

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 27, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled Court, Plaintiff Erika Collazo, individually
4 and on behalf of all other similarly situated individuals, hereby move for entry of an Order for the
5 following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Erika Collazo as class representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorneys General Act
12 settlement, in the amount of \$842,500, which is incorporated herein by reference;
- 13 5. Preliminarily and conditionally approving the application for payment to Class Counsel of
14 attorneys' fees in the amount of \$294,875 of the Gross Settlement Amount;
- 15 6. Preliminarily and conditionally approving the application for payment to Class Counsel of
16 reasonable costs not to exceed \$15,000;
- 17 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
18 \$15,000 to Plaintiff Erika Collazo;
- 19 8. Preliminarily approving the appointment of ILYM Group, Inc. as the Settlement
20 Administrator and for payment to ILYM Group, Inc. for administering said class action
21 settlement in an amount not to exceed \$20,000;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$50,000, 75% of which will be paid to the Labor and Workforce
24 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 25 10. Approving as to form and content the Notice of Settlement, which provide Class Members
26 information regarding the settlement, their ability to opt out of, or object to, the class action
27 settlement and which provides instruction on how to dispute an individual's settlement
28 allocation under the proposed settlement agreement;

11. Approving the proposed procedures to notify the class and determining that the proposed notification procedures and process complies with Class Members' due process rights and directing the Notice of Settlement to be sent by first class mail to Class Members;
12. Directing Defendant to report employment information, including social security numbers, to the Settlement Administrator to administer the settlement proceeds;
13. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate;
14. Directing that any amount from settlement checks that were not cashed by the check cashing deadline be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers Rights under the doctrine of *cy pres*;
15. Preliminarily and conditionally approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

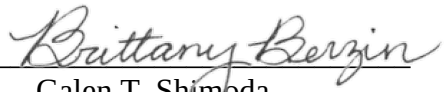
This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members and should be approved by the Court. This motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Erika Collazo, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this Motion.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and

1 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
2 court day before the hearing, no hearing will be held.

3 Dated: January 4, 2023

Shimoda & Rodriguez Law, PC

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5 By: 
6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Brittany V. Berzin
9 Attorneys for Plaintiff
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Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
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Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

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Case No. 34-2022-00314092

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Erika Collazo (“Plaintiff”) seeks preliminary approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$842,500. *See generally*
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).
5 Plaintiff brought this class action individually and on behalf of similarly situated employees who worked
6 for Defendant T.O.P. Marketing Group, Inc. (“Defendant”) (Plaintiff and Defendant sometimes
7 collectively referred to as the “Parties”). There are approximately 1,202 Class Members. Plaintiff
8 worked for Defendant in California from July 2020 to March 2021 and Plaintiff was subject to all the
9 same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B
10 (Plaintiff’s Operative Complaint); Declaration of Erika Collazo (“Decl. Collazo”) ¶ 2.

11 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to pay minimum wages,
12 failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage
13 statements, failed to timely pay final wages, failed to reimburse expenses, engaged in unfair
14 competition, and violated the Private Attorney’s General Act. *See generally* Exhibit B. Plaintiff has
15 also alleged Defendant is liable for a civil penalties under the PAGA based on these violations. *See id.*;
16 Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding
17 PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendant violated
18 California law by 1) misclassifying Class Members as independent contractors; 2) failing to maintain
19 accurate time records for Class Members; 3) failing to pay Class Members for all regular and overtime
20 hours worked; 4) failing to adopt meal and rest period policies; and 5) failing to reimburse Class
21 Members for phone and vehicle expenses. The waiting time penalties, unfair competition, and PAGA
22 claims are derivative of these violations. *See* Exhibit B. Plaintiff has contended that this is a
23 meritorious class action lawsuit and that this case is appropriate for class certification for settlement
24 purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

25 Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or
26 wrongdoing of any kind. *See* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶ 5. Defendant has
27 denied that this case is appropriate for class certification other than for purposes of settlement. *See id.*
28 However, subject to Court approval, the parties have been able to compromise and settle all asserted

claims as a result of extensive investigations, informal document and data exchanges, and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's counsel is convinced that the proposed Agreement is in the best interest of Class Members based on the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Berzin, ¶¶ 6-10. The prospect of potential class certification issues and the uncertainty of class certification, difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed Agreement. *See id.*

It is well within the discretion of this Court to grant preliminary and conditional approval of the Agreement, which satisfies all of the criteria for preliminary settlement approval under California law. Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in the Agreement; and (4) adopt the implementation schedule contained in the proposed order, including the scheduling of a final approval hearing.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint on approximately January 19, 2022, in Sacramento County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately April 27, 2022 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3, 6-10. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Collazo ¶¶ 2, 5-7. The Parties engaged in informal discovery and exchange of documents, including a

1 representative sampling of employee data, such as payroll data, and relevant policies for the entirety of
2 the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the
3 asserted claims, including certification issues, merits issues, damages, the scope and configuration of
4 Class Members, the content and implementation of the wage and hour policies at issue, issues relating
5 to manageability concerns at trial, among other relevant areas. See Decl. Berzin, ¶ 7. The information
6 allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's
7 contentions and create an accurate damages model to assess the reasonableness of any settlement. See
8 *id.*

9 IV. NEGOTIATION AND PROPOSED SETTLEMENT

10 a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

11 The final settlement occurred only after extended, and sometimes contentious, arm's length
12 negotiations. Over the course of approximately nine months, Plaintiff has been investigating the claims
13 and discussing with Defendant's counsel the merits of the claims and issues present in this case. See *id.*
14 at ¶¶ 6-9. The Parties exchanged substantial amounts of information and legal analysis in connection
15 with these discussions. See *id.* It was only after these extended discussions, which included a full day
16 mediation with Brandon McKelvey, Esq., that the Parties were able resolve all claims and enter into the
17 Agreement. See *id.* at ¶ 8.

18 b. The Terms of the Agreement

19 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
20 which include all non-exempt employees who have, or continue to, work for Defendants in California
21 from January 19, 2018 up to November 26, 2022, including but not limited to all customer service
22 associates, customer service reps, customer service assistants, customer service specialists, warehouse
23 workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title
24 performing similar job duties, whether as an employee or independent contractor, with the exception of
25 any individuals who only performed sales of Lifeline goods or services through T.O.P. Marketing
26 Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January
27 19, 2018 and February 27, 2019, and who were included in the information exchanged between the
28

1 parties during the litigation in Gregory v. Amerimex Communications Corp., et al., Case No.
2 BC670901; and (b) Aggrieved Employees, which include all non-exempt employees who have, or
3 continue to, work for Defendants in California from January 14, 2021 up to November 26, 2022,
4 including but not limited to all customer service associates, customer service reps, customer service
5 assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution
6 specialists, sales representatives, or other job title performing similar job duties, whether as an
7 employee or independent contractor, with the exception of any individuals who only performed sales of
8 Lifeline goods or services through T.O.P. Marketing Group, Inc. for SafetyNet Wireless (the dba for
9 Amerimex Communications Corp.) between January 19, 2018 and February 27, 2019, and who were
10 included in the information exchanged between the parties during the litigation in Gregory v.
11 Amerimex Communications Corp., et al., Case No. BC670901. *See* Exhibit A, ¶¶ 1.2, 1.5.

12 2. Defendant will pay the Gross Settlement Amount of \$842,500, which is exclusive of the
13 employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
14 revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
15 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

16 3. Up to \$15,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
17 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
18 5.4.

19 4. Any Settlement Administrator Costs shall be paid from the Gross Settlement Amount.
20 Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the Settlement
21 Administrator, who has provided a maximum cost estimate of \$16,850. *See* Exhibit D (ILYM Group,
22 Inc. Quote); Exhibit A, ¶ 1.26. The difference between any actual Settlement Administrator Costs and
23 the \$20,000 allocated under the Agreement, if any, will be added to the Net Settlement Amount and
24 paid to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.3.

25 5. The Parties agree that \$50,000 of the Gross Settlement Amount shall be allocated to
26 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
27 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
28 5.5. Given the derivative nature of the penalties and the presence of what may likely be deemed good

1 faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes the \$50,000
2 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given
3 the facts of this case. *See* Decl. Berzin, ¶ 9; *see also Davis v. Cox Commc'ns California, LLC*, 2017
4 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in
5 \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal.
6 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson &*
7 *Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
8 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
9 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*,
10 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a
11 \$3,700,000 settlement).

12 6. The Parties agree that up to thirty five percent (35%) of the Gross Settlement Amount
13 (\$15,000) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
14 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
15 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
16 approved by the Court in an amount not to exceed \$15,000. *See id.* The difference between any
17 awarded fees and costs and the allocated amounts will be redistributed to Class Members on a pro rata
18 basis. *See* Exhibit A, ¶ 5.2. The proposed notice to be sent to Class Members will state this
19 information. *See* Exhibit F.

20 7. Any Settlement Administrator Costs, any amounts paid for attorneys' fees and costs, the
21 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
22 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

23 8. Class Members who fail to timely opt-out of this settlement will waive all Released
24 Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved
25 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
26 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

27 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
28 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their

1 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
2 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
3 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
4 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See
5 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). Notwithstanding this fact, the designated
6 beneficiaries clearly promote the law consistent with the objectives and purposes underlying the
7 lawsuit. See *id.* at 723-724 ("The court's proper focus in this context is not so much whether another
8 type of distribution might be better, but the extent to which the distribution, as proposed, is
9 appropriately useful in fulfilling the purposes of the underlying cause of action"). These organizations
10 are non-profits aimed at assisting employees with wage and hour claims who cannot afford legal
11 representation, including providing representation for employees in wage claims before the California
12 Labor Commissioner. See Decl. Berzin, ¶¶ 27, 29-30. Plaintiff's counsel regularly volunteer for these
13 organizations and, as such, can attest that they organizations fulfill the purposes underlying the claims
14 alleged in this lawsuit. See Decl. Berzin, ¶ 33. For these reasons, the proposed *cy pres* distribution is
15 appropriate.

16 **c. Allocation of Settlement Funds**

17 Payment to Participating Class Members and Aggrieved Employees of their Individual
18 Settlement Amount will not require the submission of a claim form. A Net Settlement Amount will be
19 determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees
20 and costs, any Enhancement Payment to the Class Representative, the Settlement Administrator Costs,
21 and the PAGA Payment. Each Class Member's share will be determined by dividing their total pay
22 periods worked within the Class Period by the total pay periods worked by all Class Members within
23 the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
24 Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of
25 the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked
26 within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the
27 PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment
28 to arrive at the Aggrieved Employee's individual share. See Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

1 **V. ARGUMENT**

2 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
3 **California Rules of Court**

4 A class action may not be dismissed, compromised, or settled without Court approval and the
5 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules
6 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
7 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
8 settlements). However, courts should give “proper deference to the private consensual decision of the
9 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
10 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
13 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
14 agreeable to all parties, a court should disapprove of the settlement “only with considerable
15 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
16 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
17 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
18 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

19 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

20 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
21 determine only whether the proposed settlement is within the range of possible approval and whether
22 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
23 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
24 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
25 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
26 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). To make the fairness
27

28

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

determination, the Court must consider several factors, including:

the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations Between the Parties

Settlement of this case was reached only after substantial litigation and extensive arm's length negotiations lasting nearly nine months, which included a full day mediation. *See* Decl. Berzin, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still professional in nature. *See id.*

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter Into an Informed and Reasonable Settlement

The Parties were in possession of all necessary information during the negotiations. The Parties engaged in substantial informal discovery, which included all necessary components for evaluating the class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *See Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

1 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

2 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
3 actions. This experience makes them acutely aware of the risks of complex litigation and the hurdles
4 the claims may face if this matter proceeded to trial. *See id.* Thus, Plaintiff's counsel are qualified to
5 evaluate the class claims, the value of settlement versus moving forward with litigation, and viability of
6 possible affirmative defenses Plaintiff's counsel believe that the Agreement is fair, reasonable, and
7 adequate in light of the risks associated with the PAGA claims, the Court's discretion to lower the
8 amount of penalties ultimately awarded, the uncertainties of complex litigation, and the secured benefit
9 to the class. *See* Decl. Berzin, ¶¶ 12-20.

10 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
11 **Plaintiff's Case and the Risks and Costs of Further Litigation**

12 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
13 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 8 to 12% and
14 a net recovery of approximately 6% of the claims' maximum likely value. *See id.* at ¶¶ 9-10.
15 Additionally, the average net award per class member is approximately \$372.40. *See id.* This
16 settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile
17 ranges of the total available damages that have been approved in other class settlements. *See Wershba,*
18 *91 Cal. App. 4th at 246, 250; Rebney v. Wells Fargo Bank, 220 Cal.App.3d 1117, 1139 (1990); Officers*
19 *for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 628 (9th Cir. 1982); see also In re Omnivision*
20 *Technologies, Inc., 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of*
21 *6% of maximum potential recovery after reduction for attorney's fees was higher than median*
22 *percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000*
23 *through 2002); Bravo v. Gale Triangle, Inc., 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving*
24 *a settlement where the net recovery to class members was approximately 7.5% of the projected*
25 *maximum recovery amount); Avila v. Cold Spring Granite Co., 2017 U.S. Dist. LEXIS 130878 (E.D.*
26 *Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages*
27 *available and a net recovery of approximately 6.7% of the projected maximum recovery);*
28 *Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where*

the gross recovery was approximately 8.5% of the projected maximum recovery).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if a plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the number of class members, relevant payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.* Plaintiff similarly relied upon pay period data, payroll data, and Class Member data to determine the realistic potential damages suffered by the class as a whole. *See* Decl. Berzin ¶¶ 6-10. Ultimately, Plaintiff secured a percentage of the total likely damages for the putative class that is well within the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and approximately \$800 per class member). The Agreement represents a reasonable compromise given the percentage of the potential damages that was secured, the average recovery per Class Member, the Court’s ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl. Berzin ¶¶ 6-10.

1 **vi. Attorneys' Fees and Costs, Enhancement Payment, and Settlement**
2 **Administrator Costs To Be Requested In Connection With Final Approval**

3 Should the Court grant preliminary approval of the Agreement, Plaintiff will make a request in
4 connection with the final approval briefing for attorney's fees in the amount of \$15,000 (35% of the
5 Gross Settlement Amount), costs in an amount not to exceed \$15,000, Settlement Administrator Costs
6 in an amount not to exceed \$9,750, and an Enhancement Payment for the Class Representative in the
7 amount of Fifteen Thousand Dollars and Zero Cents. Plaintiff believes an award of attorney's fees
8 under the common fund doctrine is appropriate in this case. *See Boeing Co. v. Van Gemert*, 444 U.S.
9 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . .
10 her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Laffitte v. Robert Half*
11 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016). Similarly, Plaintiff believes the amounts to be requested for
12 attorney's fees and costs are within accepted ranges. Historically, attorneys' fee awards in common
13 fund cases in general range from 20% to 50% of the fund, depending on the circumstances of the case.
14 *See Newberg on Class Actions*, (3rd Ed. 1992), §14.03 (finding 50% to be the upper limit). Awards
15 ranging between 30% and 40% of the fund are generally approved as reasonable in representative
16 litigation settlements below \$10 million. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS
17 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District,
18 Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action
19 settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA)
20 (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). Similarly, the amounts
21 to be requested for Settlement Administrator Costs and an Enhancement Payment to the Class
22 Representative are within accepted ranges. *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS
23 76558, at *7-*8, *12, *27 (E.D. Cal. Oct. 19, 2006) (awarding a \$15,000 representative enhancement
24 where 10,000 class members were to receive a gross award of approximately \$500 each from the
25 \$5,000,000 settlement); *see Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-
26 *16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000
27 settlement for approximately 530 class members); *See Patel v. Nike Retail Services, Inc.*, 2019 WL
28 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive where

1 PAGA group consisted of 40 employees).

2 The Notice of Settlement will state the amounts to be requested to provide Class Members the
3 ability to comment thereon, which will provide evidence of whether the requested amounts are
4 reasonable. See Exhibit F at pg. 2, § II.A; see also *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS
5 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class
6 counsel’s fee request further supports finding the fee request reasonable”). In connection with the final
7 approval briefing, Plaintiff will provide information to enable a lodestar cross check of the requested
8 fee, a detailed declaration from Plaintiff regarding their time spent on the case as well as any risks and
9 burdens incurred as the Class Representative, an updated itemized costs spreadsheet, and a declaration
10 from the Settlement Administrator detailing the work performed and Settlement Administrator Costs
11 incurred. See Decl. Berzin ¶ 22. Any allocated amounts not ultimately awarded by the Court will be
12 distributed to Class Members pro rata. See Exhibit A, ¶¶ 5.2-5.4, 5.8.

13 **c. The Proposed Notice Procedures Comply With Class Members’ Due Process Rights**

14 It is not required that Class Members be given actual notice of class settlement; instead, “the
15 best practicable notice under the circumstances, including individual notice to all members who can be
16 identified through reasonable effort” is all that is required. See Fed. R. Civ. Proc. 23(c)(2)(b); *Silber v.*
17 *Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th
18 Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal.
19 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d
20 1449 (9th Cir. 1994), the Court rejected a class member’s argument that he had not received due
21 process because he did not receive notice until after the opt out period, finding that, so long as the
22 notice process utilized is the best practicable under the circumstances, due process is satisfied even if
23 there is no actual receipt of the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made
24 in *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), which further noted that those class
25 members who did not receive actual notice may still receive benefits from the settlement through a cy
26 *pres* distribution. See *Briseno*, 844 F.3d at 1129. With regard to any potential undeliverable Notice of
27 Settlement in this case, the Court in *Rannis v. Recchia*, 380 F. App’x 646 (9th Cir. 2010) found that
28 class members who did not receive actual notice due to their mailings being deemed undeliverable were

1 still properly held to be part of the class settlement because they received the best notice practicable
2 under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless,*
3 *Inc.*, 7 Cal. 5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a
4 similar approach regarding providing notice to class members.

5 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
6 of Settlement contains all information necessary for a Class Member to assess the litigation, the
7 settlement, and whether they wanted to participate, object, or opt-out. *See Exhibit F.* The Settlement
8 Administrator will utilize a national change of address database, forwarding notices, and skip tracing in
9 an effort to ensure that all reasonable means were exhausted in attempting to provide Class Members
10 notice of this settlement. *See Exhibit A, ¶¶ 7.1-7.4.* Additionally, the entire motion for preliminary
11 approval and the Notice of Settlement will be on a web page accessible to all Class Members. *See id.* at
12 ¶ 7.2. The content of the notice provided and the manner in which it will be provided to Class
13 Members is the best practicable notice to satisfy due process. *See Fed. R. Civ. Proc. 23(c)(2)(b).*
14 Furthermore, as noted in *Briseno*, Class Members, including any whose Notice of Settlement is
15 deemed undeliverable, will receive indirect benefit through a *cy pres* distribution in this case. *See*
16 *Exhibit A, ¶ 5.6.*

17 **d. Provisional Certification of the Class is Appropriate**

18 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
19 defined community of interest in the questions of law and fact involved affecting the parties to be
20 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
21 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
22 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
23 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See Exhibit A.*

24 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

25 The proposed settlement class is ascertainable because all putative Class Members can be
26 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
27 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex,*
28 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 1,202

1 individuals who fall within the definition of Class Member, which makes joinder of all members
2 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
3 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no
4 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
5 acceptable). Thus, these requirements are satisfied.

6 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

7 The commonality requirement is met when there are questions of law or fact regarding the class
8 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
9 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
10 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
11 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
12 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
13 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
14 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
15 named representative are typical of those of the class, though "they need not be substantially identical."
16 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

17 The common questions of law and fact in this case stem from Plaintiff's contention that
18 Defendant violated California law by 1) misclassifying class members as independent contractors; 2)
19 failing to maintain time records for class members; 3) failing to pay class members for all regular and
20 overtime hours worked; 4) failing to adopt meal and rest period policies; and 5) failing to reimburse
21 class members for phone and vehicle expenses. *See Exhibit B*. The waiting time penalties, unfair
22 competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class
23 Members seek the same remedies under state law. Under these specific circumstances, the
24 commonality and predominance requirements are satisfied. Regarding the typicality requirement,
25 Plaintiff contends she suffered from the same unlawful policies, treatment, and circumstances as Class
26 Members did, will request the same remedies, and will rely on the same methods of proof to establish
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement, Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the number of workweeks they worked for Defendant. *See Exhibit A*. Finally, any settlement class member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number of workweeks stated in the Notice of Settlement (Exhibit F).

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendant's counsel in settlement discussions over the course of approximately ten months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Berzin.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the proposed settlement, including the Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs; approve the Notice of Settlement, including the proposed deadlines for opting-out of and objecting to the settlement; and schedule the final settlement approval hearing. A copy of Plaintiff's proposed order is being filed concurrently herewith.

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1
2 Dated: January 4, 2023

Shimoda & Rodriguez Law, PC

3
4 By: *Brittany Berzin*
5 Galen T. Shimoda
6 Justin P. Rodriguez
7 Brittany V. Berzin
8 Attorneys for Plaintiff
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	ILYM Group, Inc. Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: January 4, 2023

Shimoda & Rodriguez Law, PC

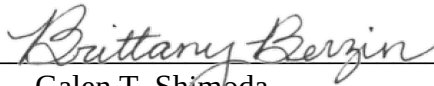
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

Joel M. Van Parys (SBN 227387)
Tashayla Billington (SBN 307050)
CDF Labor Law LLP
900 University Ave, Suite 200
Sacramento, CA 95825
Phone: (916) 361-0991

Attorneys for T.O.P. MARKETING GROUP, INC.

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

ERIKA COLLAZO, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 34-2022-00314092

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: January 19, 2023
FAC Filed: April 27, 2022
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Erika Collazo, on behalf of herself, the Labor and Workforce
3 Development Agency, Class Members, and Aggrieved Employees, and Defendant T.O.P. Marketing
4 Group, Inc., Michael D’Adamo, and Kevin D’Adamo. This Agreement is subject to the terms and
5 conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Collazo v. T.O.P. Marketing Group, Inc.*,
9 Sacramento County Superior Court, Case No. 34-2022-00314092, filed January 19, 2022.

10 1.2 “Aggrieved Employee(s)” means all non-exempt employees who have, or continue to, work
11 for T.O.P. Marketing Group, Inc. in California during the PAGA Claim Period, including but not limited
12 to all customer service associates, customer service reps, customer service assistants, customer service
13 specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives,
14 or other job title performing similar job duties, whether as an employee or independent contractor.

15 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
16 Regarding Class Action and PAGA Settlement and Release.

17 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
18 Shimoda & Rodriguez Law, PC.

19 1.5 “Class Member(s)” means all non-exempt employees who have, or continue to, work for
20 T.O.P. Marketing Group, Inc. in California during the Class Period, including but not limited to all
21 customer service associates, customer service reps, customer service assistants, customer service
22 specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives,
23 or other job title performing similar job duties, whether as an employee or independent contractor, with the
24 exception of any individuals who only performed sales of Lifeline goods or services through T.O.P.
25 Marketing Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between
26 January 19, 2018 and February 27, 2019, and who were included in the information exchanged between
27 the parties during the litigation in *Gregory v. Amerimex Communications Corp., et al.*, Case No.
28 BC670901.

1 1.6 “Class Period” means January 19, 2018 up to either (1) the Preliminary Approval Date, or
2 (2) November 26, 2022, whichever is earlier.

3 1.7 “Class Representative” means Plaintiff Erika Collazo.

4 1.8 “Complaint” means the operative Complaint on file in the Action with the Court.

5 1.9 “Court” means the Sacramento County Superior Court.

6 1.10 “Defendant” means T.O.P. Marketing Group, Inc.

7 1.11 “Defendant’s Counsel” means CDF Labor Law LLP.

8 1.12 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
9 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
10 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
11 Representative as a Participating Class Member.

12 1.13 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
13 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
14 after a signed order approving this settlement has been filed provided no appellate proceeding having been
15 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
16 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
17 further remedies or relief, whichever is later.

18 1.14 “Final Approval Date” means the date a signed order granting final approval of this
19 Agreement is filed with the Court.

20 1.15 “Gross Settlement Amount” is the sum of Eight Hundred Forty-Two Thousand Five
21 Hundred Dollars and Zero Cents (\$842,500).

22 1.16 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
23 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
24 Sections 1.19, 1.23, 5.5, and 5.8.

25 1.17 “LWDA” means the California Labor and Workforce Development Agency.

26 1.18 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
27 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
28

attorneys' fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.19 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.20 "Notice Period" means sixty (60) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.21 "PAGA" means Private Attorneys General Act.

1.22 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.23 "PAGA Claim Period" means January 14, 2021 up to either (1) to the Preliminary Approval Date or (2) November 26, 2022, whichever is earlier.

1.24 "Parties" mean Defendant, Kevin D'Adamo, Michael D'Adamo and Plaintiff.

1.25 "Participating Class Member" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.26 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.27 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant, Michael D'Adamo and Kevin D'Adamo have agreed to pay under this Agreement shall remain the property of Defendant, Michael D'Adamo and Kevin D'Adamo until the payments required under the Agreement are made.

1.28 "Qualifying Pay Periods" are pay periods worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. The calculation of a Class Member's and/or Aggrieved Employee's pay periods and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendant's records.

1.29 "Released Class Claims" means any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the

1 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
2 The Released Class Claims exclude claims for workers' compensation or unemployment insurance
3 benefits. This release will cover all Class Members who do not opt out.

4 1.30 "Released PAGA Claims" means any and all claims that were brought under the Private
5 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage
6 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during
7 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

8 1.31 "Released Parties" means Defendant, Michael D'Adamo and Kevin D'Adamo, as well as
9 Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

10 1.32 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
11 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
12 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
13 Parties each represent that they do not have any financial interest in the Settlement Administrator.

14 1.33 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
15 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
16 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
17 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
18 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
19 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
20 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
21 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
22 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
23 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
24 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
25 other filings required by any governmental taxing authority or agency; all costs and fees associated with
26 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
27 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
28 in connection with the execution of its duties under this Agreement.

1 **2. DESCRIPTION OF THE LITIGATION**

2 2.1 On or about January 14, 2022, Plaintiff sent notice to the LWDA to exhaust administrative
3 remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to
4 provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in
5 lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to pay
6 reimbursements for expenses, provisions regulating hours and days of work in the Industrial Welfare
7 Commission Order, failure to provide paid sick leave, willful misclassification as independent contractors,
8 and failure to pay contract wages and unlawful deductions. The LWDA did not respond to the notice
9 within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private
10 Attorneys General on all alleged PAGA claims.

11 2.2 On or about January 19, 2022, Plaintiff filed a class action Complaint in Sacramento County
12 Superior Court on behalf of herself and Class Members alleging claims for failure to pay overtime wages,
13 failure to pay minimum wages, meal period violations, rest period violations, wage statement violations,
14 waiting time penalties, failure to reimburse expenses, and unfair competition. Plaintiff filed a First
15 Amended Complaint on approximately April 27, 2022 to add a PAGA cause of action based on the
16 violations alleged in the January 14, 2022 notice to the LWDA on behalf of herself and Aggrieved
17 Employees.

18 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
19 with copies of all applicable versions of its policies and procedures, independent contractor agreements,
20 information on Class Members and Aggrieved Employees including, but not limited to, Class Members'
21 workweeks, the total number of Class Members, the total number of Aggrieved Employees, and payroll
22 records for a sample of Class Members and Aggrieved Employees.

23 2.4 On September 27, 2022, the Parties participated in a lengthy mediation with private
24 mediator Brandon McKelvey, Esq. At the conclusion of the mediation, the Parties were able to come to a
25 resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at
26 arm's length.

27 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
28 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the

1 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
2 merits of the claims and the defenses to those claims.

3 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) misclassifying
4 class members as independent contractors; 2) failing to maintain accurate time records; 3) failing to pay
5 class members for all regular and overtime hours worked; 4) failing to adopt meal and rest period policies;
6 5) failing to reimburse class members for phone and vehicle expenses; and 6) failing to provide all paid
7 sick time. Plaintiff's waiting time, wage statement, and PAGA claims are derivative. Defendant has denied
8 each of Plaintiff's claims and Defendant has denied that this Action is appropriate for class certification
9 for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after
10 evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting
11 these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
12 potential liability based on Defendant's factual and legal contentions and defenses.

13 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
14 and the information exchanged to date, are more than sufficient to assess the merits of the respective
15 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
16 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
17 manner and upon such terms and conditions set forth herein in order to avoid further expense,
18 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
19 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
20 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
21 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
22 circumstances.

23 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

24 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
25 settling the Action. This Agreement and the settlement it evidences is made in compromise of disputed
26 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
27 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
28 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is

1 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
2 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
3 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
4 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
5 evidence that may be applicable.

6 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
7 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
8 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
9 the Effective Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to
10 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
11 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
12 any and all other potential defenses or privileges.

13 **4. SCOPE OF THE CLASS**

14 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
15 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
16 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
17 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
18 Section 7.5.1.

19 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
20 this Agreement.

21 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
22 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
23 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
24 data request to the Settlement Administrator. The data request must contain all of the following
25 information: (a) the full name and, if applicable, Social Security Number of the individual making the
26 request; (b) the name used by such employee as of the time his or her employment or work with Defendant
27 ended; (c) the individual's dates of employment, or when they worked, with Defendant; and (d) a return
28 address to which a response may be sent. Every data request must be postmarked on or before the

1 conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is
2 received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement
3 Administrator shall promptly (in no event more than two business days) transmit the data requests to
4 Defendant's Counsel and request that Defendant review its records.

5 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
6 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
7 person who submitted the data request, at the address designated for that purpose in the data request. All
8 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
9 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
10 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
11 Employee for all other purposes.

12 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
13 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
14 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
15 dispute. Defendant's records shall control unless the individual submitting the data request provides
16 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
17 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The
18 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
19 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)
20 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement
21 Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject
22 to Court review.

23 **5. TERMS OF THE SETTLEMENT**

24 The Parties agree as follows:

25 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
26 Section 6, Defendant, Michael D'Adamo, and Kevin D'Adamo shall pay the Gross Settlement Amount
27 (\$842,500). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the
28 Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount

includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's, Michael D'Adamo's, or Kevin D'Adamo's tax obligations (*e.g.*, employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$15,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$15,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$20,000. The difference between any actual costs and the allocated \$20,000 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to the Class Representative in an amount not to exceed \$15,000 (Fifteen Thousand Dollars and Zero Cents) to compensate for the risks, time, and expense of her involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member. Defendant has agreed to not oppose Class Counsel's request for an

Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.5 PAGA Payment: Fifty Thousand Dollars and Zero Cents (\$50,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received. It is expressly understood and agreed that the receipt of such Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the sole payments to be made by Defendant, Michael D'Adamo, and Kevin D'Adamo to the Participating Class Members and Aggrieved Employees in connection with this Agreement (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 Agreement).

1 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
2 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
3 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
4 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
5 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
6 dividing their total Qualifying Pay Periods within the Class Period by the total Qualifying Pay Periods of
7 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
8 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
9 under this formula who timely opt out of the Settlement will be redistributed to Participating Class
10 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing
11 their total Qualifying Pay Periods within the Class Period by the total Qualifying Pay Periods of all
12 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
13 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
14 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total
15 Qualifying Pay Periods within the PAGA Claim Period by the total Qualifying Pay Periods by all
16 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
17 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

18 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
19 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
20 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
21 on the amounts paid to Participating Class Members as wages as well as calculating all required
22 withholdings and deductions from said wage payments. The characterization of Individual Settlement
23 Amounts to Participating Class Members and Aggrieved Employees are as follows:

24 5.9.1 One third (1/3) of each Participating Class Members' Individual Settlement Amount
25 shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
26 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
27 Settlement Amount.

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1 5.9.2 Two thirds (2/3) of each Participating Class Members' Individual Settlement
2 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted
3 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
4 which the Participating Class Members shall receive an IRS Form 1099-MISC.

5 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
6 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
7 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
8 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

9 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
10 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
11 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
12 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
13 including the treatment of such payments as not subject to withholding or deduction for payroll and
14 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
15 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
16 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
17 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
18 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
19 implications of any provision of this Agreement.

20 5.11 No Additional Contribution by Defendant: Defendant's, Michael D'Adamo's, and Kevin
21 D'Adamo's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any
22 employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other
23 costs and expenses arising out of or in connection with the performance of this Agreement shall be paid
24 from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event
25 this agreement is deemed null and void as described in Section 3 because the Court, in its independent
26 determination, finds that the Agreement does not meet the standards for settlement approval, and the Parties
27 are not otherwise able to resolve the Court's concerns and finalize settlement, then Defendant, Kevin
28

D'Adamo, Michael D'Adamo and Plaintiff shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Released Class Claims against any of the Released Parties.

6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in

consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Pay Period calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting and payments on the QSF and payment of the Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants that Class Members and Aggrieved Employees are able to read and write in English such that no translation of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how

1 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
2 Pay Periods, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
3 Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed
4 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
5 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
6 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
7 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's
8 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
9 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
10 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
11 as the Court directs.

12 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
13 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last
14 known mailing address, last known telephone number, Social Security Number, the number of pay periods
15 worked for each Class Member and Aggrieved Employee, and any other information the Settlement
16 Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein.
17 No later than fourteen (14) calendar days after receipt of such address information, the Settlement
18 Administrator will perform a national change of address ("NCOA") search, update the addresses per the
19 results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as
20 Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The
21 Settlement Administrator shall maintain all information received from Defendant confidential to itself, and
22 Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Pay
23 Periods and estimated Individual Settlement Amounts for Class Members and Aggrieved Employees prior
24 to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

25 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
26 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
27 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
28 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly

attempt to determine a correct address using a skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request will be specifically identified in any proposed order granting final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the

1 Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts
2 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
3 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

4 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
5 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
6 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
7 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
8 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
9 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
10 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
11 number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092) (e) be signed; and (f)
12 be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section
13 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice of intent to
14 appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to
15 appear at the final approval hearing.

16 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
17 Pay Periods on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
18 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
19 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
20 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
21 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
22 dispute. Defendant's records shall presumptively control unless the Class Member can produce
23 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
24 information, the Class Member shall be credited or subtracted Qualifying Pay Periods in accordance with
25 their submitted dispute and that final number of Qualified Pay Periods shall govern the calculation of that
26 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
27 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
28 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class

Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

7.5.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant, Kevin D'Adamo, and Michael D'Adamo shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after the settlement is funded, the

1 Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the
2 Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA,
3 Settlement Administrator Costs, and payment to Participating Class Members and/or Aggrieved Employees
4 as required under this Agreement and approved by Court.

5 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
6 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
7 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
8 after the Final Approval Date.

9 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
10 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
11 requested by Class Counsel.

12 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
13 Individual Settlement Amount.

14 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
15 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
16 Agreement. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent
17 necessary to determine the amount of the payroll tax payment required.

18 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
19 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
20 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
21 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
22 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
23 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
24 cashing deadline.

25 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
26 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
27 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
28 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete

and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant, Michael D'Adamo and Kevin D'Adamo to fund settlement	Within 21 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after funding
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

1 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
2 Settlement.

3 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
4 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
5 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
6 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
7 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
8 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
9 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
10 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
11 approved as fair, reasonable and adequate as to the Class Members.

12 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
13 Agreement.

14 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
15 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
16 appropriate to assure effective communication to individual Class Members of information about their
17 rights and obligations under this Agreement.

18 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
19 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
20 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
21 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
22 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
23 of the Claim Administrator's mailings including tracing and re-mailing efforts.

24 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
25 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
26 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
27 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
28 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an

Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant, Michael D'Adamo and Kevin D'Adamo have represented that there are no more than 18,918 Qualifying Pay Periods during the Class Period. In the event the number

1 of Qualifying Pay Periods during the Class Period is more than 20,810 (*i.e.*, greater than 10% more than
2 18,918), then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess
3 of 18,918, multiplied by the pay period value. For example, if there were 11,900 pay periods represented
4 to exist during the Class Period, but there are actually 15,000 pay periods in the Class Period, and the
5 actual pay period value is \$5.00 per pay period, Defendant, Michael D’Adamo and Kevin D’Adamo
6 would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 pay periods – 11,900 pay
7 periods = 3,100 pay periods x \$5.00/pay period).

8 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
9 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
10 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
11 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
12 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
13 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
14 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
15 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
16 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
17 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
18 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
21 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
22 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
23 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
25 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
26 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
27 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
28

1 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
2 THIS AGREEMENT.

3 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
5 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
6 and discharged in this Agreement.

7 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
8 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
9 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
10 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

11 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
15 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
16 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
17 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
18 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

19 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
20 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
21 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
22 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
23 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
24 otherwise, to effectuate this Agreement and the terms set forth herein.

25 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
26 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
27 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
28 Complaint, the representative character of the Action, the validity of any of the claims that were or could

1 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
2 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
3 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
4 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
5 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
6 the intention to avoid further disputes and litigation.

7 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
8 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
9 third business day after mailing by United States certified mail, return receipt requested, addressed as
10 follows:

11 To Plaintiff and the Class:

12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Shimoda & Rodriguez Law, PC
16 9401 East Stockton Blvd., Suite 120
17 Elk Grove, CA 95624

18 To Defendant:

19 Joel M. Van Parys
20 Tashayla Billington
21 CDF Labor Law LLP
22 900 University Ave, Suite 200
23 Sacramento, CA 95825

24 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
25 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
26 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
27 party or its counsel participated in the drafting of this Agreement.

28 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
as expressly provided in this Agreement.

1 10.12 No Modifications: This Agreement may be amended or modified only by a written
2 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
3 discharged except by performance in accordance with its terms.

4 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
6 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
7 to effectuate its terms and to execute any other documents required to effectuate the terms of this
8 Agreement.

9 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
10 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
11 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
12 may be executed on behalf of all Class Members by the Class Representative.

13 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in
15 counterparts, and execution of counterparts shall have the same force and effect as if each had signed the
16 same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and
17 effect of originals.

18 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
20 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
21 and governed by, the substantive laws of the State of California without giving effect to that State's choice
22 of law principles.

23 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
24 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
25 this Agreement, or any provision thereof.

26 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
27 construed as retaliation against any Class Members for participating or seeking to participate in this class
28 action settlement. The Parties will not discourage any class member from participating or seeking to

1 participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached.

3 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
4 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
5 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
6 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
7 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
8 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
10 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

11 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
12 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
13 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
16 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
18 attorneys, as of the day and year herein set forth.

19
20
21 **For Plaintiff:**

22 Date: 11/18/2022

DocuSigned by:
Erika F. Collazo
BBBDB8F7A2EC414...
Erika Collazo

23
24 **For Defendant:**

25 Date: _____

26 By: 
27 For T.O.P. Marketing Group, Inc.
28

1
2
3 Date: _____

Michael D'Adamo

4
5
6
7 Date: _____

Kevin D'Adamo

8
9
10
11 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

12
13 Dated: 11/18/22 _____

By: *Brittany Berzin*
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff and Aggrieved
Employees

14
15
16 APPROVED AS TO FORM

CDF LABOR LAW LLP

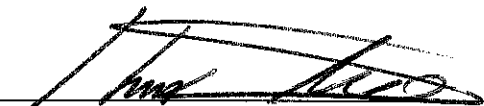
17
18
19 Dated: _____

By: _____
Joel M. Van Parys
Tashayla Billington
Attorneys for Defendant

1
2
3 Date: 11/28/22
4


Michael D'Adamo

5
6
7 Date: 11/28/22
8


Kevin D'Adamo

9
10
11 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

12
13 Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff and Aggrieved
Employees

14
15
16 APPROVED AS TO FORM

CDF LABOR LAW LLP

17
18
19 Dated: November 29, 2022


By: _____
Joel M. Van Parys
Tashayla Billington
Attorneys for Defendant

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **34-2022-00314092**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all non-exempt employees or contractors who have, or continue to, work for T.O.P. Marketing Group, Inc. in California during the Class Period (as defined below), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor, with the exception of any individuals who only performed sales of Lifeline goods or services through T.O.P. Marketing Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January 19, 2018 and February 27, 2019, and who were included in the information exchanged between the parties during the litigation in *Gregory v. Amerimex Communications Corp., et al.*, Case No. BC670901 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Erika Collazo (“Plaintiff” or “Class Representative”) on behalf of Class Members as defined above and Defendant T.O.P. Marketing Group, Inc. (“Defendant”) and its owners, Kevin D’Adamo and Michael D’Adamo. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] pay periods during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any pay period disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On January 19, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of California for the County of Sacramento on behalf of herself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00314092. The Class Period is January 19, 2018 to [REDACTED] (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages; 2) failing to pay minimum wages; 3) failing to provide meal periods or pay premiums in lieu thereof; 4) failing to provide rest periods or pay premiums in lieu thereof; 5) failing to provide accurate wage statements; 6) failing to pay final wages; 7) failing to pay reimbursements for expenses; 8) violating provisions regulating hours and days of work in the Industrial Welfare Commission Order; 9) failing to provide paid sick leave; 10) willfully misclassifying workers as independent contractors; and 11) failing to pay contract

wages and making unlawful deductions. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees or contractors who have, or continue to, work for T. O. P. Marketing Group, Inc. in California during the Class Period (as defined above), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor, with the exception of any individuals who only performed sales of Lifeline goods or services through T.O.P. Marketing Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January 19, 2018 and February 27, 2019, and who were included in the information exchanged between the parties during the litigation in *Gregory v. Amerimex Communications Corp., et al.*, Case No. BC670901. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees or contractors who have, or continue to, work for T.O.P. Marketing Group, Inc. in California during the PAGA Claim Period (as defined below), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant, Kevin D'Adamo and Michael D'Adamo have agreed to pay a total sum of Eight Hundred Forty-Two Thousand Five Hundred Dollars and Zero Cents (\$842,500) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representative's Enhancement Payment of \$15,000, and \$50,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant, Kevin D'Adamo or Michael D'Adamo in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of pay periods worked by participating Class Members during the Class Period. Of the \$50,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of pay periods you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of pay periods worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding pay periods, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages

for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total pay periods worked within the Class Period by the total pay periods worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as January 14, 2021 up to [REDACTED]. Defendant's records indicate that you worked [REDACTED] pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Pay Period Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of pay periods worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional pay periods must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, Michael D'Adamo and Kevin D'Adamo, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your pay period information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the pay period calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, 34-2022-00314092); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, 34-2022-00314092) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, CA 95814, on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel’s motion for preliminary approval, the Agreement, and any other documents

required by the Court at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Defendant's Counsel as follows:

Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Joel M. Van Parys
Tashayla Billington
CDF Labor Law LLP
900 University Ave, Suite 200
Sacramento, CA 95825
Phone: (916) 361-0991
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
04/27/2022
nzayaad
By _____, Deputy
Case Number:
34-2022-00314092

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda & Rodriguez Law, PC
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff ERIKA COLLAZO

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

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff ERIKA COLLAZO ("Plaintiff"), on behalf of herself and all other similarly situated
2 employees, hereby files this Complaint against Defendants T.O.P. MARKETING GROUP, INC., a
3 New York Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 "Defendants"). On information and belief, Plaintiff alleges the following:

5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wage, meal and rest period
8 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
9 competition.

10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, California Business and Professions Code, and Wage Order No. 4.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
15 Defendants reside in Sacramento and some of the wrongful acts and violations of law asserted herein
16 occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento
17 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
22 approximately January 14, 2022. Plaintiff provided facts and legal bases for her claims within the notice
23 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
24 Plaintiff submitted the \$75.00 filing fee. The January 14, 2022 notice was also sent via certified mail to
25 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
26 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
27 believes that she has exhausted all administrative remedies pursuant to the Private Attorneys General
28 Act and may bring this action on behalf of herself and all Aggrieved Employees. See Cal. Labor Code §

1 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
2 (2005). Aggrieved Employees includes 1) all non-exempt, hourly employees who have, or continue to,
3 work for Defendants in California from January 14, 2021 to the present; and 2) all individuals who have,
4 or continue to, work for Defendants in California as customer service associates, customer service reps,
5 customer service assistants, customer service specialists, warehouse workers, canvassers, event
6 marketers, distribution specialists, sales representatives, or other job title performing similar job duties,
7 whether as an employee or independent contractor, from January 14, 2021 to the present.

8 **PARTIES**

9 5. ERIKA COLLAZO is an individual over the age of eighteen (18) and is a resident of
10 the State of California.

11 6. On information and belief, Plaintiff alleges, T.O.P. MARKETING GROUP, INC., is
12 now and/or at all times mentioned in this Complaint was a New York Corporation and the owner and
13 operator of an industry, business and/or facility doing business in the State of California.

14 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
15 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
16 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
17 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
18 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
19 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
20 Plaintiff.

21 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
22 other Defendants and was acting within the course and scope of such agency or employment. The
23 Defendants are jointly and severally liable to Plaintiff.

24 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
25 were members of and/or engaged in a joint employment, joint venture, partnership and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
27 joint venture, partnership and common enterprise.

28 //

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt, hourly employees who have, or continue to, work for Defendants in California from January 19, 2018 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all hours worked;
- (2) Whether Defendants paid the correct overtime wages to putative class members;
- (3) Whether Defendants correctly calculated putative class members' regular rates of pay;

- (4) Whether Defendants authorized and permitted meal periods;
- (5) Whether Defendants authorized and permitted rest periods;
- (6) Whether Defendants had a policy to reimburse putative class members for the use of their personal cellphones;
- (7) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (8) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who Defendants failed to pay for all regular and overtime hours. Defendants also did not pay them the correct regular rates of pay. Additionally, Defendants did not provide all meal and rest periods and issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly

1 situated persons to prosecute their common claims in a single forum simultaneously,
2 efficiently, and without the unnecessary duplication of effort and expense that numerous
3 individual actions would engender. Further, as damages suffered by each individual
4 member of the class may be relatively small, the expenses and burden of the individual
5 litigation would make it difficult or impossible for individual members of the class to
6 redress the wrongs done to them, and an important public interest will be served by
7 addressing the matter as a class action. The cost to the court system of adjudication of
8 such individualized litigation would be substantial. Individualized litigation would also
9 present the potential for inconsistent or contradictory judgments.

10 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 GENERAL ALLEGATIONS

13 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
14 set forth herein.

15 16. Plaintiff worked for Defendants from approximately July 6, 2020 to March 2021. At
16 Defendants' direction, Defendants' office staff, including Plaintiff, would create and post ads for job
17 openings to hire individuals that Defendants would unilaterally classify as independent contractors
18 (herein referred to as canvassers). Office staff would further schedule two interviews for job applicants,
19 including an unpaid day of observation, and then enroll the applicants in Defendants' online portal.
20 Thereafter, Defendants would e-mail the canvassers links to enroll in various campaigns for companies
21 that Defendants contracted with that enrolled individuals in programs for free or discounted phones or
22 flat rate utility bills. Canvassers did not sell any products or services.

23 17. Office staff would earn bonuses for recruiting individuals as canvassers. Canvassers
24 were paid flat sum bonuses (or pieces) per individual enrolled in a utility program (e.g., \$50 per
25 individual). For the phone programs, canvassers were allotted points for obtaining e-mail addresses for
26 individuals and completing enrollment of the individuals in the phone program. The canvassers would
27 then be paid certain amounts depending on the number of points they had allotted. Canvassers also split
28

1 bonuses they earned with other canvassers. For example, a canvasser who recruited other canvassers to
2 work for Defendants would receive a portion of those canvassers' bonuses.

3 18. Defendants did not pay Plaintiff and similarly situated employees for all regular and
4 overtime hours worked. Defendants required office staff to work on the weekends but did not pay them
5 for any work performed on weekends. Defendants also required office staff to clock out at the end of
6 the day but continue working off the clock. Additionally, Defendants did not keep track of the hours
7 that canvassers worked and did not pay them for time spent during daily meetings and trainings or for all
8 hours worked.

9 19. Defendants did not incorporate the value of non-discretionary remuneration, such as
10 bonuses, into the calculation of employees' regular rates of pay for the purpose of calculating overtime
11 and paid sick time owed to them. For example, during the 12/7/20-12/13/20 pay period, Plaintiff's
12 paystub reflects she worked 0.13 hours of overtime and earned a bonus of \$9.36. However, Plaintiff
13 was paid overtime at 1.5x her base hourly rate and no adjustment was made for the value of the bonus
14 she received.

15 20. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
16 all meal and rest periods owed to them. Additionally, Defendants did not have any policy for Plaintiff
17 and similarly situated employees to begin meal periods before their fifth hour of work to the extent a
18 meal period was received. Defendants also discouraged individuals from taking breaks by making
19 statements such as, "breaks are for losers." Defendants did not have any policy authorizing meal and
20 rest periods for canvassers. Defendants did not pay Plaintiff and similarly situated employees any meal
21 or rest period premiums.

22 21. Defendants required Plaintiff and similarly situated employees to use their personal
23 cellphones and vehicles for work without being reimbursed. Defendants did not have any policy to
24 reimburse Plaintiff or similarly situated employees for the use of their personal cellphones or vehicles
25 for work. Office staff used their cellphones to enroll canvassers and communicate on WhatsApp.
26 Canvassers used their cellphones to communicate on WhatsApp and enroll individuals in the phone or
27 utility programs. Office staff would use their personal vehicles to run errands for Defendants throughout
28 the day and canvassers would use their personal vehicles to travel from the office to various locations to

1 canvass. Additionally, Defendants required canvassers to carry a binder and badge provided by
2 Defendants but would charge canvassers if they forgot or lost these items and make deductions from
3 their earnings.

4 22. Defendants did not have any policy to provide canvassers with paid sick leave as was
5 required under the Healthy Workplaces Healthy Families Act of 2014.

6 23. Defendants did not issue any wage statements to canvassers. Defendants issued wage
7 statements to office staff that did not accurately state total hours worked, all applicable rates in effect
8 during the pay period and the number of hours worked at each rate, and gross and net wages.

9 24. Plaintiff and similarly situated employees had unpaid wages owing to them at the time of
10 their separation or termination, including minimum wages, overtime wages, and paid sick time. As of
11 the filing of this Complaint those wages have not been paid.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES**
(As to all Defendants)

15 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
16 set forth herein.

17 26. During the class period, Defendants were required to compensate putative class members
18 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per
19 day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in
20 excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code*
21 *§§ 510, 1194.*

22 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
23 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
24 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
25 worked at their regular rates of pay. Plaintiff and similarly situated employees would work overtime
26 hours on the weekends and at the end of the day after they were told to clock out. Additionally,
27 Defendants paid Plaintiff and similarly situated employees non-discretionary remuneration, such as
28 bonuses, but did not incorporate the value of bonuses into employees' regular rates of pay.

1 28. Plaintiff and similarly situated employees were not exempt from overtime protections
2 employees under the California Wage Orders and Labor Code.

3 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
5 the extent pertinent as if set forth here in full.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(As to all Defendants)**

9 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
10 set forth herein.

11 31. For the period preceding the filing of this Complaint, Defendants were required to
12 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
13 every hour worked. See MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
14 1194.

15 32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
16 obligation to pay the minimum wage for each hour worked but failed to do so. Defendants required
17 Plaintiff and similarly situated employees to respond to messages on the weekends when they were not
18 on the clock and to work off the clock during the week after they were instructed to clock out.

19 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **THIRD CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
26 set forth herein.

27 35. An employer must provide an employee a meal period in accordance with the
28 applicable Wage Order, and California Labor Code sections 226.7 and 512.

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1 36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours..

4 37. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 38. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes. Defendants also
12 failed to allow Plaintiff and similarly situated employees to take their first meal period before the
13 completion of their fifth hour of work. Plaintiff and similarly situated employees did not waive their
14 rights to all meal periods throughout their employment.

15 39. Defendants further failed to pay Plaintiff and similarly situated employees the
16 applicable meal period premiums for any such missed meal breaks.

17 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
18 employees have been damaged as stated in the section below entitled "DAMAGES," which is
19 incorporated here to the extent pertinent as if set forth here in full.

20 **FOURTH CAUSE OF ACTION**
21 **REST PERIOD VIOLATIONS**
(As to all Defendants)

22 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
23 set forth herein.

24 42. An employer must provide an employee a rest period in accordance with the
25 applicable Wage Order and California Labor Code section 226.7.

26 43. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
27 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
28 four (4) hours or a major fraction thereof.

1 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
2 accurately itemize all hours worked, applicable hourly rates in effect during the pay period and the
3 hours worked at each corresponding rate of pay, and gross and net wages earned. Plaintiff and
4 similarly situated employees were not able to promptly and easily determine their total hours worked
5 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
6 confusion over whether they received all wages owed and were prevented from effectively
7 challenging information on their wage statements.

8 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **SIXTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
(As to all Defendants)

13 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
14 set forth herein.

15 52. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. See Cal. Lab. Code § 201.

17 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. See Cal. Lab. Code § 202.

19 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 and overtime wages, meal and rest period premiums and paid sick time at their termination or within the
21 required time after their separation from employment.

22 55. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. See Cal. Lab. Code § 203.

25 56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Such conduct shows Defendants had knowledge
27 of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining
28 wages owed.

1 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
2 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
3 thirty (30) days for Defendants' failure to pay all wages due.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES**
6 **(As to all Defendants)**

7 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
8 set forth herein.

9 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
11 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
12 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
13 unlawful."

14 60. Defendants required Plaintiff and similarly situated employees to use their personal
15 cellphones to enroll job applicants, take pictures of IDs, and communicate via WhatsApp. Defendants
16 also required Plaintiff and similarly situated employees to use their personal vehicles for work as
17 described above. Defendants did not pay any reimbursement for personal cellphone or vehicle use.

18 61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **EIGHTH CAUSE OF ACTION**
22 **UNFAIR COMPETITION**
23 **(As to all Defendants)**

24 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
25 set forth herein.

26 63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
27 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
28 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
California Business and Professions ("B&P") Code § 17200.

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1 64. Plaintiff and similarly situated employees were not paid all wages owed, including
2 minimum and overtime wages, and meal and rest period premiums, and paid sick time during their
3 employment or any time thereafter.

4 65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
5 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
6 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

7 66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
8 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
9 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
10 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 511, 512, and 1194 all
11 in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this
12 Action.

13 **NINTH CAUSE OF ACTION**
14 **PRIVATE ATTORNEYS GENERAL ACT**
15 **(As to all Defendants)**

16 67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully
17 set forth herein.

18 68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
19 following provisions of the Labor Code in their dealings with him and other similarly situated current
20 and former employees:

- 21 • Violation of Labor Code §§ 510, 511, 1194; IWC Wage Order 4, § 3 (Failure to Pay
22 Overtime Wages)
- 23 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay
24 Minimum Wages)
- 25 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
26 Statements)
- 27 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 28 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B)
(Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide
Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 226.8 (Willful Misclassification As Independent
Contractor)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages)

69. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;

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1 4. As to the Third Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 5. As to the Fourth Cause of Action:

- 6 a. Wages in an amount to be proven at trial;
- 7 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 8 section 1021.5;

9 6. As to the Fifth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 7. As to the Seventh Cause of Action:

- 18 a. An amount to be proven at trial;
- 19 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

20 8. As to the Ninth Cause of Action:

- 21 a. For civil penalties as provided for in the Labor Code for each enumerated
- 22 violation in an amount proven at trial;
- 23 b. For those Labor Code sections, the violation of which there is no civil penalty
- 24 provided, the default penalty provided in Labor Code section 2699(f): for any
- 25 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 26 period; For any subsequent violation, two hundred dollars (\$200) for each
- 27 aggrieved employee per pay period;
- 28 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

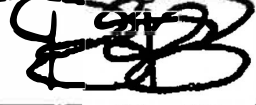
1 d. For any other remedies as allowed by law and/or deemed appropriate by the
2 Court;

3 9. For such other and further relief as this Court may deem just and proper,
4 including, but not limited to:

- 5 a. Wages as proved at trial;
6 b. Injunctive and Declaratory relief;
7 c. Attorney's fees and costs as provided for by law; and
8 d. Interest.

9
10 Dated: April 4, 2022

Shimoda & Rodriguez Law, PC

11
12 By: 

13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Brittany V. Berzin
16 Attorneys for Plaintiff
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1 Collazo v. T.O.P. Marketing Group, Inc.
2 Sacramento County Superior Court of California 34-2022-00314092

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Estefania Rodriguez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On April 27, 2022, I served the following documents on the party below:

9 • **First Amended Class Action Complaint**

10 Joel M. Van Parys (SBN 227387) 11 CDF Labor Law LLP 12 900 University Ave, Suite 200 13 Sacramento, CA 95825 14 Phone: (916) 361-0991 Email: jvanparys@cdflaborlaw.com dkhatib@cdflaborlaw.com ekastern@cdflaborlaw.com	
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15 [] [By Mail] I am familiar with my employer's practice for the collection and
16 processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action
20 by placing a true copy thereof enclosed in a sealed envelope with postage
21 thereon fully prepaid, for collection and mailing on this date, following
22 ordinary business practices, at Elk Grove, California, addressed as set forth
23 above.

24 [] [By Personal Service] By personally delivering a true copy thereof to the
25 office of the addressee above.

26 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
27 above. No error was reported by the e-mail service that I used.

28 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on April 27, 2022, at Elk Grove, California.


Estefania Rodriguez

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

January 14, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Collazo v. T.O.P. Marketing Group, Inc.*

Dear Labor Commissioner,

As counsel for Erika Collazo ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

T.O.P. Marketing Group Inc.
990 Westbury Rd., Suite 102
Westbury, NY 11590

Kevin D'Adamo
990 Westbury Rd., Suite 102
Westbury, NY 11590

Michael D'Adamo
990 Westbury Rd., Suite 102
Westbury, NY 11590

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against T.O.P. Marketing Group, Inc., Michael D'Adamo and Kevin D'Adamo ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: 1) all non-exempt, hourly employees who have, or continue to, work for Defendant in California from one (1) year prior to the date of this letter to the present; and 2) all individuals who have, or continue to, work for Defendants in California as a customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor, from one (1) year prior to the date of this letter to the present. Plaintiff is clearly entitled to bring a Private



Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately July 6, 2020 to March 2021. At Defendants’ direction, Defendants’ office staff would create and post ads for job openings to hire individuals that Defendants would unilaterally classify as independent contractors (herein referred to as canvassers). Office staff would further schedule two interviews for job applicants, including an unpaid day of observation, and then enroll the applicants in Defendants’ online portal. Thereafter, Defendants would e-mail the canvassers links to enroll in various campaigns for companies that Defendants contracted with that enrolled individuals in programs for free or discounted phones or flat rate utility bills. Canvassers did not sell any products or services.

Office staff would earn bonuses for recruiting individuals as canvassers. Canvassers were paid flat sum bonuses (or pieces) per individual enrolled in a utility program (e.g., \$50 per individual). For the phone programs, canvassers were allotted points for obtaining e-mail addresses for individuals and completing enrollment of the individuals in the phone program. The canvassers would then be paid certain amounts depending on the number of points they had allotted. Canvassers also split bonuses they earned with other canvassers. For example, a canvasser who recruited other canvassers to work for Defendants would receive a portion of those canvassers’ bonuses.

Defendants did not pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked. Defendants required office staff to work on the weekends but did not pay them for any work performed on weekends. Defendants also required office staff to clock out at the end of the day but continue working off the clock. Additionally, Defendants did not keep track of the hours that canvassers worked and did not pay them for time spent during daily meetings and trainings or for all hours worked.

Defendants did not incorporate the value of non-discretionary remuneration, such as bonuses, into the calculation of Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime and paid sick time owed to them. For example, during the 12/7/20-12/13/20 pay period, Plaintiff’s paystub reflects she worked 0.13 hours of overtime and earned a bonus of \$9.36. However, Plaintiff was paid overtime at 1.5x her base hourly rate and no adjustment was made for the value of the bonus she received.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Additionally, Defendants did not have any policy for Plaintiff and Aggrieved Employees to begin meal periods before their fifth hour of work to the



extent a meal period was received. Defendants also discouraged individuals from taking break making statements such as, “breaks are for losers.” Defendants did not have any policy authorizing meal and rest periods for canvassers. Defendants did not pay Plaintiff and Aggrieved Employees any meal or rest period premiums.

Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones and vehicles for work without being reimbursed. Office staff used their cellphones to enroll canvassers and communicate on WhatsApp. Canvassers used their cellphones to communicate on WhatsApp and enroll individuals in the phone or utility programs. Office staff would use their personal vehicles to run errands for Defendants throughout the day and canvassers would use their personal vehicles to travel from the office to various locations to canvass. Additionally, Defendants required canvassers to carry a binder and badge provided by Defendants but would charge canvassers if they forgot or lost these items and make deductions from their earnings.

Defendants did not have any policy to reimburse Plaintiff or Aggrieved Employees for the use of their personal cellphones to enroll potential hires, take pictures of their IDs, and communicate on WhatsApp. Defendants also did not provide any company cellphones, so Plaintiff and Aggrieved Employees were required to use their personal cellphones. Defendants did not pay Plaintiff or Aggrieved Employees any reimbursements.

Defendants did not have any policy to provide canvassers with paid sick as was required under the Healthy Workplaces Healthy Families Act of 2014.

Defendants did not issue any wage statements to canvassers. Defendants issued wage statements to office staff that did not accurately state total hours worked, all applicable rates in effect during the pay period and the number of hours worked at each rate, and gross and net wages.

Plaintiff and Aggrieved Employees had unpaid wages owing to them at the time of their separation or termination, including minimum wages, overtime wages, and paid sick time. As of the date of this letter, those wages have not been paid.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 511, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Employers must pay employees 2 times their regular rate of pay for all hours



worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As described above, Plaintiff and Aggrieved Employees were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

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Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages and meal and rest period premiums be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for work use of personal cell phone by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer



to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Kevin D'Adamo and Michael D'Adamo were officers, directors, shareholders, and/or managing agents of T.O.P. Marketing Group, Inc. responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Nine – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Ten – Violation of Labor Code § 226.8 (Willful Misclassification As Independent Contractor)

Labor Code section 226.8 provides that it is unlawful for any person or employer to willfully misclassify individuals as independent contractors and/or charge these willfully misclassified individuals fees or make any deduction from compensation for any purpose. For the reasons stated above, Defendants violated this statute in willfully misclassifying Aggrieved Employees as well as charging fees and/or causing deductions from their wages in connection with their employment.



Count Eleven – Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

Labor Code section 221 states that “[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated above, Defendants deducted amounts from the wages it agreed to pay Aggrieved Employees. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Brittany V. Berzin

cc: Client via e-mail

1 *Collazo v. T.O.P. Marketing Group, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Allyssa Phonglom, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On January 14, 2022, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9 T.O.P. Marketing Group Inc. 10 990 Westbury Rd., Suite 102 11 Westbury, NY 11590	Kevin D'Adamo 990 Westbury Rd., Suite 102 Westbury, NY 11590
12 Michael D'Adamo 13 990 Westbury Rd., Suite 102 14 Westbury, NY 11590	

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
22 personally delivered via the following overnight courier service:_____.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on January 14, 2022, at Elk Grove,
California.

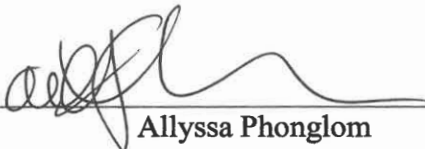
25 
26 Allyssa Phonglom
27
28

EXHIBIT D

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Collazo v. T.O.P Marketing Group, Inc.

Requesting Attorneys Name:	Brittany Berzin
E-Mail:	bberzin@shimodalaw.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroup.com
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	1,322
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Programming of Class Database	Hourly	\$175.00	4	\$700.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,300.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	8	\$960.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	4	\$280.00
Report Processing	Hourly	\$70.00	6	\$420.00
NCOA	Flat Rate	\$143.02	1	\$143.02
Toll Free Customer Service Representatives	Flat Rate	\$225.00	1	\$225.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00

Subtotal \$2,918.02

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity

Rate Type

Unit Cost

Volume

Amount

NOTIFICATION/MAILING

Fulfillment of Notice	Per Piece	\$1.50	1,322	\$1,983.00
USPS First Class Postage	Per Piece	\$0.55	1,322	\$727.10
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	79	\$158.64
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$3,168.74

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	7	\$1,050.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	7	\$875.00
Check, Stub & Release - Print & Mail (1099)	Per Check	\$1.25	1,322	\$1,652.50
USPS First Class Postage	Per Piece	\$0.55	1,322	\$727.10
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$2.00	79	\$158.64
Preparation of Taxes	Hourly	\$120.00	14	\$1,680.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$7,643.24

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	6	\$600.00
Project Manager Final Reporting	Hourly	\$120.00	6	\$720.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$1,820.00

TOTAL CASE ESTIMATE - NOT TO EXCEED: \$16,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

Shimoda & Rodriguez Law, PC Costs - Collazo v. T.O.P. Marketing

Date	Description	Amount
1/14/2022	Payment to LWDA - PAGA Filing Fee	\$75.00
1/14/2022	Certified Mail - PAGA Letter to Employers	\$12.84
1/15/2022	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
1/19/2022	Payment to Court - Complaint	\$435.00
1/19/2022	Service Fee to Court - Complaint	\$40.00
1/25/2022	Postage - N&A Packet to OC	\$7.75
2/1/2022	Payment to Court - Complex Fees	\$1,000.00
2/1/2022	Service Fee to Court - Notice of Depositing Complex Fees to Court	\$40.00
2/17/2022	Service Fee to Court - Proof of Service of Summons	\$40.00
4/4/2022	Payment to Court - Stipulation to Amend	\$20.00
4/4/2022	Service Fee to Court - Stipulation to Amend	\$40.00
5/19/2022	One Legal Fee - First Amended Complaint	\$78.76
6/21/2022	Mediation - Payment to Mediator	\$6,250.00
7/23/2022	Payment to Court - Jury fee	\$150.00
8/24/2022	Service Fee to Court - Joint Case Management Statement	\$40.00
9/28/2022	Mediation - Mediation meal for GS	\$20.00
9/28/2022	Mediation - Travel (Flight)	\$352.20
10/14/2022	One Legal Fee - Joint Case Management Statement	\$61.26
Anticipated	One Legal Fee - Preliminary Approval Motion	\$300.00
Anticipated	Service Fee - Preliminary Approval Motion (Personal Service)	\$80.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	One Legal Fee - Joint Case Management Statement	\$61.26
Anticipated	One Legal Fee - Final Approval Motion	\$300.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Fee - Compliance Declarations	\$70.00
TOTAL:		\$10,094.07

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **34-2022-00314092**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all non-exempt employees or contractors who have, or continue to, work for T.O.P. Marketing Group, Inc. in California during the Class Period (as defined below), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor, with the exception of any individuals who only performed sales of Lifeline goods or services through T.O.P. Marketing Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January 19, 2018 and February 27, 2019, and who were included in the information exchanged between the parties during the litigation in *Gregory v. Amerimex Communications Corp., et al.*, Case No. BC670901 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Erika Collazo (“Plaintiff” or “Class Representative”) on behalf of Class Members as defined above and Defendant T.O.P. Marketing Group, Inc. (“Defendant”) and its owners, Kevin D’Adamo and Michael D’Adamo. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] pay periods during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any pay period disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On January 19, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of California for the County of Sacramento on behalf of herself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00314092. The Class Period is January 19, 2018 to [REDACTED] (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages; 2) failing to pay minimum wages; 3) failing to provide meal periods or pay premiums in lieu thereof; 4) failing to provide rest periods or pay premiums in lieu thereof; 5) failing to provide accurate wage statements; 6) failing to pay final wages; 7) failing to pay reimbursements for expenses; 8) violating provisions regulating hours and days of work in the Industrial Welfare Commission Order; 9) failing to provide paid sick leave; 10) willfully misclassifying workers as independent contractors; and 11) failing to pay contract

wages and making unlawful deductions. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees or contractors who have, or continue to, work for T. O. P. Marketing Group, Inc. in California during the Class Period (as defined above), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor, with the exception of any individuals who only performed sales of Lifeline goods or services through T.O.P. Marketing Group, Inc. for SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January 19, 2018 and February 27, 2019, and who were included in the information exchanged between the parties during the litigation in *Gregory v. Amerimex Communications Corp., et al.*, Case No. BC670901. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees or contractors who have, or continue to, work for T.O.P. Marketing Group, Inc. in California during the PAGA Claim Period (as defined below), including but not limited to all customer service associates, customer service reps, customer service assistants, customer service specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales representatives, or other job title performing similar job duties, whether as an employee or independent contractor. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant, Kevin D'Adamo and Michael D'Adamo have agreed to pay a total sum of Eight Hundred Forty-Two Thousand Five Hundred Dollars and Zero Cents (\$842,500) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representative's Enhancement Payment of \$15,000, and \$50,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant, Kevin D'Adamo or Michael D'Adamo in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of pay periods worked by participating Class Members during the Class Period. Of the \$50,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of pay periods you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of pay periods worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding pay periods, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages

for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total pay periods worked within the Class Period by the total pay periods worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as January 14, 2021 up to [REDACTED]. Defendant's records indicate that you worked [REDACTED] pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Pay Period Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of pay periods worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional pay periods must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, Michael D'Adamo and Kevin D'Adamo, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your pay period information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the pay period calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, 34-2022-00314092); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.*, *Collazo v. T.O.P. Marketing Group, Inc.*, 34-2022-00314092) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, CA 95814, on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel’s motion for preliminary approval, the Agreement, and any other documents

required by the Court at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Defendant's Counsel as follows:

Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Joel M. Van Parys
Tashayla Billington
CDF Labor Law LLP
900 University Ave, Suite 200
Sacramento, CA 95825
Phone: (916) 361-0991
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Erika Collazo (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant T.O.P. Marketing Group, Inc. (“Defendant”) failed to pay overtime wages, failed to pay
10 minimum wages, failed to provide meal and rest periods or premiums in lieu thereof, failed to provide
11 accurate wage statements, failed to timely pay final wages, failed to reimburse expenses, and engaged
12 in unfair competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys
13 General Act (“PAGA”). These claims were based allegations that Defendant 1) misclassified Class
14 Members as independent contractors; 2) failed to maintain accurate time records for Class Members; 3)
15 failed to pay Class Members for all regular and overtime hours worked; 4) failed to adopt meal and rest
16 period policies; and 5) failed to reimburse Class Members for phone and vehicle expenses¹. The
17 PAGA, waiting time, wage statement, and unfair competition claims also derive from these violations.

18 3. Plaintiff is the only named representative in this matter. From our initial investigations
19 going over facts and documents with Plaintiff, we believed the claims had merit and could be brought
20 on a class basis. We filed the action on January 19, 2022. Plaintiff exhausted administrative remedies
21 through the Labor and Workforce Development Agency (“LWDA”) prior to amending the Complaint
22 to add a PAGA claim. Plaintiff filed a notice with the LWDA on January 14, 2022, setting forth the
23 facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed
24 with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and
25 the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA
26 regarding its intent to investigate the claims alleged in Plaintiff’s notice for more than 65 days. As

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28 ¹ Plaintiff also alleged Defendant paid non-discretionary bonuses to Class Members that needed to be considered for purposes
of calculating overtime wages and paid sick time. However, through informal discovery prior to mediation, Plaintiff learned
the vast majority of Class Members did not receive any bonuses.

1 such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
2 Amended Complaint on April 27, 2022. A true and correct copy of Plaintiff's operative Complaint is
3 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on May 16,
4 2022, after we received an endorsed copy back from Court.

5 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

6 5. Defendant is represented in this matter by CDF Labor Law LLP. From the beginning,
7 Defendant has contested the merits of this case, the suitability of the case for class action or
8 representative treatment, and the manageability of the case at trial. For instance, Defendant contended
9 that Class Members were direct salespeople under Labor Code section 2783 and are therefore subject to
10 the *Borello* test rather than the ABC test, Class Members were properly classified as independent
11 contractors, Defendant exerted no control over Class Members' work or schedule, and the question of
12 whether Class Members were properly classified would require an inquiry into how each Class Member
13 performed their work, among other defenses and contentions they made challenging the propriety of
14 this action. Defendant also contended even assuming there was a finding supporting the imposition of
15 PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such
16 penalties owed based on evidence of good faith with respect to classifying Class Members as
17 independent contractors and Defendant's attempts to comply with California Labor Code obligations.
18 Notwithstanding its agreement to settle this matter, Defendant denies Plaintiff's allegations. Also,
19 Defendant has contended that this matter is not appropriate for class certification outside of this
20 proposed class settlement.

21 6. Based on the expected testimony from Plaintiff and Class Members, a review of
22 Defendant's policies and procedures, Defendant's contracts related to Class Members' work as
23 independent contractors, documents relating to the scope and terms of Class Members' work, e-mails,
24 text messages, Defendant's job postings, other documents relating to the alleged claims, information on
25 the number of Class Members and Aggrieved Employees, Class Members' and Aggrieved Employees'
26 pay periods worked², and a representative sample of Class Members' payroll data, the scope of the
27 potential damages to Plaintiff and Class Members in light of the claims alleged, the uncertainty in the

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² Defendant utilized weekly pay periods during the Class Period.

1 law with regard to certification, and the negotiations that have taken place, I believe that the proposed
2 settlement is in the best interest of the class. The length and risks of trial and other normal perils of
3 litigation that impact the value of the claims were also considered and weighed in reaching the
4 Agreement. For instance, I carefully considered the prospect of potential class certification issues, the
5 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
6 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that
7 Plaintiff's claims primarily relied on Plaintiff successfully proving that Defendant misclassified Class
8 Members as independent contractors, penalties under the PAGA could be substantially cut at the
9 discretion of the Court, and there was risk that the Court could find no willfulness in the failure to pay
10 wages at separation, which would eliminate the value of the waiting time penalty claim entirely.
11 Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to
12 proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the
13 case.

14 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
15 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
16 and potential damages for such claims. The parties engaged in informal discovery and exchange of
17 documents, including Defendant's relevant policies for the entirety of the statute of limitations
18 applicable to the alleged claims, contracts Defendant entered into with Class Members recording their
19 work as independent contractors, time records available, and a representative sampling of payroll data.
20 The discovery covered all aspects of the asserted claims, including certification issues, merits issues,
21 damages, the scope and configuration of Class Members, the content and implementation of the wage
22 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
23 From this production we were able to determine information critical to a reliable damages analysis such
24 as the average hourly rate, average number of workweeks/pay periods that had potential violations based
25 on the asserted claims, and the frequency with which violations occurred in a given week/pay period.
26 This information allowed my office to assess both liability and damages and create an accurate damages
27 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
28 to Plaintiff's and Class Members' employment conditions, providing a substantial number of documents,

1 and answering questions regarding Defendant's factual contentions in this matter. This was important
2 because it directly related to our ability to maintain this case as a class action and our ability to obtain a
3 favorable settlement for the class.

4 8. Throughout this litigation our office had numerous communications with Defendant's
5 Counsel discussing our respective positions. The parties engaged in mediation on September 27, 2022,
6 using an experienced mediator, Brandon McKelvey, Esq. It was only after about nine months of
7 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
8 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
9 professional in nature.

10 9. The parties reviewed and analyzed substantial amounts of data regarding the class
11 claims. Based on our analysis and review of all relevant documents and Class Member information, the
12 following represents the potential maximum recovery for each asserted claim and the risk associated:

- 13 • Minimum/Overtime Wages: Defendant contracted with third party telecommunications
14 carriers and other companies to provide information to customers about its client's
15 government subsidized programs for free/discounted phones or flat rate utility bills,
16 verify customers qualified for the programs, and enroll customers in the programs.
17 These claims are based on allegations that Defendant did not pay Class Members for all
18 hours worked, including an unpaid "observation day" resulting in unpaid minimum and
19 overtime wages. At the time of mediation, the maximum possible damages for these
20 claims based on Defendant's records was \$491,868 for liquidated damages³ and
21 \$293,229 for overtime wages. These amounts do not take into account any potential
22 risks with respect to Plaintiff proving the merits or damages. This claim relies on
23 Plaintiff successfully proving that Class Members were misclassified as independent
24 contractors and would not fall within the outside sales exemption. If Class Members
25 were properly classified as independent contractors or fell within the outside sales
26 exemption, the value of these claims would be eliminated entirely. There was a
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28 ³ This amount is only for liquidated damages because any underlying unpaid minimum wages were accounted for in the value of Plaintiffs' overtime claim.

substantial risk that Class Members could be within the outside sales exemption based on the type of work Class Members performed going door to door to solicit customers to enroll in its client's programs. Moreover, Defendant contended that Class Members were direct salespeople under Labor Code section 2783 and are therefore subject to the *Borello* test rather than the ABC test, which would make it much more difficult for Plaintiff to prevail on the issue of misclassification.

- Meal/Rest Periods: These claims are based on allegations that Defendant did not provide meal and rest periods due to misclassifying Class Members as independent contractors and failing to maintain legally compliant policies. At the time of mediation, the maximum possible damages for these claims based on Defendant's records was \$586,458 for unpaid meal period premiums and \$586,458 for unpaid rest period premiums. These amounts do not take into account any potential risks with respect to Plaintiff proving the merits or damages. Similar to Plaintiff's minimum wage and overtime claims, these claims heavily relied on Plaintiff being able to show Class Members were misclassified and did not fall within the outside sales exemption. If Plaintiff were unsuccessful, the value of these claims would be eliminated entirely. Further, Defendant contended that Class Members were free to take meal and rest periods, it maintained a legally compliant rest and meal break policy and had some record of Class Members receiving breaks.
- Wage Statement: This claim is based on allegations that Defendant failed to issue wage statements to Class Members or to the extent wage statements were issued failed to provide all of the information required by Labor Code section 226(a). At the time of mediation, the maximum possible damages for this claim based on Defendant's records was \$236,475. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Again, this claim largely rests on Plaintiff's ability to show Class Members were misclassified. The same risks described above with respect to the issue of misclassification apply to this claim. Further, to the extent Plaintiff's misclassification claim was successful, there was a substantial risk that a trier

1 of fact could find that Defendant's failure to provide wage statements or all of the
2 required information on wage statements was not knowing and intentional due to its
3 belief that it had properly classified Class Members as independent contractors.

- 4 • Waiting Time: This claim is derivative of the above claims. It is based on allegations
5 that Class Members had wages due and owing to them that remained unpaid after the
6 end of their employment. Because this claim is derivative, it carries the same risks
7 identified for Plaintiff's overtime, minimum wage, meal and rest period, and paid sick
8 time claims. At the time of mediation, the maximum possible damages for this claim
9 based on Defendant's records was \$2,235,720. This amount does not take into account
10 any potential risks with respect to Plaintiff proving the merits or damages. Plaintiff's
11 failure to prevail on any of the above claims would reduce the number of former Class
12 Members with unpaid wages who would be eligible to recover waiting time penalties.
13 Further, there is a substantial risk that Defendant's belief it properly classified Class
14 Members as independent contractors would cause a trier of fact to find the failure to pay
15 wages was not willful or that Defendant has a good faith affirmative defense, which
16 would eliminate the value of this claim entirely. See Labor Code § 203 (a good faith
17 dispute that any wages are due will preclude imposition of waiting time penalties);
18 *Estrada v. Royal Carpet Mills, Inc.*, 76 Cal.App.5th 685, 729 (2022) ("A good faith
19 dispute that any wages are due occurs when an employer presents a defense, based in
20 law or fact, which if successful, would preclude any recovery on the party of the
21 employee.") (internal citations omitted); *Hill v. Walmart, Inc.*, 32 F.4th 811, 820 (9th
22 Cir. 2022) (finding employer had good faith defense to waiting time claim where
23 employer had reasonable grounds to believe it properly classified an individual as an
24 independent contractor); *Kao v. Joy Holiday*, 12 Cal. App. 5th 947, 963 (2017) (a good
25 faith dispute as to whether an employee is exempt will preclude an award of waiting
26 time penalties).
- 27 • Reimbursement: This claim is based on allegations that Defendant failed to reimburse
28 Class Members for the use of personal cellphones and vehicles for work without

1 reimbursement. At the time of mediation, the maximum possible damages for this claim
2 based on Defendant's records was \$727,397.10 - \$189,180 for phone reimbursement and
3 \$538,217.10 for mileage reimbursement. This amount does not take into account any
4 potential risks with respect to Plaintiff proving the merits or damages. This amount was
5 calculated based on an estimated \$40 owed per month for phone reimbursement and
6 mileage reimbursement for 50 miles per week for each Class Member during each
7 workweek in the Class Period. Defendant contends that it did pay some reimbursements
8 to Class Members. Further, proving this claim would require substantial testimony from
9 Class Members regarding whether they used their personal cellphones and vehicles,
10 whether the use was necessary for work, and estimates regarding amounts owed for
11 reimbursement, which could raise concerns about manageability and may result in a
12 lower damages calculation depending on the actual expenses incurred.

- 13 • Paid Sick Time: This claim is based on allegations that Defendant did not provide paid
14 sick leave to Class Members due to misclassifying them as independent contractors. At
15 the time of mediation, the maximum possible damages for this claim based on
16 Defendant's records was \$670,716. This amount does not take into account any
17 potential risks with respect to Plaintiff proving the merits or damages. As described
18 above, if Plaintiff were not able to show Class Members were misclassified, the value of
19 this claim would be eliminated entirely.
- 20 • PAGA: This claim is derivative of the Labor Code violations identified above. Based on
21 our research, we did not find any prior Labor Commissioner or court decisions that
22 stated Defendant's practices and/or policies were improper. As such, a "subsequent
23 violation" may not be found for penalty calculation purposes, and the exposure analysis
24 here is based on an "initial violation" valuation being adopted by any fact finder if this
25 matter went to trial. Based on the data, the total exposure for this claim is \$6,084,005.
26 This amount does not take into account any of the potential risks associated with this
27 claim. Because this claim is derivative, it carries all the same risks identified in the
28 claims above. I also believe the Court may exercise its discretion to reduce PAGA

penalties in this case because a majority of the civil penalties sought would be in addition to amounts owed for substantive violations and Defendant contends it properly classified workers as independent contractors, which a Court may find resulted in a good faith dispute that Class Members are owed any unpaid wages or associated penalties. Courts are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, the total exposure may be cut to approximately \$4,258,803.50 (30%) to \$1,095,120.90 (82% reduction) or lower. It is important to note that this discretionary reduction is completely separate and in addition to any risks on the merits. Given the substantial risks, and the disputed nature of the claims, we believe the amount that might ultimately be awarded under this claim would be significantly lower than our maximum exposure calculation. Allocating \$50,000 to the PAGA claims in this case is appropriate, especially in light of amounts that Courts have approved as reasonable valuations in other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from

\$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10. To summarize, I have determined that the maximum damages for the asserted class claims is approximately \$12,301,155.79, which includes civil penalties under the PAGA. The likely exposure for PAGA penalties is approximately \$6,084,005.00 based on the counts alleged to the LWDA and the class data. The likely recovery if Plaintiff was successful at trial on proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties would be approximately \$7,312,271.69 (82% PAGA reduction) to \$10,475,954.29 (30% PAGA reduction). Taking this into account, Plaintiff's \$842,500 gross recovery under the Agreement represents approximately 8% to 12% of the maximum likely value in this matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs, and the PAGA Payment to the LWDA, the net recovery under the Agreement represents approximately 6% of the maximum likely value in this matter. The average net award is approximately \$372.40 (\$447,625 net settlement/1202 Class Members). I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary judgment ruling. However, we believe it is important to make sure employees are able to find affordable representation in order to ensure that employers are complying with all their legal obligations towards employees and paying employees all their hard-earned wages.

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12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working on individual, class action and PAGA employment cases throughout law school. I also participated in an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and providing representation in wage claims before the California Labor Commissioner. From 2016-2017, I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District Court for The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over seven years of experience working on civil litigation and employment law matters. Most of that experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time

1 records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition,
2 breach of contract, independent contractor misclassification, and salaried misclassifications. Some of
3 the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include
4 the following:

- 5 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
6 Sup. Ct.);
- 7 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 8 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 9 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
10 Sup. Ct.);
- 11 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
12 Cal.);
- 13 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 14 • *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- 15 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 16 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 17 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 18 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 19 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 20 • *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 21 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 22 • *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- 23 • *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- 24 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 25 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- 26 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- 27 • *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- 28 • *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);

- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

13. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

14. The partner, Justin P. Rodriguez, Esq. also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated

college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr. Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems, PAGA*, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses

on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);

- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);

- 1 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185
- 2 (Sac. Sup. Ct.);
- 3 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 4 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 5 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 6 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 7 00082201 (Sac Sup. Ct.);
- 8 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 9 • *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- 10 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 11 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 12 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 13 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 14 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac.
- 15 Sup. Ct.);
- 16 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 17 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

18 16. The preceding list of cases does not include those where, for a variety of reasons, the
19 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
20 of the case.

21 17. The partner, Galen T. Shimoda, Esq. also assisted with this case. Mr. Shimoda
22 graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in
23 Asian Studies, with a minor in Japanese language. He then attended and graduated from the University
24 of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from
25 McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor
26 Society. Since graduating from McGeorge, he has authored a number of employment law articles for
27 journals and regularly publishes articles on our firm's website.

28 //

18. He has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

19. He has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. He began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour law. He has litigated several class action cases in California State and Federal Courts, including up to certification, settlement, preliminary and final approval, and disbursement of monies, and has been

found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include, but are not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);

- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);

- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

20. The preceding list also does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

21. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency basis and as a class action with the possibility that I would not receive any compensation for my time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty five

1 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
2 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
3 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
4 firm and working with several other firms has been that the typical percentage negotiated between
5 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
6 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
7 common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
8 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
9 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
10 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
11 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
12 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
13 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
14 I believe my request of \$15,000 (approximately 35%) for attorneys' fees is justified given the results
15 obtained on behalf of the class. Moreover, at this time, my firm has advanced all costs for Plaintiff and
16 Class Members and has not received any compensation whatsoever for our time expended in this case.
17 The expected costs through final approval are not expected to exceed \$15,000. Attached as Exhibit E is
18 a true and correct copy of the costs incurred prior to the filing of this Motion and the expected costs
19 incurred through the final approval and fairness hearing. Any difference in the actual costs and the
20 maximum amount allocated under the Agreement will be added to the Net Settlement Amount.

21 22. In connection with the final approval briefing, Plaintiff will provide information to
22 enable a lodestar cross check of the requested fee, a detailed declaration from Plaintiff regarding their
23 time spent on the case as well as any risks and burdens incurred as the Class Representative, an updated
24 itemized costs spreadsheet, and a declaration from the Settlement Administrator detailing the work
25 performed and Settlement Administrator Costs incurred.

26 23. I have used several class action administrator companies in the wage and hour class
27 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
28 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated

1 maximum cost of administering the class settlement of approximately \$16,850. A true and correct copy
2 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an
3 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
4 of the settlement. However, the difference between the actual, lesser costs and \$20,000, if any, will be
5 paid to the Participating Class Members on a pro rata basis.

6 24. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
7 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
8 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
9 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
10 Exhibit G.

11 25. A true and correct copy of the proposed Notice of Settlement is being filed with this
12 Motion as Exhibit F.

13 26. The intended *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
14 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
15 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

16 27. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
17 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
18 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
19 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
20 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
21 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
22 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
23 *pres* funds from several jurisdictions in the State of California pursuant to California Code of Civil
24 Procedure section 384, including from Sacramento County Superior Court.

25 28. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
26 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
27 their current or former employment. This assistance regularly includes, but is not limited to, free legal
28 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay

1 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
2 forms, and direct representation in administrative hearings, including administrative hearings in front of
3 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
4 who provide assistance, along with experienced employment law attorney volunteers. These services
5 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
6 and continuing through today under CPB.

7 29. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
8 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
9 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
10 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
11 workers and advises them as to the available legal remedies. In addition to individual counseling on
12 employment issues, the CFWR educates workers, unions, and community members about workplace
13 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

14 30. The CFWR provides limited representation for low-wage workers in wage claims before
15 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
16 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
17 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
18 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
19 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
20 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
21 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
22 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
23 respect to those wage claims.

24 31. I believe the services provided by CPB and the CFWR promote the law consistent with
25 the objective of wage and hour class actions in general and in this case specifically.

26 32. I have spoken with every other attorney at my firm to determine whether they have any
27 relationship with either of the proposed *cy pres* beneficiaries.

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33. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic. I am currently the Chair of the Board of Directors for CFWR. I have never received payment or compensation of any kind in connection with any work I've done with the CFWR. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting on CPB's advisory committee. I believe these entities provide quality service and attention to individuals in need of employment law advice and representation at the California Labor Commissioner. I believe the services they provide directly support and promoted the purposes underlying this lawsuit. I do not receive any compensation, whether direct or indirect, for designating these entities as *cy pres* beneficiaries.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4 day of January 2023 in Elk Grove, California.

Brittany Berzin
Brittany V. Berzin

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**DECLARATION OF ERIKA COLLAZO IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set

1 I, Erika Collazo, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant T.O.P. Marketing Group, Inc. ("Defendant") from
6 approximately July 2020 to March 2021. I was subject to Defendant's policies and practices that have
7 been alleged as unlawful in the Complaint and the notice sent to the Labor and Workforce
8 Development Agency, including the following: failure to pay overtime, failure to pay minimum wages,
9 failure to provide accurate wage statements, failure to timely pay final wages, failure to provide meal
10 and rest periods or pay premiums in lieu thereof, and failure to reimburse expenses.

11 3. I have actively participated in the litigation of this case for the benefit of all Class
12 Members. After securing Shimoda & Rodriguez Law, PC, I continued to be actively involved in the
13 case to help ensure a positive outcome.

14 4. My attorneys explained to me the risks and benefits of bringing a class action and a
15 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
16 class and PAGA action meant that it would take substantially longer than pursuing my claims
17 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
18 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
19 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
20 as a class and PAGA action rather than pursuing my claims individually. As a Class Representative, I
21 also took on the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims.

22 5. During the course of this litigation, I have given detailed accounts of all the facts related
23 to my employment. I provided my attorneys with extensive documentation that I believe supported the
24 claims brought against Defendant. I met with and assisted my attorneys in understanding these
25 documents and providing context for Defendant's employment policies and payroll process as they
26 applied to me and how I believed they applied to Defendant's other employees.

27 6. The work I performed for this case included an extensive review of documents to show
28 and explain to my attorneys what was happening and why I thought it was unlawful. For example, I

1 spent numerous hours searching for helpful documents and information, including e-mails from
2 Defendant, text messages, any and all documents I received from Defendant, including policy
3 documents and time and pay records, Defendant's job postings/job descriptions, and videos posted to
4 Defendant's social media accounts. I went over these documents in detail with my attorneys to help
5 explain the process Defendant used to hire and classify Class Members as independent contractors, how
6 Class Members were paid, and the scope and terms of Class Members' work for Defendant. This was
7 very important as it helped provide evidence and support for my allegation that Defendant misclassified
8 Class Members as independent contractors, which was the primary basis for the overtime, minimum
9 wage, meal period, rest period, wage statement, unfair competition, waiting time, and PAGA claims
10 alleged in the Complaint to help reconstruct the timeline and facts consistent with our allegations. I also
11 reviewed documents produced by Defendant to aid in mediation that were part of the informal
12 information and document exchange, such as the payroll data sample, Defendant's policies, and
13 independent contractor agreements. My attorneys also asked me questions about the payroll data
14 sample and independent contractor agreements that were produced as part of informal discovery to
15 engage in mediation. In addition, I spent a substantial amount of time identifying and speaking to
16 potential witnesses who could speak to my attorneys to give their own insights and potentially provide
17 declarations. Overall, I have spent numerous hours assisting in the prosecution of this case.

18 7. I participated in the negotiations and settlement discussions in this case, including
19 participating in mediation by phone, speaking with and answering questions from the mediator,
20 speaking with my attorneys to answer questions, provide any additional information needed to assist
21 the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.
22 Throughout the course of this litigation, I have asked questions when I needed clarification about
23 various aspects of this case to make sure there were continually steps taken to advance the interests of
24 Class Members.

25 8. Although I have already spent a substantial amount of time on this case and assisting my
26 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
27 granted because Class Members will likely reach out to me about the Settlement and the process for
28 receiving payment.

11. I understand that any Class Representative Enhancement Payment I may receive is for my participation as a Class Representative and it is not contingent on my support or approval of the Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd of January 2023 in Sacramento, California.

3

EC DECL. ISO MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ERIKA COLLAZO

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on January 27, 2023, at 9:00 a.m., in Department 28
4 before the Honorable Lauri A. Damrell, presiding. Named Plaintiff Erika Collazo (“Plaintiff”) filed
5 this putative class action on January 19, 2022. The operative Complaint alleges that Defendant T.O.P.
6 Marketing Group, Inc. (“Defendant”) failed to pay overtime wages, failed to pay minimum wages,
7 failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage
8 statements, failed to timely pay final wages, failed to reimburse expenses, and engaged in unfair
9 competition. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
10 Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs
11 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was
12 appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendant and its owners,
14 Michael D’Adamo and Kevin D’Adamo, will provide monetary consideration in exchange for a
15 release of claims consistent with the terms of the proposed settlement as set forth in the Joint
16 Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or
17 “Settlement”). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary Approval
19 of Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed
20 Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS
21 AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees who have, or continue to, work for T.O.P.
27 Marketing Group, Inc. in California from January 19, 2018 up to
28 November 26, 2022, including but not limited to all customer service
associates, customer service reps, customer service assistants, customer
service specialists, warehouse workers, canvassers, event marketers,

1 distribution specialists, sales representatives, or other job title performing
2 similar job duties, whether as an employee or independent contractor, with
3 the exception of any individuals who only performed sales of Lifeline
4 goods or services through T.O.P. Marketing Group, Inc. for SafetyNet
5 Wireless (the dba for Amerimex Communications Corp.) between January
6 19, 2018 and February 27, 2019, and who were included in the
7 information exchanged between the parties during the litigation in
8 *Gregory v. Amerimex Communications Corp., et al.*, Case No. BC670901.

9 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
10 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

11 The Court finds that Class Members meet the ascertainability and numerosity requirements since
12 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
13 the definition and the number of Class Members would make joinder impractical. The commonality and
14 predominance requirements are met for settlement purposes since there are questions of law and fact
15 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
16 contentions that Defendant caused the violations outlined above by 1) misclassifying Class Members as
17 independent contractors; 2) failing to maintain accurate time records for Class Members; 3) failing to
18 pay Class Members for all regular and overtime hours worked; 4) failing to adopt meal and rest period
19 policies; and 5) failing to reimburse Class Members for phone and vehicle expenses. The PAGA,
20 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
21 violations. Additionally, Class Members seek the same remedies under state law. The typicality
22 requirement for settlement purposes is also satisfied since the claims of the Class Representative is
23 based on the same facts and legal theories as those applicable to the class members.

24 The Court also finds that preliminarily and conditionally certifying the settlement class is
25 required to avoid each Class Member from litigating similar claims individually. This Settlement will
26 achieve economies of scale for Class Members with relatively small individual claims and conserve the
27 resources of the judicial system.

28 The Court finds that Plaintiff Erika Collazo and Plaintiff's counsel, Galen T. Shimoda
Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
representatives of the settlement class. The Court appoints them as Class Representative and Class
Counsel, respectively.

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1 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

2 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
3 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
4 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
5 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
6 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
7 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
8 of continued litigation. The Court also acknowledges that Class Members may present any objections to
9 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
10 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
11 therein as if stated here in full, including the \$842,500 Gross Settlement Amount.

12 The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and
13 hereby appoints them to fulfill those duties as outlined in the Agreement.

14 The Court approves of the \$50,000 PAGA Payment, which shall be paid from the Gross
15 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
16 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
17 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
18 on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a
19 recovery that creates an effective substantial deterrent to any potential future non-compliance, furthering
20 the purpose of the Labor Code and LWDA.

21 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
22 **INCLUDING THE NOTICE OF SETTLEMENT**

23 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
24 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
25 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
26 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
27 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
28 hearing to be conducted on the date set forth below. The Court further finds that the Notice of

Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, and total number of pay periods during which the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later

Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant, Michael D'Adamo and Kevin D'Adamo to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after funding
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court directs the parties to contact the Clerk for Department 28 to schedule a final approval hearing to take place in this Department on a Friday at 9:00 a.m. consistent with the administration timelines set forth in the Agreement. Briefs and supporting documentation relating to the final approval hearing are to be submitted according to the California Code of Civil Procedure. Class Members who

1 object in a timely manner, and in the manner set forth in the Agreement, may appear and present such
2 objections at the fairness hearing in person or by counsel.

3 If for any reason the Court does not grant final approval of the Agreement, all evidence and
4 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
5 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
6 purpose other than approving a settlement class. The parties will revert to their respective positions as if
7 no settlement had been reached at all.

8 **IT IS SO ORDERED.**

9
10 Date: _____

By: _____

Judge of the Superior Court