obligation to make further attempts to locate
20 or send Class Notice to Class Members whose Class Notice is returned by the
21 USPS a second time.

22 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
23 and/or Pay Periods, and Requests for Exclusion will be extended an additional
24 fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class
25 Notice for all Class Members whose notice is re-mailed. The Administrator will
26 inform the Class Member of the extended deadline with the re-mailed Class
27 Notice.

28 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise

discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and 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, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) 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 reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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

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

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator in writing via fax, email or mail. The Administrator must request that the challenging Class Member submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of

1 Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
2 Administrator's determination as to the challenges.

3 7.7. Objections to Settlement.

4 7.7.1. Only Participating Class Members (i.e., Class Members who do not submit valid
5 and timely Requests for Exclusion) may object to the class action components of
6 the Settlement and/or this Agreement, including contesting the fairness of the
7 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
8 Counsel Litigation Expenses Payment and/or Class Representative Service
9 Payment. Aggrieved Employees have no right to object to the PAGA portion of the
10 Settlement.

11 7.7.2. For any Participating Class Member to object, the Class Member must send written
12 objections to the Administrator, signed by the Class Member, by fax, email or
13 mail, no later than forty-five (45) days after the Administrator's mailing of the
14 Class Notice (plus an additional fourteen (14) days for Class Members whose Class
15 Notice was re-mailed). The Settlement Administrator shall send all objections it
16 receives to Defense Counsel and Class Counsel within three (3) business days of
17 receipt. Participating Class Members may also appear in Court (or hire an attorney
18 to appear in Court on their behalf) to present verbal objections at the Final
19 Approval Hearing. The Court retains final authority with respect to the
20 consideration and admissibility of any Class Member objections.

21 7.7.3. Non-Participating Class Members (i.e., Class Members who submit valid and
22 timely Requests for Exclusion) have no right to object to any of the class action
23 components of the Settlement.

24 7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the
25 Settlement and shall be bound by the Release of claims identified in Paragraph 5.3
26 of this Agreement.

27 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
28 performed or observed by the Administrator contained in this Agreement or otherwise.

- 1 7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
2 promptly review on a rolling basis Requests for Exclusion to ascertain their
3 validity. Not later than 5 days after the expiration of the deadline for submitting
4 Requests for Exclusion, the Administrator shall email a list to Class Counsel and
5 Defense Counsel containing (a) the names and other identifying information of
6 Class Members who have timely submitted valid Requests for Exclusion
7 (“Exclusion List”); (b) the names and other identifying information of Class
8 Members who have submitted invalid Requests for Exclusion; (c) copies of all
9 Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 10 7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide written
11 reports to Class Counsel and Defense Counsel that, among other things, tally the
12 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
13 Requests for Exclusion (whether valid or invalid) received, objections received,
14 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
15 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
16 Report”). The Weekly Reports must include the Administrator’s assessment of the
17 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
18 and objections received.
- 19 7.8.3. Workweek and/or Pay Period Challenges. The Administrator has the authority to
20 address and make final decisions consistent with the terms of this Agreement on all
21 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
22 The Administrator’s decision shall be final and not appealable or otherwise
23 susceptible to challenge.
- 24 7.8.4. Administrator’s Declaration. Not later than fourteen (14) days before the date by
25 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
26 the Administrator will provide to Class Counsel and Defense Counsel, a signed
27 declaration suitable for filing in Court attesting to its due diligence and compliance
28 with all of its obligations under this Agreement, including, but not limited to, its

mailing of Class Notice, the 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 attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records at the time of mediation, Defendant estimated that there were approximately 144,710 Total Workweeks from January 25, 2018 to February 3, 2023. In the event the actual count of Workweeks during the Class Period increases by more than 10% from original estimate of 144,710 Workweeks, (i.e., by more than 14,471 Workweeks, or in other words, if the Workweeks worked between January 25, 2018 to the date the Court grants preliminary approval exceed 159,181), Defendant, at its option, can either choose to: (1) cut off the end date for the class releases as of the date on which the number of workweeks reaches 159,181, or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% (i.e., if there was 16% increase in the number workdays during the Class Period, Defendant would agree to increase the Settlement Fund by 6%).

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent

(10%) of the total of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than fourteen (14) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. 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.

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

10.3. 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

1 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
2 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
3 law.

4 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
5 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
6 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
7 Parties, their respective counsel, and all Participating Class Members who did not object to
8 the Settlement as provided in this Agreement, waive all rights to appeal from the
9 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
10 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
11 waiver of appeal does not include any waiver of the right to oppose such motions, writs or
12 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
13 Agreement will be suspended until such time as the appeal is finally resolved and the
14 Judgment becomes final, except as to matters that do not affect the amount of the Net
15 Settlement Amount.

16 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
17 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
18 material modification of this Agreement (including, but not limited to, the scope of release
19 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
20 nevertheless expeditiously work together in good faith to address the appellate court's
21 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis,
22 any additional Administration Expenses reasonably incurred after remittitur. An appellate
23 decision to vacate, reverse, or modify the Court's award of the Class Representative
24 Service Payments or any payments to Class Counsel shall not constitute a material
25 modification of the Judgment within the meaning of this paragraph, as long as the Gross
26 Settlement Amount remains unchanged.

27 **11. AMENDED JUDGMENT.**

28 If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work

1 together in good faith to jointly submit and a proposed amended judgment.

2
3 **12. ADDITIONAL PROVISIONS.**

4 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
5 Purposes. This Agreement represents a compromise and settlement of highly disputed
6 claims. Nothing in this Agreement is intended or should be construed as an admission by
7 Defendant that any of the allegations in the Operative Complaint have merit or that
8 Defendant has any liability for any claims asserted; nor should it be intended or construed
9 as an admission by Plaintiff that Defendant's defenses in the Action have merit. The
10 Parties agree that class certification and representative treatment is for purposes of this
11 Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final
12 Approval or enter Judgment, Defendant reserves the right to contest certification of any
13 class for any reasons, and Defendant reserves all available defenses to the claims in the
14 Action, and Plaintiff reserves the right to move for class certification on any grounds
15 available and to contest Defendant's defenses. The Settlement, this Agreement and Parties'
16 willingness to settle the Action will have no bearing on, and will not be admissible in
17 connection with, any litigation (except for proceedings to enforce or effectuate the
18 Settlement and this Agreement).

19 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
20 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
21 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize,
22 or cause or permit another person to disclose, disseminate or publicize, any of the terms of
23 the Agreement directly or indirectly, specifically or generally, to any person, corporation,
24 association, government agency, or other entity except: (1) to the Parties' attorneys,
25 accountants, or spouses, all of whom will be instructed to keep this Agreement
26 confidential; (2) counsel in a related matter only as necessary to litigate each related
27 matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in
28 response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued

by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

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

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement 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. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. 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, modifying the Settlement Agreement, 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 and/or the Court for resolution.

12.7. 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.

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

12.9. 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.

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

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

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

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

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no

other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiff:

Kane Moon, Esq.
Allen Feghali, Esq.
Edwin Kamarzarian, Esq.
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, CA 90017

To Defendant:

McCormick, Barstow, Sheppard, Wayte & Carruth LLP
Christina C. Tillman, Esq.
7647 North Fresno Street
Fresno, California 93720

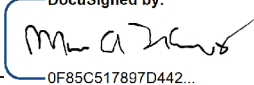
12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts

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

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

Plaintiff & Class Representative:

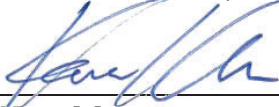
Dated: 3/8/2023

By: 
 0F85C517897D442...
 Marco Antonio Zaragoza

Plaintiff's Counsel:

Dated: 3/8/2023

MOON & YANG, APC

By: 
 Kane Moon
 Allen Feghali
 Edwin Kamarzarian

Attorneys for Plaintiff

Defendant:

Dated:

The Roman Catholic Bishop of Fresno

By: _____
 Print Name

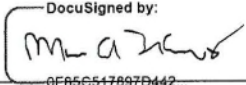
 Signature

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

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

Plaintiff & Class Representative:

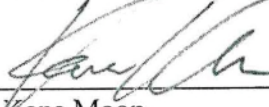
Dated: 3/8/2023

By: 
DocuSigned by:
0F65C517897D442...
 Marco Antonio Zaragoza

Plaintiff's Counsel:

Dated: 3/8/2023

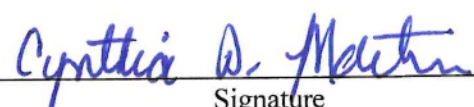
MOON & YANG, APC

By: 
 Kane Moon
 Allen Feghali
 Edwin Kamarzarian
 Attorneys for Plaintiff

Defendant:

Dated: 03/13/2023

The Roman Catholic Bishop of Fresno

By: CYNTHIA D. MARTIN
 Print Name

 Signature

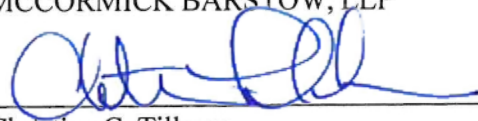
CHIEF FINANCIAL OFFICER

Title

Defendant's Counsel:

Dated: 03/13/2023

MCCORMICK BARSTOW, LLP

By: 

Christina C. Tillman

Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Marco Antonio Zaragoza v. The Roman Catholic Bishop of Fresno dba Sacred Heart Church
Merced County Superior Court Case No. 22CV-00282

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU WORKED AS A NON-EXEMPT EMPLOYEE OF THE ROMAN CATHOLIC BISHOP OF FRESNO DBA SACRED HEART CHURCH (“DEFENDANT”) IN CALIFORNIA AT ANY TIME BETWEEN JANUARY 25, 2018 AND **[[DATE OF PRELIMINARY APPROVAL]]**, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a lawsuit entitled *Zaragoza v. The Roman Catholic Bishop of Fresno dba Sacred Heart Church*, Merced County Superior Court Case No. 22CV-00282 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

The proposed Settlement will resolve all claims in the Action. A hearing concerning final approval of the proposed Settlement will be held before the Hon. Brian McCabe on **<<FA Date and Time>>** in Department 8 of the Merced County Superior Court, Old Merced Courthouse, located at 627 West 21st Street, Merced CA 95340, to determine whether the Settlement is fair, adequate and reasonable. Defendant’s records have identified you as someone who worked for Defendant as a non-exempt employee during the relevant time period. As such, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be considered part of the settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement. Except that, even if you request exclusion, you will receive payment for eligible PAGA Penalties, and you will release PAGA claims as discussed below.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE>>	To object to the Settlement, you may mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. You may arrange to appear at the hearing remotely via CourtCall by dialing 1-888-882-6878 or by visiting the CourtCall website at www.courtcall.com to schedule a remote appearance.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Settlement Class”):

All persons who worked for Defendant in California as an hourly, non-exempt employee at any time between January 25, 2018 and [[the date of preliminary approval]].

According to Defendant's records, you are a member of the Settlement Class ("Settlement Class Member").

What is this case about?

In the Action, Plaintiff Marco Antonio Zaragoza ("Plaintiff") on behalf of himself and the Settlement Class, alleges that Defendant: (1) Failed to Pay Minimum Wages; (2) Failed to Pay Overtime Compensation; (3) Failed to Provide Meal Periods; (4) Failed to Authorize and Permit Rest Breaks; (5) Failed to Indemnify Necessary Business Expenses; (6) Failed to Timely Pay Final Wages at Termination; (7) Failed to Provide Accurate Itemized Wage Statements; (8) committed Unfair Business Practices; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, reimbursement for necessary business expenses, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and significant expense associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Settlement Class Members.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

MOON & YANG, APC

Kane Moon, Esq.

E-mail: kane.moon@moonyanglaw.com

Allen Feghali, Esq.

E-mail: allen.feghali@moonyanglaw.com

Edwin Kamarzarian, Esq.

E-mail: edwin.kamarzarian@moonyanglaw.com

1055 W. Seventh St., Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

Defendant's Counsel

McCormick, Barstow, Sheppard, Wayte & Carruth LLP

Christina C. Tillman, #258627

christina.tillman@mccormickbarstow.com

7647 North Fresno Street

Fresno, California 93720

Telephone: (559) 433-1300

Facsimile: (559) 433-2300

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$1,500,000 (the "Gross Settlement Amount") for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative

Service Payment to Plaintiff (\$7,500); (c) the Court-approved attorneys' fees and costs to Class Counsel (\$500,000.00 in fees and up to \$25,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties (\$75,000 of a total of \$100,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of \$20,000).

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement ("Settlement Class Members").

Upon preliminary approval of the Settlement by the Court, Defendant will make a one-time payment of \$1,500,000 into a qualified settlement account established by the Settlement Administrator. A pro-rated portion of your Individual Settlement Payment will be mailed to you within 14 days after the Effective Date of the settlement.

The Net Settlement Amount shall be divided among all Settlement Class Members on a pro rata basis based upon the total number of workweeks worked by each respective Settlement Class Member as a non-exempt hourly employee in the State of California during the Class Period. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<Estimated Payment>> (less applicable withholdings) and your covered Work Weeks worked during the relevant period between January 25, 2018 and <<Date of Preliminary Approval>> are <<Work Weeks>>. Your estimated Individual PAGA Payment is <<Estimated Payment>> based on Defendant records showing that had <<Pay Periods>> during the relevant period between January 20, 2021 and <<Date of Preliminary Approval>> (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 because you did not work during the PAGA Period. To the extent you dispute the number of Work Weeks or Pay Periods, you must make your dispute ("Work Week Dispute") in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<+45 days from date of mailing>> (the "Response Deadline") to:

ILYM Group, Inc., <<Mailing Address & Fax Number>>

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its' decisions will be reviewable by the Court during the Final Approval Hearing. **REMINDER:** If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Settlement Class Period only) are wrong, the deadline to dispute the workweeks reported for you is <<RESPONSE DATE>>.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 33.33% as wages, 33.33% as penalties, and 33.33% as interest, excluding the PAGA Settlement Payments, which will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. Defendant will be responsible for the employer's share of payroll taxes, separate and apart from the Class Fund.

All checks for individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a participating Class Member within that time. Any individual Settlement Payment that is not cashed by a Settlement Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Settlement Class Member who failed to cash their Settlement Payment check prior to the void date. The Settlement Administrator shall void any tax documents issued to Settlement Class Members who did not cash

their checks within 180 days of issuance. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Awards, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$500,000.00 (one-third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$25,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of up to \$7,500 to Plaintiff for his efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$20,000.00. A payment in the amount of \$75,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$100,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and payment of all funds due under this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, and each Settlement Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- (a) **Identity of Released Parties.** Defendant and any parent, subsidiary, affiliate, predecessor or successor entity, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof. (collectively "Releasees").
- (b) **Date Release Becomes Active.** The Released Claims will be released upon the Settlement's Effective Date and payment by Defendant of all funds due under the settlement. Settlement Class Members will not release the Released Claims or Released PAGA Claims until the Effective Date and payment by Defendant of all funds due under the settlement.
- (c) **Claims Released by Settlement Class Members.** Each and every Settlement Class Member, on behalf of themselves and their heirs and assigns, unless they have submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:
 - 1) All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 *et seq.* Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the Plaintiff's PAGA Notice. Except as set forth in Section 5.3 of this Agreement, Participating

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

- 2) All Settlement Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; and/or failure to keep adequate records.

What are my options in this matter?

You have three options under this Settlement, each of which is further discussed below. You may: (A) remain in the Settlement Class and receive an individual Settlement Payment; (B) if you choose option (A), you may also object to the Settlement, as explained below; or (C) exclude yourself from the Settlement.

If you remain in the Settlement Class, you will receive a settlement payment and you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Settlement Class. If you wish to remain in the Settlement Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Settlement Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

OPTION B. Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection ("written objection") to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<Response Deadline>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION C. Request to Be Excluded from the Settlement and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a participating Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement – except that you will still receive payment for and release claims for Civil Penalties under PAGA. You will not be able to complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness, and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department 8 of the Merced County Superior Court, Old Merced Courthouse, located at 627 West 21st Street, Merced CA 95340. If you wish to attend the Final Approval Hearing telephonically, you may arrange to appear at the hearing remotely via CourtCall by dialing 1-888-882-6878 or by visiting the CourtCall website at www.courtcall.com to schedule a remote appearance prior to the date of the Final Approval Hearing. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Class Action and PAGA Settlement Agreement attached to the Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval. The Class Action and PAGA Settlement Agreement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Merced County Superior Court. You may also request a copy of the Settlement Agreement from Class Counsel and/or Defendant's Counsel referenced above.

PLEASE DO NOT OTHERWISE CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.