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6  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

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

13 Plaintiff,

14 vs.

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

18 Defendants.  
19  
20  
21  
22

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

**CLASS ACTION**

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

Reservation No.: 2708842

Date: June 9, 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 June 9, 2023, at 9:00 a.m., or as soon thereafter as the matter  
3 may be heard in Department 28 of the above-entitled Court, Plaintiff Erika Collazo, individually and on  
4 behalf of all other similarly situated individuals, hereby moves for entry of an order for the following:

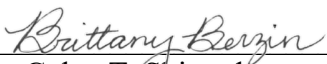
- 5 1. Certifying the proposed class herein for purposes of settlement;
- 6 2. Appointing Plaintiff Erika Collazo as class representative for purposes of settlement;
- 7 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 8 4. Approving the proposed class action and Private Attorneys General Act settlement, in the  
9 amount of \$842,500, which is incorporated herein by reference;
- 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of  
11 \$294,875 of the Gross Settlement Amount;
- 12 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of  
13 \$10,088.99;
- 14 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Erika  
15 Collazo;
- 16 8. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for  
17 payment to ILYM Group, Inc. for administering said class action settlement in the amount of  
18 \$16,850;
- 19 9. Approving the settlement of claims under the Private Attorneys General Act for the total  
20 amount of \$50,000, 75% of which will be paid to the Labor and Workforce Development  
21 Agency and 25% of which will be paid to Aggrieved Employees;
- 22 10. Determining that the proposed notification procedure and process complied with Class  
23 Members' due process rights;
- 24 11. Directing that any amount from settlement checks that are not cashed by the check cashing  
25 deadline be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for  
26 Workers Rights under the doctrine of *cy pres*; and
- 27 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed  
28 herewith and incorporated by reference.

1 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section  
2 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved  
3 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class  
4 Members and should be approved by the Court. This motion will be based on the notice of motion,  
5 memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Erika  
6 Collazo, the Declaration of Nathalie Hernandez, exhibits, the record and files of this case, and any  
7 further oral or documentary evidence introduced at the hearing of this Motion.

8  
9 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**  
10 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**  
11 **department may be downloaded off the court's website. If the party does not have online access,**  
12 **they may call the dedicated phone number for the department as referenced in the local telephone**  
13 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**  
14 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**  
15 **court day before the hearing, no hearing will be held.**

16 Dated: May 15, 2023

Shimoda & Rodriguez Law, PC

17 By:   
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Brittany V. Berzin  
Attorneys for Plaintiff

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

**CLASS ACTION**

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

Reservation No.: 2708842

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

2           Plaintiff Erika Collazo (“Plaintiff”) seeks final 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 1,119 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 believes 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, ¶¶ 6-11. The prospect of potential class certification issues and the uncertainty of class certification, Defendant's factual and legal contentions, 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.*

The reaction of Class Members to the preliminarily approved Agreement has been overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations therein being fair, reasonable, and adequate. Zero Class Members opted out of the settlement and there have been zero objections to the Agreement. *See* Declaration of Nathalie Hernandez ("Decl. Hernandez"), ¶¶ 11-12. It is well within the discretion of this Court to final approval of the proposed settlement, which satisfies all of the criteria for final settlement approval under California law. Accordingly, Plaintiff requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the Agreement; (3) find that the procedures used to notify the Class Members complied with due process; (4) grant Plaintiff's request for attorneys' fees and costs, the Enhancement Payment to the Class Representative, and Claims Administrator Costs; and (5) approve and adopt proposed order granting final approval, which is filed concurrently herewith.

## **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.

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### III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See* Decl. Berzin, ¶ 7, 10-11; Decl. Collazo, ¶¶ 5-6. 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 representative sampling of employee data, such as payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Berzin, ¶ 7, 10-11. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

### IV. NEGOTIATION AND PROPOSED SETTLEMENT

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

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

#### b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all non-exempt employees who have, or continue to, work for Defendants in California from January 19, 2018 up to 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, 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; and (b) Aggrieved Employees, which include all non-exempt employees who have, or continue to, work for Defendants in California from January 14, 2021 up to 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, 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. *See* Exhibit A, ¶¶ 1.2, 1.5.

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

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

4. Any Settlement Administrator Costs shall be paid from the Gross Settlement Amount. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the Settlement Administrator, who has provided a final cost amount of \$16,850. *See* Decl. Hernandez, ¶ 15; Exhibit A, ¶ 1.26. The difference between the actual Settlement Administrator Costs and the originally

1 allocated \$20,000 under the Agreement, will be added to the Net Settlement Amount and paid to Class  
2 Members on a pro rata basis. *See* Exhibit A, ¶ 5.3.

3         5. The Parties agree that \$50,000 of the Gross Settlement Amount shall be allocated to  
4 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to  
5 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶  
6 5.5. Given the risk of proving the claims on the merits, the derivative nature of the penalties, the efforts  
7 by Defendant to maintain complaint policies and take corrective action, the presence of what may likely  
8 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff  
9 believes the \$50,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring  
10 non-compliance given the facts of this case. *See* Decl. Berzin, ¶ 10; *see also Davis v. Cox Commc'ns*  
11 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily approving \$4,000  
12 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS  
13 118764, \*6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v.*  
14 *Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA  
15 allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, \*9  
16 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon*  
17 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at \*7 (E.D. Cal. 2012) (approving \$10,000 PAGA  
18 allocation in a \$3,700,000 settlement).

19         6. The Parties agree that up to thirty five percent (35%) of the Gross Settlement Amount  
20 (\$294,875) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant  
21 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.  
22 Additionally, the Parties agree that Plaintiff will be entitled to the actual litigation costs in the amount  
23 of \$10,088.99. *See* Exhibit D (Plaintiff's Counsel's Itemized Costs). The difference between the actual  
24 costs and the originally allocated \$15,000 will be redistributed to Class Members on a pro rata basis.  
25 *See* Exhibit A, ¶ 5.2.

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

1           8.       In consideration for the value received in the Agreement, Class Members who fail to  
2 timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement.  
3 See Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved Employees will waive all Released PAGA  
4 Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. See  
5 *id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

6           9.       For any portion of the Net Settlement Amount or PAGA Payment allocated to  
7 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their  
8 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be  
9 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the  
10 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that  
11 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See  
12 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). Notwithstanding this fact, the designated  
13 beneficiaries clearly promote the law consistent with the objectives and purposes underlying the  
14 lawsuit. See *id.* at 723-724 ("The court's proper focus in this context is not so much whether another  
15 type of distribution might be better, but the extent to which the distribution, as proposed, is  
16 appropriately useful in fulfilling the purposes of the underlying cause of action"). These organizations  
17 are non-profits aimed at assisting employees with wage and hour claims who cannot afford legal  
18 representation, including providing representation for employees in wage claims before the California  
19 Labor Commissioner. See Decl. Berzin, ¶¶ 29-32. Plaintiff's counsel regularly volunteer for these  
20 organizations and, as such, can attest that they organizations fulfill the purposes underlying the claims  
21 alleged in this lawsuit. See Decl. Berzin, ¶ 33. Neither Plaintiff's counsel nor Plaintiff's counsel's firm  
22 have received any compensation, direct or indirect, or referrals in connection with any of the volunteer  
23 work they have done with the organization. See Decl. Berzin, ¶ 36. For these reasons, the proposed *cy*  
24 *pres* distribution is appropriate.

25           **c. Allocation of Settlement Funds**

26           Payment to Participating Class Members and Aggrieved Employees of their Individual  
27 Settlement Amount will not require the submission of a claim form. A Net Settlement Amount will be  
28 determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees

1 and costs, any Enhancement Payment to the Class Representative, the Settlement Administrator Costs,  
2 and the PAGA Payment. Each Class Member's share will be determined by dividing their total pay  
3 periods worked within the Class Period by the total pay periods worked by all Class Members within  
4 the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the  
5 Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of  
6 the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked  
7 within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the  
8 PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment  
9 to arrive at the Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

10 **d. The Timing of the Release Is Appropriate**

11 While the effective date for the release precedes the date that payment is due to Class Members,  
12 the Agreement, and all obligations therein by all parties, become effective and are triggered on the date a  
13 signed order granting final approval is filed with the Court, assuming no objections to the Agreement  
14 have been lodged by Class Members. *See id.* at ¶¶ 1.13-1.14. This puts all parties, including Class  
15 Members, in the same position that they would have been had Plaintiff prevailed at trial. At final  
16 approval, and as part of the final approval order, judgment is entered consistent with the terms of the  
17 Agreement. *See* Cal. Rules of Court, 3.769(h). Just as in the case of judgment after trial, judgment by  
18 consent or stipulation has res judicata affects, preventing litigation of claims covered by the  
19 settlement. *See Johnson v. Am. Airlines, Inc.*, 157 Cal.App.3d 427, 431 (1984); *Villacres v. ABM Indus.*  
20 *Inc.*, 189 Cal.App.4th 562, 583 (2010). The Court retains jurisdiction to enforce the judgment to ensure  
21 compliance. *See* Cal. Rules of Court, 3.769(h); Exhibit A at ¶ 10.7. To the extent Defendant does not  
22 comply with its contractual obligations and Court judgment, Plaintiffs will utilize the Enforcement of  
23 Judgments Law ("EJL"), which is the comprehensive scheme governing the enforcement of all civil  
24 judgments in California. *See* Cal. Civ. Proc. Code §§ 680.010-724.260. These are the exact same  
25 mechanisms any plaintiff would be subject to, and utilize, to the extent a defendant did not pay as  
26 required after trial. The proposed Agreement with release and payment timing that mirrors what would  
27 apply after trial is fair, reasonable, and adequate to all involved, which is the appropriate standard of  
28

1 review. *See North County Contr. 's Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-  
2 1090 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008).

3 Failing to treat all parts of the Agreement as effective raises serious enforcement questions that  
4 would undermine Class Counsel's ability to enforce Defendant's obligation to pay. To the extent a  
5 provision delaying the applicability of waivers is meant to preserve Class Members' ability to bring  
6 individual claims, so long as the Court grants final approval there is a judgment and all Class Member's  
7 claims would be extinguished under res judicata as a matter of law. *See Johnson*, 157 Cal.App.3d at  
8 431; *Villacres*, 189 Cal.App.4th at 583; Cal. Rules of Court, 3.769(h). The same is true for any claims  
9 under the PAGA. Attempting to circumvent that calls into question whether the judgment is actually  
10 final. If not, Class Counsel would not be able to utilize the EJI to secure payment from a recalcitrant  
11 defendant. Furthermore, the potential for such individual actions would raise questions of set offs to the  
12 gross settlement amount yet to be funded. This scenario also raises a potential conflict between any  
13 Class Member who attempts to bring their own claim and those wish to wait and utilize the ELJ rather  
14 than relitigate the merits. To the extent that there is any pending bankruptcy, Class Members would  
15 have an increased likelihood of getting *some* recovery where there is a judgment, and the only remaining  
16 obligation is payment by Defendant. *See In re Marciano*, 459 B.R. 27, 53 (B.A.P. 9th Cir. 2011), *aff'd*,  
17 708 F.3d 1123 (9th Cir. 2013).

18 For these reasons, the timing of the waivers and payment dates under the Agreement are  
19 appropriate.

20 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**  
21 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

22 Plaintiff's motion for preliminary approval of the class action settlement was approved by the  
23 Court in its entirety on January 27, 2023. To comply with the class members' due process rights, the  
24 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide  
25 notice to the class. The parties provided the class action administrator the names, last known address,  
26 and social security numbers for the class. The class action administrator then updated this information  
27 by doing an address trace for each individual using this information. *See Decl. Hernandez ¶¶ 5-6*. If  
28 the Notice Packets were returned as undeliverable, further investigation was performed and they were

1 remained using updated information. *See id.* at ¶¶ 8-9. Of the 1,119 Notice Packets mailed, only 58  
2 were undeliverable after use of these methods. *See id.* at ¶ 10. The notice Packets included information  
3 regarding the requested attorneys; fees, costs, payment to the LWDA, administration costs, and tax  
4 allocations. *See Decl. Hernandez, Exh. A.* The average distribution to participating class members is  
5 approximately \$407.23, the maximum distribution is approximately \$5,150.17. *See id.* at ¶ 14. No  
6 objections to the preliminarily approved settlement have been made and no Class Members opted out.  
7 *See Decl. Hernandez* ¶¶ 11-12.

8         It is not required that Class Members be given actual notice of a class settlement; instead, the  
9 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d  
10 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);  
11 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at \*12-14 (N.D. Cal. 2017); *Wright v.*  
12 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.  
13 1994), the Court rejected a class member's argument that he had not received due process because he  
14 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is  
15 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of  
16 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*  
17 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the  
18 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not  
19 receive actual notice due to their mailings being deemed undeliverable were still properly held to be  
20 part of the class settlement because they received the best notice practicable under the circumstances.  
21 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-  
22 984 (2019), the California Supreme Court noted that California has adopted a similar approach  
23 regarding providing notice to class members.

24         The notice method in *Rannis* is similar to that used in the present case. For example, the Notice  
25 contains all information necessary for a Class Member to assess the litigation, the settlement, and  
26 whether they wanted to participate, object, or opt-out. *See Decl. Hernandez, Exh. A.* The Settlement  
27 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an  
28 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members

notice of this settlement. *See* Decl. Hernandez, ¶¶ 6-8. Additionally, the entire motion for preliminary approval, the Notice, and all filings in this matter were available, free of charge, on a web page accessible to all Class Members. *See id.* at ¶ 3(i). The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

**VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS, PROVIDING AN EXCELLENT RECOVERY UNDER THE FACTS OF THIS CASE**

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

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

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it

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<sup>1</sup>The 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).

1 should grant final approval of the class action settlement. *See, e.g., North County Contr. 's Assn., Inc. v.*  
2 *Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168  
3 Cal. App. 4th 116, 133 (2008). To make the fairness determination, the Court must consider several  
4 factors, including:

5 the strength of the Plaintiff's case, the risk, expense, complexity and likely  
6 duration of further litigation, the risk of maintaining class action status  
7 through trial, the amount offered in settlement, the extent of discovery  
8 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.

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

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

19 Settlement of this case was reached only after substantial litigation and extensive arm's length  
20 negotiations lasting nearly nine months, which included a full day mediation. *See Decl. Berzin*, ¶¶ 6-11.  
21 At all times, the negotiations were adversarial and contentious, although still professional in nature. *See*  
22 *id.*

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

25 The Parties were in possession of all necessary information during the negotiations. The Parties  
26 engaged in substantial informal discovery, which included all necessary components for evaluating the  
27 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-11. Plaintiff was in possession of  
28 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

1 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of  
2 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*  
3 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

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

5 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA  
6 actions. This experience makes them acutely aware of the risks of complex litigation and the hurdles  
7 the claims may face if this matter proceeded to trial. *See id.* Thus, Plaintiff's counsel are qualified to  
8 evaluate the class claims, the value of settlement versus moving forward with litigation, and viability of  
9 possible affirmative defenses Plaintiff's counsel believe that the Agreement is fair, reasonable, and  
10 adequate in light of the risks associated with the PAGA claims, the Court's discretion to lower the  
11 amount of penalties ultimately awarded, the uncertainties of complex litigation, and the secured benefit  
12 to the class. *See Decl. Berzin*, ¶¶ 12-21.

13 **iv. No Class Members Objected or Opted Out**

14 The reaction by Class Members to the Agreement and all the terms and allocations stated  
15 therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement  
16 and zero have opted out. *See Decl. Hernandez*, ¶¶ 11-12. This provides strong evidence that the  
17 settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*10 (“It  
18 is established that the absence of a large number of objectors to a proposed class action settlement  
19 raises a strong presumption that the terms of a proposed class settlement action are favorable to the  
20 class members”); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.  
21 Cal. 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that  
22 the Proposed Settlement is fair, just, reasonable, and adequate”).

23 **v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**  
24 **Plaintiff's Case and the Risks and Costs of Further Litigation**

25 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on  
26 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 8 to 12% and  
27 a net recovery of approximately 4.3 to 6.2% of the claims' maximum likely value. *See id.* at ¶¶ 10-11.  
28 Additionally, the average net award per class member is approximately \$407.23 and the highest

1 recovery is approximately \$5,150.17. *See* Decl. Hernandez, ¶ 14. This settlement is a reasonable  
2 compromise of the class and PAGA claims, and is within the percentile ranges of the total available  
3 damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246,  
4 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv.*  
5 *Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559  
6 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum  
7 potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries  
8 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*  
9 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net  
10 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*  
11 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement  
12 with a gross recovery of 11% of the projected maximum damages available and a net recovery of  
13 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306  
14 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5%  
15 of the projected maximum recovery); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at  
16 \*48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately \$198.70, with the  
17 highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved  
18 are good, which is highlighted by the fact that there was no objection to the settlement amount or the  
19 attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal.  
20 2012) (“the results achieved in this case were very favorable. Class members are provided with  
21 immediate monetary relief, with an average award of around several hundred dollars and a minimum  
22 award of \$50”).

23 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

24 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional  
25 information be presented in class action settlements “to ensure that the recovery represents a reasonable  
26 compromise, given the magnitude and apparent merit of the claims being released, discounted by the  
27 risks and expenses of attempting to establish and collect on those claims by pursuing the  
28 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 ¶¶ 6-11. 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 ¶¶ 6-11.

**b. Certification of the Class is Appropriate**

Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Court conditionally certified the settlement class on January 27, 2023, and nothing has

happened in the interim that would warrant changing the decision. See *Garcia v. City of King City*, 2017 WL 363257, \*4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, \*4 (N.D. Cal. 2017). Here, the parties agree that, for the purposes of settlement, these prerequisites are met. See Exhibit A.

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

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. See *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 1,119 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. See *Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

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

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

The common questions of law and fact in this case stem from Plaintiff's contention that

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<sup>2</sup>When 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).

Defendant violated California law by 1) misclassifying Class Members as independent contractors; 2) failing to maintain accurate time records for Class Members; 3) failing to pay Class Members for all regular and overtime hours worked; 4) failing to adopt meal and rest period policies; and 5) failing to reimburse Class Members for phone and vehicle expenses. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See Exhibit B.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends she suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish 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 wished to opt-out of the settlement was able to do so, and he or she was also able to dispute the number of workweeks stated in the Notice of Settlement.

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 nine 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.*

//

1 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**  
2 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND CLAIMS**  
3 **ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED**

4 The Notice of Settlement sent to Class Members specifically identified the allocations for  
5 attorney’s fees and costs, the Class Representative Enhancement Payment, and Settlement  
6 Administrator Costs. *See* Decl. Hernandez, Exh. A. The reaction of Class Members to these requested  
7 amounts provides useful evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005  
8 WL 1594403, \*21 (“The absence of objections or disapproval by class members to Class Counsel’s fee  
9 request further supports finding the fee request reasonable”). As noted above, there were no objections  
10 raised to the Agreement or any term or allocation therein whatsoever. *See* Decl. Hernandez, ¶¶ 11-12.  
11 In addition to Class Members’ reactions supporting the requested amount, the facts and applicable case  
12 law also support awarding these amounts in full.

13 An award of attorney’s fees should include compensation for all hours reasonably spent. *See*  
14 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431  
15 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).  
16 California has not adopted any “benchmark” percentage utilized by several federal courts. *See Emmons*  
17 *v. Quest Diagnostics Clinical Lab’ys, Inc.*, 2017 WL 749018, at \*7 (E.D. Cal. 2017) (“Notably, while  
18 the California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage  
19 awards in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he  
20 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61  
21 Cal.App.5th 734, 744 (2021).

22 **a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within**  
23 **the Ranges Historically Approved by Courts in Class Settlements and a Lodestar**  
24 **Cross Check Validates the Proposed Fee**

25 An award of attorney’s fees under the common fund doctrine is appropriate in this case as there  
26 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be  
27 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class  
28 Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,  
lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);  
*Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*

1 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of  
2 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).  
3 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*  
4 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, \*22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*  
5 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a  
6 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern  
7 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class  
8 action settlement); Decl. Berzin, ¶ 22; Exhibit G (Sacramento County Superior Court May 2016 Minute  
9 Order) (awarding 35% of a common fund class action settlement); Exhibit H (*Strawn, et. al. v.*  
10 *Bridgestone Retail Operations, LLC*, Final Approval Order) (awarding 35% of a common fund class  
11 action settlement).

12 To the extent there may be some Courts that have granted fees at a percentage less than 35%,  
13 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the  
14 treatises or cases discussing these percentages are relying on federal decisions guided by a  
15 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*  
16 *Emmons*, 2017 WL 749018, at \*7. This artificially lowers the average percentage of fees awarded.  
17 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement  
18 fund to begin with, which will generally correspond to a lower percentage of fees being deemed  
19 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an  
20 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of  
21 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on  
22 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as  
23 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,  
24 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular  
25 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference  
26 to all the circumstances of the case”).

27 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the  
28 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of

1 attorney's fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at  
2 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind  
3 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 422.2 hours  
4 performing tasks that would normally be billed to any fee playing client in complex litigation and  
5 estimate that this number will increase to approximately 432.2 after monitoring the disbursement of all  
6 funds and compliance hearing(s). *See Decl. Berzin*, ¶ 23; Exhibit F; *Syers Props. III, Inc. v. Rankin*,  
7 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law ... ,  
8 there is no required level of detail that counsel must achieve.") (internal quotations omitted).  
9 At the prevailing market rates for Class Counsel's level of experience and this type of complex  
10 litigation, this equates to a lodestar of approximately \$237,844.50. *See Decl. Berzin*, ¶¶ 23-24; Exhibit  
11 G; Exhibit H; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates  
12 were reasonable where they were "within the range of reasonable rates charged by and judicially  
13 awarded comparable attorneys for comparable work").

14 Plaintiff's counsels' request for attorney's fees of \$294,875 is reasonable considering their  
15 lodestar of \$237,844.50, which results in a 1.2 multiplier. *See Decl. Berzin* ¶ 25; *see also Laffitte v.*  
16 *Robert Half Internat., Inc.*, 1 Cal.5th 480 (2016) (finding the trial court did not abuse its discretion in  
17 approving a fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a  
18 multiplier of 2.03 to 2.13); *Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or  
19 even higher"). Multipliers are typically awarded in contingent fee litigation to compensate counsel for  
20 the risk of non-payment:

21 It is an established practice in the private legal market to reward attorneys  
22 for taking the risk of non-payment by paying them a premium over their  
23 normal hourly rates for winning contingency cases. *See Richard Posner,*  
24 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent  
25 fees that may far exceed the market value of the services if rendered on a  
non-contingent basis are accepted in the legal profession as a legitimate  
way of assuring competent representation for Plaintiff who could not  
afford to pay on an hourly basis regardless whether they win or lose.

26 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th  
27 Cir. 1994). Moreover, "in the common fund context, attorneys whose compensation depends on their  
28 winning the case, must make up in compensation in the cases they win for the lack of compensation in

1 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the  
2 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive  
3 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither  
4 unexpected nor fortuitous”).

5 **b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit**  
6 **Obtained**

7 The appropriate analysis in determining whether particular costs are compensable is whether  
8 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*  
9 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees  
10 those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v.*  
11 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8  
12 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek  
13 reimbursement here are categories normally charged to hourly clients and, therefore, should be  
14 reimbursed out of the common fund. *See Decl. Berzin*, ¶ 26; Exhibit D.

15 **c. Class Counsel’s Request for A Class Representative Enhancement Payment Is**  
16 **Justified In Light of The Results Achieved for the Class**

17 A service payment to a named plaintiff is intended to recognize their time and effort on behalf  
18 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the  
19 services they provide and the risks they incurred during the course of the class action litigation. *See*  
20 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved  
21 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to  
22 the class by responding to discovery, participating in the mediation process, and taking the risk of  
23 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,  
24 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*  
25 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the  
26 four (4) named plaintiffs); *See Exhibit G* (awarding class representative service fee enhancements  
27 ranging from \$20,000 to \$10,000); *Exhibit H* (awarding class representative enhancement payments of  
28 \$15,000).

1 In this case Plaintiff provided substantial support in helping to secure payment to Class  
2 Members, spending approximately 90 hours assisting with the prosecution of the case. *See* Decl.  
3 Berzin, ¶ 8; Decl. Collazo, ¶¶ 4-9. Plaintiff was heavily involved in this case and went above and  
4 beyond spending time outside of her full-time job to speak Plaintiff's counsel, search for information  
5 and documents, search for and speak with witnesses, and assist with the mediation. Plaintiff provided  
6 and explained a substantial number of documents critical to helping establish important facts central to  
7 this case and participated in substantial amount of informal discovery. *See id.* Payment of \$15,000.00  
8 to Plaintiff is appropriate given the risk, assistance, time required, and burden experienced in bringing  
9 and resolving this case, especially since this amount was identified in the Notice of Settlement and no  
10 objections to it have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at  
11 \*7-\*8, \*12, \*27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class  
12 members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement);  
13 *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at \*9-\*10, \*15-\*16 (D. Nev. 2013) (awarding  
14 a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class  
15 members).

16 **d. The Court Should Approve the Payment of Settlement Administrator Costs**

17 Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has  
18 carried out its duties as set forth in the Court's order and the Agreement. *See generally* *See* Decl.  
19 Hernandez. Under the Agreement, a maximum of \$20,000 was set aside for potential Claims  
20 Administrator Costs. ILYM Group, Inc.'s final costs are \$16,850, well under the potential maximum  
21 Class Members were given notice of. Plaintiff requests that the Court approve payment to the  
22 Settlement Administrator in the amount of \$16,850 to compensate it for the costs of administration as  
23 part of the final order approving the Settlement.

24 **VIII. CONCLUSION**

25 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class  
26 for settlement purposes; grant final approval of the proposed settlement, including the Enhancement  
27 Payment, the payment to the LWDA under PAGA, and Class Counsel's application for reasonable  
28 attorneys' fees and costs; find that the Notice of Settlement, administration processes satisfied Class

Members' due process rights; and proposed order submitted concurrently herewith.

Dated: May 15, 2023

**Shimoda & Rodriguez Law, PC**

By: \_\_\_\_\_

Galen T. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

Attorneys for Plaintiff

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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  
FINAL APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

Reservation No.: 2708842

Date: June 9, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: January 19, 2022

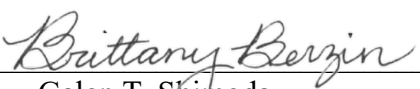
FAC Filed: April 27, 2022

Trial Date: None Set

| <b><u>EXHIBIT</u></b> | <b><u>DESCRIPTION</u></b>                                                    |
|-----------------------|------------------------------------------------------------------------------|
| <b>A</b>              | Joint Stipulation Regarding Class Action and PAGA Settlement and Release     |
| <b>B</b>              | Plaintiff's Operative Complaint                                              |
| <b>C</b>              | Plaintiff's Letter to the LWDA Regarding PAGA Claims                         |
| <b>D</b>              | Plaintiff's Itemized Costs                                                   |
| <b>E</b>              | Proof of Submission to LWDA                                                  |
| <b>F</b>              | Summary of Plaintiff's Counsel's Hours                                       |
| <b>G</b>              | Sacramento County Superior Court May 2016 Minute Order                       |
| <b>H</b>              | Strawn, et. al. v. Bridgestone Retail Operations, LLC, Final Approval Order. |

Dated: May 15, 2023

**Shimoda & Rodriguez Law, PC**

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

# **EXHIBIT A**

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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

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

Filed: January 19, 2022  
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.

28     //

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

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**

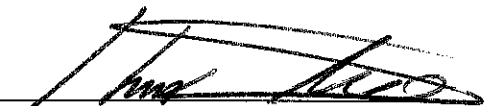
17  
18  
19 Dated: \_\_\_\_\_

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 9<sup>th</sup> 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)  
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5 9401 East Stockton Boulevard, Suite 120  
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7 Telephone: (916) 525-0716  
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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 44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly  
2 situated employees to take paid rest periods of at least ten (10) minutes for each work period that  
3 they worked more than four (4) hours or a major fraction thereof.

4 45. Defendants further failed to pay Plaintiff and similarly situated employees the  
5 applicable rest period premiums for any such missed rest periods.

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

9 **FIFTH CAUSE OF ACTION**  
10 **WAGE STATEMENT VIOLATIONS**  
11 **(As to all Defendants)**

12 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully  
13 set forth herein.

14 48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized  
15 statement to an employee, semimonthly or at the time of each payment of wages, showing:

16 *(1) gross wages earned, (2) total hours worked by the employee, except for*  
17 *any employee whose compensation is solely based on a salary and who is*  
18 *exempt from payment of overtime under subdivision (a) of Section 515 or*  
19 *any applicable order of the Industrial Welfare Commission, (3) the*  
20 *number of piece-rate units earned and any applicable piece rate if the*  
21 *employee is paid on a piece-rate basis, (4) all deductions, provided that*  
22 *all deductions made on written orders of the employee may be aggregated*  
23 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*  
24 *period for which the employee is paid, (7) the name of the employee and*  
25 *the last four digits of his or her social security number or an employee*  
26 *identification number other than a social security number, (8) the name*  
27 *and address of the legal entity that is the employer and, if the employer is*  
28 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*  
*name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be*  
*recorded in ink or other indelible form, properly dated, showing the*  
*month, day, and year, and a copy of the statement and the record of the*  
*deductions shall be kept on file by the employer for at least three years at*  
*the place of employment or at a central location within the State of*  
*California.*

49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an  
itemized statement or failed to provide an accurate and complete itemized statement showing the

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.

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

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

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

59. California 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."

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

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

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

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

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (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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- 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;

//

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;

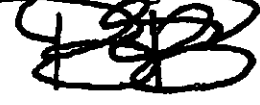
1 d. For any other remedies as allowed by law and/or deemed appropriate by the  
2 Court;

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)<br>11 CDF Labor Law LLP<br>12 900 University Ave, Suite 200<br>13 Sacramento, CA 95825<br>14 Phone: (916) 361-0991<br>Email: <a href="mailto:jvanparys@cdflaborlaw.com">jvanparys@cdflaborlaw.com</a><br><a href="mailto:dkhatib@cdflaborlaw.com">dkhatib@cdflaborlaw.com</a><br><a href="mailto:ekastern@cdflaborlaw.com">ekastern@cdflaborlaw.com</a> |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

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  
thereon fully prepaid, for collection and mailing on this date, following  
ordinary business practices, at Elk Grove, California, addressed as set forth  
above.

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

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

25 ☐ [By Overnight Courier] By causing a true copy and/or original thereof to be  
26 personally delivered via the following overnight courier service: \_\_\_\_\_.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
28 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](http://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

|                                                                                     |                                                                    |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 10 T.O.P. Marketing Group Inc.<br>990 Westbury Rd., Suite 102<br>Westbury, NY 11590 | Kevin D'Adamo<br>990 Westbury Rd., Suite 102<br>Westbury, NY 11590 |
| 12 Michael D'Adamo<br>990 Westbury Rd., Suite 102<br>Westbury, NY 11590             |                                                                    |

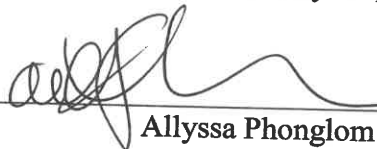
14

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**

**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 Service 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 Service Fee - Joint Case Management Statement                                         | \$ 61.26     |
| 1/4/2023    | One Legal Service Fee - Preliminary Approval Motion                                             | \$ 294.92    |
| 1/11/2023   | Service Fee - Preliminary Approval Motion (Personal Service)                                    | \$ 80.00     |
| 1/11/2023   | Payment to Court - Preliminary Approval Motion                                                  | \$ 60.00     |
| 1/11/2023   | One Legal Service Fee - Preliminary Approval Motion Proof of Service                            | \$ 61.26     |
| Anticipated | One Legal Filing Fee - Final Approval Motion                                                    | \$ 300.00    |
| Anticipated | Payment to Court - Final Approval Motion                                                        | \$ 60.00     |
| Anticipated | One Legal Filing Fee - Compliance Declarations                                                  | \$ 70.00     |
|             |                                                                                                 | <hr/>        |
|             |                                                                                                 | \$ 10,088.99 |

# **EXHIBIT E**

# **EXHIBIT F**

| <b><u>TASK CATEGORY</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b><u>Galen Shimoda</u></b> | <b><u>Justin Rodriguez</u></b> | <b><u>Brittany Berzin</u></b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------|-------------------------------|
| <b>Pre-filing investigation, Pleadings, Admin Exhaustion.</b> Includes time spent speaking with potential client. Initial client meeting and review of claims and documents, pre-filing investigation/research. Public record searches and review of public record documents. Drafting pleadings, tolling agreements, stipulations, administrative filings and court filings and communications with opposing counsel regarding same regarding same, internal communications regarding same (email or otherwise), communications with client regarding same.                                                                                                                                                               | 5.6                         | 22.2                           | 49                            |
| <b>Case Review, Management, Strategy Meetings.</b> Includes time spent discussing general plan of action updates and strategies in weekly meetings, research and analysis regarding claims, case management conferences and related meet/confer, drafting of statements, and attendance for hearings. Communications with opposing counsel regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                      | 15.6                        | 24                             | 12.1                          |
| <b>Discovery (Non-Mediation Related).</b> Includes time spent preparing discovery requests, Belaire Notice, Protective Order, and meet and confer efforts. Reviewing Witness Information pre-investigation for mediation. Communicate with client regarding same, communicate with opposing counsel regarding same.                                                                                                                                                                                                                                                                                                                                                                                                        | 2.7                         | 18.1                           | 5.2                           |
| <b>Discovery / Investigation for Mediation.</b> Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing informal mediation productions, including data, analyses, documents, public records, analyzing the sample, reviewing witness information, legal research for mediation, and communications with client and opposing counsel regarding same.                                                                                                                                                                                                                                                                                                                       | 4.0                         | 21                             | 32.8                          |
| <b>Mediation / Settlement Conference.</b> Includes time spent drafting mediation brief and accompanying exhibits, prepare for and attending mediation, drafting damages analysis, drafting notes for mediation, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues on day of mediation.                                                                                                                                                                                                                                                                                    | 38.8                        | 16                             | 18.8                          |
| <b>Drafting Settlement Agreements.</b> Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.                                                                                                                                                                                                                                                                                                                                                                                                           | 2.3                         | 19.7                           | 11.2                          |
| <b>Settlement Approval and Administration.</b> Includes time spent drafting motion for preliminary approval and supporting declarations and order, legal research related to settlement approval, class data review, speaking with Settlement Administrator regarding calculations and distributions, analyze calculations and estimated disbursements, review notice updates and class member responses, drafting motion for final approval and supporting declarations and order, communicate with opposing counsel regarding same, communicate with client regarding same. Includes 10 hours for Brittany Berzin supervising final distributions and compliance with Count final approval order and compliance hearings | 14.4                        | 24.7                           | 64                            |
| <b>Total Per Billing Party:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 83.4                        | 145.7                          | 203.1                         |

# **EXHIBIT G**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 05/05/2016

TIME: 09:00:00 AM

DEPT: 35

JUDICIAL OFFICER PRESIDING: Alan Perkins

CLERK: G. Toda

REPORTER/ERM: E. Teklinsky CSR# 7895

BAILIFF/COURT ATTENDANT: T. Elder

CASE NO: **34-2015-00174957-CU-OE-GDS** CASE INIT.DATE: 02/09/2015

CASE TITLE: **Navarro-Salas vs. Markstein Beverage Co**

CASE CATEGORY: Civil - Unlimited

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**EVENT TYPE:** Motion for Final Approval of Class Action Settlement - Complex

**ASSOCIATED CASES:** 34-2015-00181859-CU-OE-GDS

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**APPEARANCES**

Galen T Shimoda, counsel, present for Plaintiff(s).

Kenneth H Yoon, counsel, present for Plaintiff(s).

Jennifer G Redmond, counsel, present for Defendant(s).

Douglas Han, attorney for Dimes-Williams, Richard (Plaintiff)

Justin Rodriguez, attorney for Dimes-Williams, Richard (Plaintiff)

---

The following is a copy of the tentative ruling for the hearing on May 5, 2016, at 09:00 a.m.

*The Court's ruling tentatively indicates that it will give its final approval to the class action settlement conditioned upon further arguments to be made during the final fairness hearing. While no class member indicated any intent to appear at the hearing, this does not relieve the parties from appearing at the final fairness hearing or otherwise render the instant ruling final in the event oral argument is not requested. The Court will not render a final ruling until it holds the final fairness hearing.*

**Motion for Final Approval of Class Action Settlement**

The Court issues the following tentative ruling for the hearing on May 5, 2016, at 09:00 a.m. regarding the motion for final approval of class action settlement, and related relief filed by Plaintiffs Mario Navarro-Salas, Antjuan Nichols, Richard Dimes-Williams, and Michael Sliskevics individually and on behalf of all others similarly situated and as aggrieved employees on behalf of themselves and other current and former employees ("Plaintiffs"). No written objections to the motion have been filed.

This is a wage-and-hour class action. The Defendant is Markstein Beverage Co. of Sacramento, a California Corporation ("Defendant" or "Markstein"). In the operative Second Amended Complaint ("SAC"), Plaintiffs allege that Defendant owes them damages for meal period and rest break wages, overtime wages and minimum wages, vested vacation pay, and penalties. Plaintiffs worked for Defendant as delivery drivers and warehouse supervisors and were all classified as non-exempt employees. (SAC at 4.)

The Court certified the Plaintiff class for settlement purposes only on December 16, 2015. The class was defined as follows:

"All persons in the Covered Positions during the Class Period." "Covered Positions is defined as "an

hourly paid or non-exempt position working for Markstein Beverage Co. of Sacramento within the state of California." Class period is defined as February 9, 2011 to December 15, 2015.

(Order dated December 16, 2015.)

The Court previously appointed attorneys the Law Offices of Kenneth H. Yoon, Justice Law Corporation, and Shimoda Law Corporation to serve as class counsel for purposes of settlement.

The Court previously appointed Plaintiffs Mario Navarro-Salas, Antjuan Nichols, Richard Dimes-Williams, and Michael Sliskevics as class representatives for purposes of settlement.

The Court previously appointed CPT Group, Inc. as the third-party administrator for mailing notices and claims administration.

Before final approval of a class action settlement, notice must be given to the class. (See California Rules of Court, Rule 3.769(e), (f).) Here, the 535 class members received the best practicable notice, as the notice was personally mailed to each of them by claims administrator CPT Group, Inc. (Declaration of Abel E. Morales ("Morales Decl.") ¶¶ 5-20.) One additional individual self-identified as being a class member, and that individual was approved by defense counsel and added, making the final class size 536. (*Id.* ¶ 5.) No objections were received. (*Id.* ¶ 16.) There was one request for exclusion (by "Michael Goucher"). (*Id.* ¶ 11.)

#### Discussion

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244, 245.) "[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." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) The Court considers such factors as "the strength of plaintiffs' 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 class members to the proposed settlement." (*Id.* at 1801.)

The papers before the Court reflect that a \$4,000,000.00 settlement fund was created on behalf of the class (including attorneys' fees, litigation cost and expenses, Settlement Administration Costs, employer's share of payroll taxes, PAGA Payment and enhancement payments) to be paid by Defendant. (See e.g., P&As at 10.)

There were four hundred forty five (445) valid claim forms submitted (83.02% of total class members) and representing approximately 45,421 class weeks (93.85% of total class weeks). (Morales Decl. ¶¶ 17-20.) The 445 valid claim forms represent a claimed amount of approximately \$2,325,251.34, which is 93.85% of the Net Settlement Amount. (*Id.* ¶ 19.) The average settlement payment to each claiming Class Member is \$5,225.28, with a high payment of \$13,003.10. (*Id.* ¶ 20.) The 445 claimants will receive \$2,325,251.34, a raw average of \$5,225.28. (P&As at 1.) In total, 93.85% of the Net Settlement Amount has been timely claimed by 80.02% of the Class. (P&As at 1; Morales Decl. ¶ 17-20.)

The named plaintiffs shall also receive reasonable service payments in addition to their claim shares. (P&As at 14-15; see also Declarations of Navarro-Salas, Nichols, Sliskevics and Dimes-Williams.) The payment to Navarro-Salas shall be \$20,000, the payment to Nichols shall be \$20,000, the payment to

Sliskevics shall be \$15,000, and the payment to Dimes-Williams shall be \$10,000. (P&As at 1-2; see also Declarations of Navarro-Salas, Nichols, Sliskevics and Dimes-Williams.) These are appropriate awards. (See *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1395.)

The Settlement provides for a PAGA Payment totaling \$20,000, with \$15,000 awarded to the State of California and \$5,000 awarded to Qualified Claimants. (P&As at 2.) These are appropriate awards. (Cal. Labor Code §§ 2698 *et seq.*)

Class counsel seeks attorneys' fees in the amount of \$1,400,000.00, which represents 35% of the \$4,000,000.00 settlement fund created on behalf of the class. (P&As at 2.) Based on the attorney time expended on this matter, the fees incurred total \$1,139,969. (P&As at 13.) Given the requested fees of \$1,400,000.00, class counsel is essentially requesting a modifier of 1.23. (*Id.*) The case was litigated on a contingent basis. (*Id.* at 9.) This settlement encompasses two class actions that were separately litigated and were only recently consolidated, such that they necessarily gave rise to separate attorneys' fees up until consolidation. The requested total reflects fees incurred by three separate law firms and their respective lead partners, as well as the associates from each firm working on the matter. Given these particular circumstances, the Court finds that the hours and rates requested (Shimoda Decl. ¶¶ 9-19 (lead partner hourly rate of \$575, associate hourly rates of \$425 and \$375, paralegal rates of \$150 and below); Yoon Decl. ¶¶ 12-22; Han Decl. ¶¶ 4-15) see generally Declaration of Richard M. Pearl ¶ 9 (chart stating lead partner Yoon's hourly rate of \$695, his associate's hourly rate of \$450, and lead partner Han's hourly rate of \$575 and his associate's hourly rate of \$450) and ¶¶ 1-11), all of which underlie the requested \$1,400,000.00 in fees, were reasonable and hereby approves them under the "lodestar" analysis and under the "percentage of the fund" analysis as described in the moving papers. The Court finds that, considering the amount of fees requested, the work performed, and the risks incurred, these requested fees are reasonable and should be awarded.

Class counsel also incurred actual litigation costs of \$31,244.47. (P&As at 13; Shimoda Decl. ¶ 18, Exh. B.) Class counsel seeks only \$30,000.00 of that amount, however, so as to stay within the "not to exceed" amount contained in the Class Notice and Settlement. (P&As at 13; Shimoda Decl. ¶ 18.) There is nothing before the Court that indicates that any requested costs were anything other than fair and reasonable.

The Claims Administrator's actual costs were \$14,276. (P&As at 17; Morales Decl. ¶ 21.) This is a fair and reasonable amount.

The Court tentatively finds, subject to arguments to be made at the hearing, that the settlement is entitled to a presumption of fairness and that all relevant factors support preliminary approval. The moving papers demonstrate that the settlement was the product of arms-length bargaining between the parties and was reached after sufficient discovery which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. (P&As at 5-6; Han Decl. ¶¶ 8-9.) The settlement is entitled to a presumption of fairness. (*Dunk*, 48 Cal.App.4th at 1802.) There is nothing before the Court which would overcome the presumption of fairness. Indeed, the settlement provides value to the class members as it provides them with monetary compensation in a manner approximately commensurate with the potential value of their individual claims in light of the risks of continued litigation. It also provides value to those employees continuing to work for Defendant (P&As at 8), as Defendant changes its "auto deduct practices," and revamped its meal/rest period policies and incentive pay procedures and practices by the time of mediation. (Yoon Decl. ¶ 10.)

For all the foregoing reasons, the Court concludes that the settlement is entitled to final approval, such that Plaintiffs' motion is **granted**.

The Court anticipates that it will sign the proposed order of final approval and judgment at the conclusion

of the final fairness hearing in the event that it adopts the findings set forth above. Conditioned upon further arguments to be made at the final fairness hearing, the Court will sign the Proposed Order filed with the moving papers.

Also conditioned upon further arguments to be made at the final fairness hearing, the Court will sign the Proposed Judgment filed with the moving papers. (Cal. Rule of Court 3.769(h) ("Judgment and retention of jurisdiction to enforce: If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment.").)

The Court hereby sets a post-Final Approval status conference for November 17, 2016 at 9 a.m., in Department 35, so that Class Counsel can advise the Court as to whether Defendant's payments were completed, distribution checks were issued and cashed, status of the PAGA payment, and the status of any uncashed checks.

**Notice:**

*Parties requesting services of a court reporter shall advise the court at (916) 874-7885 no later than 4:00 p.m. the court day before the hearing. Please be advised there is a \$30.00 fee for court reporting services, which must be paid at the time of the hearing, for each civil proceeding lasting less than one hour. (Govt. Code § 68086(a)(1)(A).)*

*The Court Reporter will not report any proceeding unless a request is made and the requisite fees are paid in advance of the hearing.*

**Court Ruling:**

*The tentative ruling is affirmed and the Court signed the Judgment and Order Granting Motion for Final Approval of Class Action Settlement.*

*The Court sets a compliance hearing for 11/17/16 at 9:00 a.m. in Department 35.*

Case Management Statements are due 14 days before the hearing, and no need to follow Judicial Counsel form.

The Order to Show Cause Re: Compliance - Complex is scheduled for 11/17/2016 at 09:00 AM in Department 35.

# **EXHIBIT H**

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

5 Attorneys for Plaintiff BRIAN STRAWN

6 [additional parties continued on next page]

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

11 BRIAN STRAWN, ESTABAN ESTRADA,  
ADRIAN PULIDO, DOMINADOR DUAZ,  
12 BRANDON NELSON and MATTHEW  
13 FARWELL, on behalf of themselves and all  
other similarly situated aggrieved employees,

14 Plaintiffs,

15  
16 vs.

17 BRIDGESTONE RETAIL OPERATIONS,  
LLC, a Delaware Limited Liability Company;  
18 BRIDGESTONE AMERICAS, INC., a  
19 Nevada Corporation;  
GORDON KNAPP, an individual;  
20 CHRISTOPHER NICASTRO, an individual;  
21 AMANDA MATHIS, an individual;  
MICHELLE ALMANDIGER, an individual;  
22 WILLIAM THOMPSON, an individual;  
DAMIEN HARMON, an individual;  
23 ERIC TURNER, an individual; and  
DOES 1 to 100, inclusive,

24  
25 Defendants.  
26  
27  
28

Case No. 34-2018-00242049

**CLASS ACTION**

*Assigned to the Honorable Jill H. Talley for all purposes*

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: November 15, 2022

Time: 1:30 p.m.

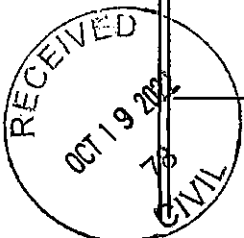
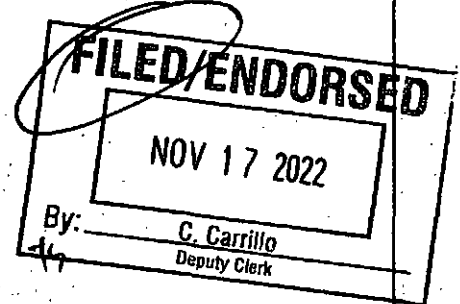
Dept.: 25

Judge: Hon. Jill H. Talley

Filed: October 5, 2018

FAC Filed: April 21, 2022

Trial Date: None Set



1 Kevin T. Barnes, Esq. (#138477)  
2 Gregg Lander, Esq. (#194018)  
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14 Attorneys for Plaintiffs ESTEBAN ESTRADA and ADRIAN PULIDO

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22 Attorney for Plaintiff DOMINADOR DAUZ

23 Reuben D. Nathan, Esq. (SBN: 208436)  
24 rnathan@nathanlawpractice.com  
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FAX: (562) 394-9556

Attorneys for Plaintiffs BRANDON NELSON and MATTHEW FARWELL

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement came on for  
3 regularly noticed hearing on November 15, 2022, before the Hon. Jill H. Talley, in Department 25 of  
4 the above-entitled Court, as set forth in the Parties' Stipulation of Class Action Settlement and Release  
5 ("Settlement Agreement"). Having considered the Parties' Settlement Agreement, Notice of Class  
6 Action Settlement, and Memorandum of Points and Authorities filed in Support of the Unopposed  
7 Motion for Final Approval of Class Action Settlement, the arguments and discussion of counsel for the  
8 respective parties, the documents submitted in support therewith including, without limitation, the  
9 Declarations submitted by the Parties and the Claims Administrator, as well as all supporting legal  
10 authorities and documents filed herein, and having conducted an inquiry pursuant to California Rules of  
11 Court, rule 3.769(g), including an inquiry into the notice to the Class, and good cause appearing therefor,  
12 the court now finds and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**  
13 **FOLLOWS:**

14 1. The Court, for purposes of this Final Judgment and Order ("Judgment"), adopts all  
15 defined terms (i.e., terms with initial capitalization) as set forth in the Parties' Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, the Class Members,  
17 the Named Plaintiffs, and Defendant.

18 3. The Court finds that the distribution of the Notice to Class Members, as provided for in  
19 the Order Granting Preliminary Approval for the Settlement and as detailed in the Declaration of Lluvia  
20 Islas of ILYM Group, Inc., constituted the best notice practicable under the circumstances to all Class  
21 Members and fully met the requirements of California law and due process under the California and  
22 United States Constitution. Based on evidence and other material submitted in conjunction with the  
23 Preliminary and Final Approval Hearings, the actual notice to the class was adequate in all respects.

24 4. The Court finds that the instant Action presented a good faith dispute over unpaid wage  
25 claims and reimbursement of business expenses and other relief, and the Court finds in favor of  
26 settlement approval.

27 5. The Court approves the Settlement of the above-captioned action, as set forth in the  
28 Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate.

1 The Parties to the Settlement Agreement are directed to perform in accordance with the terms set forth  
2 in the Settlement Agreement.

3 6. The Parties are to bear their own costs, except as otherwise provided in the Settlement  
4 Agreement.

5 7. For purposes of effectuating this Judgment, this Court has certified a class of all  
6 Settlement Class Members defined as follows: All current and former non-exempt employees who have  
7 worked, or continue to work, for defendant Bridgestone Retail Operations, LLC in California from July  
8 31, 2017 through July 21, 2022, who did not Opt-Out (collectively referred to as "Settlement Class").  
9 The Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a). Five  
10 (5) Class Members submitted timely Opt-Out Requests to the class action portion of the Settlement  
11 Agreement, including Chan Le, Charles Rivera, David Contizano, Ivan Perez, and Miguel A. Martinez.  
12 These individuals will remain as PAGA Members under the terms of the Settlement Agreement, will  
13 still receive their pro rata share of the PAGA Penalty Payment, and will still be subject to, and bound by,  
14 the release of claims brought under the Private Attorneys General Act ("PAGA") in any of the Actions  
15 or that could have been brought in any of the Actions based on the facts alleged therein. However, these  
16 individuals will not be paid any portion of the Net Settlement Amount outside of their pro rata share of  
17 the PAGA Penalty Payment.

18 8. With respect to the Settlement Class and for purposes of approving this Settlement, this  
19 Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that  
20 joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement  
21 Class Members, and there is a well-defined community of interest among the Settlement Class Members  
22 with respect to the subject matter of the Action; (c) the claims of the Named Plaintiffs are typical of the  
23 claims of the Class Members; (d) the Named Plaintiffs have fairly and adequately protected the interests  
24 of the Class Members; (e) a class action is superior to other available methods for an efficient  
25 adjudication of this controversy; and (f) the counsel of record for the Named Plaintiffs, *i.e.*, Class  
26 Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and representative  
27 capacity, as well as for the Settlement Class.  
28

1           9. By this Judgment, each of the Settlement Class Members shall be deemed to have, and by  
2 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged  
3 all Released Claims, as defined in the Settlement Agreement. Specifically, the Settlement fully releases  
4 and discharges Bridgestone Retail Operations, LLC and each of its former and present parents,  
5 subsidiaries, affiliates, officers, directors, operators, principals, owners, heirs, representatives,  
6 accountants, auditors, consultants, insurers and reinsurers, employees, partners, shareholders, members,  
7 divisions, fiduciaries, trustees, agents, attorneys, investors, benefit plans, other successors and  
8 predecessors in interest, assigns or legal representatives (including the parties named in the original  
9 Complaint filed by Strawn on October 5, 2018: Bridgestone Americas, Inc., Gordon Knapp,  
10 Christopher Nicastro, Amanda Mathis, Michelle Almandinger, William Thompson, Damien Harmon,  
11 Eric Turner) of any all past, present and future claims, administrative or otherwise, actions, causes of  
12 action, rights, or liabilities, up to July 21, 2022, whether known or unknown, whether in law or equity,  
13 which were asserted or which could have been asserted based on the factual allegations in this Action,  
14 including claims based on or arising out of the following categories of claims and allegations: (1) all  
15 claims for unpaid wages, including any type of regular wages, minimum wages, overtime wages or an  
16 overtime premium on non-hourly compensation, including bonus, SPIFF or other incentive pay, in  
17 accordance with California state or federal law; (2) all claims for liquidated damages; (3) all claims  
18 related to the provision or maintenance of tools, including any claim for two times the minimum wage  
19 under the wage orders and indemnification under *Labor Code* Section 2802; (4) all claims for failure to  
20 indemnify employees for hand tools, equipment (including personal safety equipment such as gloves and  
21 glasses), mileage or other expense from personal vehicle usage and personal device usage (data, text or  
22 phone); (5) all claims for the failure to provide meal breaks or rest breaks or premium pay in lieu  
23 thereof; (6) all claims for the failure to keep accurate records, including records pertaining to hours  
24 worked and start and stop time of meal breaks, due to time "edits" or any other reason; (7) all claims that  
25 Defendant owed and failed to timely pay all wages due and owing during employment, or within the  
26 required time at Class Members' termination, resignation or discharge; (8) all future claims for *Labor*  
27 *Code* 203 penalties to the extent premised on a wage claim pled in the First Amended Complaint in this  
28 case, with the alleged violation supposedly occurring prior to July 21, 2022; (9) all claims for the failure

1 to issue properly itemized wage statements pursuant to California *Labor Code* Section 226; (10) all  
2 interest and statutory penalties based thereon, including those recoverable under the PAGA; (11) all  
3 claims for violations of *Labor Code* Sections 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5,  
4 210, 218.6, 221-223, 226, 226.3, 226.7, 256, 500-508, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5,  
5 1182.12, 1194, 1194.2, 1197, 1197.5, 1198, 2698, 2699, 2699.3, 2699.5, 2802, 2810.5; 2926 and 2927;  
6 (12) all claims for violations of any Wage Order issued by the Industrial Welfare Commission related to  
7 any of the claims set forth herein; and (13) all claims for unfair competition pursuant to California  
8 *Business and Professions Code* Section 17200, *et seq.* related to any of the claims set forth herein at any  
9 time from July 31, 2017 through July 21, 2022.

10       10. As of the date of this Judgment and the Effective Date as set forth in the Settlement  
11 Agreement, Named Plaintiffs Brian Strawn, Esteban Estrada, Adrian Pulido, Dominador Dauz, Brandon  
12 Nelson, and Matthew Farwell hereby release and waive any and all claims of any kind whatsoever,  
13 known or unknown, against the Released Parties through the execution of the Settlement Agreement.  
14 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of  
15 every nature and description whatsoever, known or unknown, asserted or that might have been asserted,  
16 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of,  
17 relating to, or in connection with any act or omission by or on the part of any of the Released Parties  
18 committed or omitted prior to the execution hereof with the sole exception of workers' compensation  
19 claims and any claims which cannot be released as a matter of law. The General Release includes any  
20 unknown claims Plaintiffs do not know or suspect to exist in their favor at the time of the General  
21 Release, which, if known by them, might have affected their settlement with, and release of, the  
22 Released Parties or might have affected their decision not to object to this Agreement or the General  
23 Release. By operation of the Stipulation and this Judgment, the Court further finds that Named  
24 Plaintiffs have expressly waived and relinquished the provisions, rights, and benefits of Section 1542 of  
25 the California Civil Code.

26       11. All Settlement Class Members and Named Plaintiffs are hereby permanently enjoined  
27 and forever barred from instituting or prosecuting any action against Defendant or any other Released  
28 Party for the Released Claims. Named Plaintiffs may take steps in *Bridgestone Retail Operations Wage*

1 and Hour Cases, Judicial Council Coordination Proceeding, Case No. 5054 to seek and effectuate  
2 dismissal of the lawsuit with prejudice.

3 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any act  
4 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
5 Settlement (i) is, or may be deemed to be, or may be used as an admission of, or evidence of, the validity  
6 of any Released Claim, or of any wrongdoing or liability of Defendant or any Released Party; or (ii) is,  
7 or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of  
8 Defendant or any Released Party in any civil, criminal, or administrative proceeding in any court,  
9 administrative agency, or other tribunal. Defendant or any of the Released Parties may file the  
10 Settlement Agreement and/or the Judgment from this Action in any other action that may be brought  
11 against it or them in order to support a defense or counterclaim based on principles of *res judicata*,  
12 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim  
13 preclusion or issue preclusion or similar defense or counterclaim.

14 13. The only Class Members entitled to payment pursuant to this Judgment are Settlement  
15 Class Members. Neither the Settlement Agreement nor this Judgment will result in the creation of any  
16 unpaid residue or residual. Any funds that would have been paid to Settlement Class Members had they  
17 cashed the check containing their respective Claim Amount within the Check-Cashing Period will be  
18 paid to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member for  
19 whom the funds are designated in accordance with the Settlement Agreement. Pursuant to section 1.20  
20 of the Settlement Agreement, no part of the Maximum Settlement Amount shall revert to Defendant.

21 14. The Court has reviewed Defendant's Hand Tool Policy attached as Exhibit A to the  
22 Declaration of Erika Avila submitted in support of Plaintiff's unopposed Motion for Preliminary  
23 Approval of Class Action Settlement, as well as Labor Code § 2802 and the applicable Wage Order  
24 requirements concerning the provision of hand tools and finds that Defendant's Hand Tool Policy  
25 facially complies with the California Labor Code and applicable Wage Order Requirements since  
26 Defendant does not require its employees to provide tools or spend money on tools in order to do their  
27 job. The Court makes no finding as to the legality of any acts in the administration of Defendant's Hand  
28 Tool Policy. The applicable Tool Policy is attached as Exhibit A to this [Proposed] Judgment.

1        15.    Class Counsel sought an award of attorneys' fees of \$805,000.00, litigation expenses of  
2 \$61,480.58, Class Representative Service Fees for the Named Plaintiffs in the amount of \$15,000 each,  
3 and for Claims Administration Costs in the amount of \$25,000.00. Defendant does not oppose these  
4 requests. The Notice sent to Class Members included information regarding these amounts and that they  
5 would be requested in connection with final approval of the Settlement Agreement. Class Members  
6 have been given the opportunity to object to these amounts and not objections have been submitted in  
7 any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding  
8 their hourly rates and the amount of time expended in the Actions for the benefit of Class Members.  
9 The Court finds that the rates requested and hours expended are reasonable. This finding is further  
10 supported by the lack of objection by Class Members to these amounts. The Court finds that these  
11 amounts as set forth in the Settlement Agreement are fair and reasonable, and shall be awarded  
12 accordingly as set forth herein.

13        16.    The following payments, as required by the Settlement Agreement, are approved:

- 14                    A) Payments to the Settlement Class Members for the full value of their Claim  
15                    Amount from the Net Settlement Amount and/or PAGA Penalty Payment in  
16                    accordance with the Settlement Agreement and as calculated by the Claims  
17                    Administrator;
- 18                    B) \$805,000.00 in attorneys' fees awarded to Class Counsel;
- 19                    C) \$61,480.58 for attorney' costs/expenses to be paid to Class Counsel;
- 20                    D) \$25,000.00 to the Settlement Administrator, ILYM Group, Inc.;
- 21                    E) \$15,000.00 each to Named Plaintiffs; and
- 22                    F) \$37,500.00 to the Labor and Workforce Development Agency for PAGA  
23                    penalties.

24        17.    Within one (1) business day after the Effective Date of this settlement (as that term is  
25 defined in the Settlement Agreement), the Claims Administrator shall provide the Defendant with wire  
26 and account information, and direct Defendant to deposit the amount of money necessary to fund the  
27 Maximum Settlement Amount as set forth in the Settlement Agreement. Within nine (9) business days  
28 of receiving the post-Effective Date notice from the Claims Administrator, Defendant shall wire the

1 funds requested by the Claims Administrator into a QSF. Within five (5) business days after receiving  
2 the wire transfer from Defendant, the Claims Administrator shall prepare and wire the settlement funds  
3 payable to Class Counsel for attorneys' fees and litigation costs awarded by the Court and the Named  
4 Plaintiffs' Class Representative Service Fees. The Claims Administrator will calculate, withhold, and  
5 remit all applicable taxes from the Maximum Settlement Fund, as well as comply with state, federal,  
6 local or other tax reporting and tax return filing requirements, pursuant to the Settlement Agreement.  
7 The Claims Administrator shall also distribute the funds to the Labor Workforce Development Agency,  
8 Class Members, PAGA Members or State Unclaimed Property Fund, in accordance with the Settlement  
9 Agreement.

10 18. This document shall constitute a Judgment for purposes of California Rule of  
11 Court 3.769(h). Without affecting the finality of this Judgment in any way, the Court reserves exclusive  
12 and continuing jurisdiction over the Action, the Named Plaintiffs, the Class Members, and Defendant for  
13 the purposes of supervising the implementation, enforcement, construction, administration, and  
14 interpretation of the Settlement Agreement and this Judgment.

15 IT IS SO ORDERED.

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

11/17/22



17 Hon. Jill H. Talley  
18 Judge of the Superior Court  
19  
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25  
26  
27  
28

1 Galen T. Shimoda (Cal. State Bar No. 226752)  
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5 Attorneys for Plaintiff ERIKA COLLAZO  
6  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

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

13 Plaintiff,

14 vs.

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

18 Defendants.  
19  
20  
21  
22  
23

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

**CLASS ACTION**

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

Reservation No.: 2708842

Date: June 9, 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 Final Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy  
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") in  
7 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 expenses<sup>1</sup>. 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

27 \_\_\_\_\_  
28 <sup>1</sup> 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 worked<sup>2</sup>, 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

28 \_\_\_\_\_  
<sup>2</sup> 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.  
28

1           8.       Based on my experience litigating class actions and working with class representatives,  
2 Plaintiff was heavily involved in the litigation and went above and beyond the typical amount of time  
3 spent assisting with the prosecution of the case. The investigation of this case required a substantial  
4 amount of time going over facts and documents because misclassification claims are very fact intensive.  
5 It was critical that Plaintiff prevail on the misclassification claims because her other claims were  
6 derivative of that allegation. For example, a lot of time was spent gathering information and documents  
7 related to Defendant's classification of Class Members as independent contractors, analyzing the  
8 misclassification claim under the ABC test, determining whether any exceptions to the ABC test could  
9 be met by Defendant, analyzing the misclassification claim under the *Borrello* test, and analyzing  
10 whether the exemption for outside salespersons could apply. This required a detailed look at  
11 Defendant's advertising and hiring practices, Class Members' job duties, the type of business Defendant  
12 engaged in, the level of control Defendant had over Class Members' work, Defendant's day-to-day  
13 operations, communications between Defendant and Class Members, Class Member testimony, and  
14 regulations related to telecommunications carriers and government subsidized programs. Throughout  
15 the litigation, Plaintiff was always responsive, checked in frequently on the status of the case, asked  
16 questions in order to fully understand the claims and potential risks, and spent a substantial amount of  
17 time providing facts, searching for documents, reviewing and searching for any helpful information  
18 online and on social media, searching for and tracking down witness contact information, and speaking  
19 with witnesses to assist my office's investigation and analysis of claims. Prior to the mediation, Plaintiff  
20 spent several hours providing additional facts and answering questions related to Defendant's informal  
21 discovery production and searching for additional witnesses and documents to support the claims and  
22 rebut Defendant's contentions. Plaintiff also heavily participated in the mediation by phone providing  
23 facts to the mediator and answering questions to rebut Defendant's contentions. Plaintiff's assistance  
24 was important because it directly related to our ability to maintain this case as a class action and our  
25 ability to obtain a favorable settlement for the class.

26           9.       Throughout this litigation our office had numerous communications with Defendant's  
27 Counsel discussing our respective positions. The parties engaged in mediation on September 27, 2022,  
28 using an experienced mediator, Brandon McKelvey, Esq. It was only after about nine months of

1 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred  
2 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still  
3 professional in nature.

4 10. In analyzing the sample data and relevant policies and comparing them against Plaintiff's  
5 allegations and theories of liability, the following represents the potential maximum recovery for each  
6 asserted claim and the risks associated with each such claim:

- 7 • Overtime Wages: This claim is based on allegations that, prior to January 2020,  
8 Class Members were paid piece rate compensation in addition to non-discretionary  
9 bonuses without being compensated for overtime hours worked, and, after January  
10 2020, that Class Members were paid hourly in addition to non-discretionary bonuses,  
11 but that the value of non-discretionary bonuses were not incorporated into Class  
12 Members' regular rates of pay for the purpose of calculating overtime wages owed.  
13 Based on Class Members' time and payroll data, only approximately 28% of the total  
14 workweeks were affected and the total exposure for this claim is \$106,074.04. This  
15 amount does not take into account the potential risks associated with this claim on the  
16 merits and in proving damages. Defendant had a written policy requiring Class  
17 Members to accurately record their hours worked. Additionally, Defendant  
18 contended that to the extent Class Members worked any overtime hours that were not  
19 recorded, the actual hours worked would have been miniscule, whereas Plaintiff's  
20 calculation is based on a consistent 7.39 unpaid overtime hours being worked per  
21 week. Even if Defendant was unsuccessful in establishing no liability, if it were able  
22 to prove a lesser amount of unpaid overtime worked per week, the claim could have  
23 been reduced to around \$11,000 to \$23,000. Defendant further contended that the  
24 bonuses paid to Class Members were discretionary based on an assessment of the  
25 profitability of the job rather than non-discretionary. If the bonus payments Class  
26 Members received were discretionary, that would eliminate the value of this overtime  
27 claim entirely from January 2020 to the present.  
28

- Meal Periods: This claim is based on allegations that Defendant did not provide Class Members with all meal periods they were entitled to. Based on Class Members' time and payroll data, the total exposure for this claim is \$676,229.40. This amount does not take into account any potential risks associated with this claim. For instance, Defendant had a written policy providing for meal periods and contends that to the extent Class Members did not take a meal period it was a personal choice because they were responsible for setting their own meal and rest period schedule throughout the day. Defendant also produced time records showing meal clock in/out times for Class Members that would likely have substantially reduced the total damages at issue even if Plaintiff was able to establish liability on these claims.
- Rest Periods: This claim is based on allegations that, for the period of time Class Members were paid piece rate compensation, Defendant did not pay Class Members for time spent during rest periods. Based on Class Members' time and payroll data, the total exposure for this claim is \$596,673.00. This number does not account for the risks associated with this claim. For example, the value of this claim depends on Class Members actually taking every rest period they were entitled to based on the time records. If Class Members chose not to take a rest period, then there would be no unpaid rest period time violation. Based on the testimony received and expected further testimony regarding inability to take meal periods, there was also a substantial risk that there was a substantial number of Class Members who did not take rest periods.
- Sick Time: This claim is based on allegations that post January 2020 Defendant failed to pay Class Members the correct amount of paid sick time because it failed to incorporate the value of non-discretionary bonuses into Class Members' regular rates of pay. Based on Class Members' time and payroll data, the total exposure for this claim is \$49,585.54. This amount does not take into account the risk associated with this claim. If Defendant prevailed on its argument that the bonus payments to Class Members were discretionary, then this claim would not have any value.

- **Waiting Time:** This claim is derivative of Plaintiff's overtime, meal period, rest period, and unpaid sick time claims. Based on Class Members' time and payroll data, the total exposure for this claim is \$514,483.20. This amount does not take into account the potential risks associated with this claim. Because this claim is derivative, the same risks mentioned above also apply to this claim. In addition, there is substantial risk that because Defendant maintained legally compliant policies throughout the Class Period it would have a good faith affirmative defense to this claim.
- **Wage Statement:** This claim is based on allegations Defendant failed to provide accurate wage statements by failing to include the accurate amount of gross and net wages and accurate hourly rates in effect on wage statements. Based on Class Members' payroll data, the total exposure for this claim is \$28,800.00. This amount does not take into account the potential risks associated with this claim. Because this claim is derivative of Plaintiff's other claims, the same risks identified above for Plaintiff's overtime, meal period, and sick time claims equally apply here. Additionally, this calculation assumes there was at least one type of violation in each of the pay periods. However, several of the claims have a small violation rate, affecting only 28% of the workweeks. To the extent that Plaintiff would have been unable to prove all claims on the merits, this would have also reduced the number of pay periods that potential wage statement violations could occur in. Moreover, Defendant contends that Class Members did not suffer any injury as a result of the wage statements and therefore would not be able to recover any penalties.
- **Cellphone/Tool Reimbursement:** This claim is based on allegations that Defendant required Class Members to use personal cellphones and tools for work without being reimbursed. The total exposure for this claim is \$30,125.00. This amount does not take into account any potential risks associated with this claim. For example, Defendant contends that it provided all necessary tools and that to the extent Class Members used their own tools it was a personal choice and not required. Defendant

1 further contends that employees were told to notify Defendant if additional tools  
2 needed to be purchased.

- 3 • PAGA: This claim is derivative of the Labor Code violations identified above. Based  
4 on Class Members' payroll data, the total exposure for this claim is \$547,315.20.  
5 This amount does not take into account any of the potential risks associated with this  
6 claim. Because this claim is derivative it carries all the same risks identified in the  
7 claims above. For example, if Defendant were able to demonstrate that all bonus  
8 payments were discretionary, all claims that depending on the regular rate of pay  
9 theory of liability would have been eliminated, including the derivative PAGA claims  
10 based thereon. Additionally, the correct valuation of civil penalties under the PAGA  
11 was disputed. For example, Plaintiff valued civil penalty claims for failure to pay  
12 final wages under Labor Code section 256 (similar to how statutory waiting time  
13 penalties are calculated) for a total of \$115,315.20 instead of the \$100 per violation  
14 default penalty, which would have resulted in a total of \$1,300. A similar valuation  
15 dispute existed with respect to wage statement violations, which could swing the civil  
16 penalty calculation from \$144,000.00 to \$57,600.00.
- 17 • Further, I believe the PAGA penalties in this case may be reduced due to the fact that  
18 the penalties would be in addition to amounts owed for substantive violations and  
19 much of the penalties are based on violations due to technical non-compliance with  
20 the Labor Code. Furthermore, Defendant produced a substantial number of  
21 documents and written policies and handbooks, that a Court may find demonstrates a  
22 good faith attempt at compliance that merits the reduction of civil penalties. Courts  
23 regularly cut civil penalties on PAGA claims where statutory penalties for the same  
24 violations are assessed as well. Courts are statutorily authorized to use discretion to  
25 reduce penalties and the range of discretion used varies substantially. See *Thurman*  
26 *v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%  
27 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, \*9 (C.D. Cal.  
28 2011) (82% reduction). Thus, civil penalties may be cut to approximately

1 \$164,194.56 (30%) to \$98,516.74 (82% reduction) or lower given the derivative  
2 recovery. It is important to note that this discretionary reduction is completely  
3 separate and in addition to any risks on the merits. Given the facts and highly  
4 disputed nature of the claims, we felt the amount that might ultimately be awarded  
5 under this claim would be low, especially in light of amounts that Courts have  
6 approved as reasonable valuations in similar cases. See Nordstrom Com. Cases, 186  
7 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA  
8 claims based on their being disputed and being part of a class settlement which was  
9 evaluated based on the terms of the agreement overall); Davis v. Cox Commc'ns  
10 California, LLC, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily  
11 approving \$4,000 PAGA allocation in \$275,000 settlement); Jack v. Hartford Fire  
12 Ins. Co., 2011 U.S. Dist. LEXIS 118764, \*6 (S.D. Cal. 2011) (approving \$3,000  
13 PAGA allocation in \$1,200,000 settlement); Singer v. Becton Dickinson & Co., 2010  
14 U.S. Dist. LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in  
15 \$1,000,000 settlement); Hopson v. Hanesbrands Inc., 2009 U.S. Dist. LEXIS 33900,  
16 \*9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement);  
17 Garcia v. Gordon Trucking, Inc., 2012 U.S. Dist. LEXIS 160052, at \*7 (E.D. Cal.  
18 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); Franco v.  
19 Ruiz Food Prod., Inc., 2012 WL 5941801, at \*14 (E.D. Cal. 2012) (\$10,000 in PAGA  
20 payment from \$2,500,000 settlement fund); Chu v. Wells Fargo Investments, LLC,  
21 2011 WL 672645, at \*1 (N.D. Cal. 2011) (approving PAGA settlement payment of  
22 \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

23 11. To summarize, I have determined that the maximum damages for the asserted class  
24 claims is approximately \$12,301,155.79, which includes civil penalties under the PAGA. The likely  
25 exposure for PAGA penalties is approximately \$6,084,005.00 based on the counts alleged to the  
26 LWDA and the class data. The likely recovery if Plaintiff was successful at trial on proving all the  
27 substantive class damages plus civil penalties after a reduction of the PAGA penalties would be  
28 approximately \$7,312,271.69 (82% PAGA reduction) to \$10,475,954.29 (30% PAGA reduction).

1 Taking this into account, Plaintiff's \$842,500 gross recovery under the Agreement represents  
2 approximately 8% to 12% of the maximum likely value in this matter. After deducting from the Gross  
3 Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment  
4 to the Class Representative, Settlement Administrator Costs, and the PAGA Payment to the LWDA, the  
5 net recovery under the Agreement of \$455,686.01, represents approximately 4.3 to 6.2% of the  
6 maximum likely value in this matter. Based on the final numbers from the administrator, the average  
7 recovery is \$407.23 and the highest recovery is \$5,150.17. I believe the Agreement represents a  
8 reasonable compromise of claims based on the legal and factual disputes in this case. The ability to  
9 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than  
10 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this  
11 Agreement.

12 12. In agreeing to take on the case our office agreed to take this case on a contingency basis,  
13 meaning that we would take a percentage of any settlement or judgment should we recover a monetary  
14 amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at  
15 trial. We also took on the risk that the case may be subject to an unfavorable summary judgment  
16 ruling. However, we believe it is important to make sure employees are able to find affordable  
17 representation in order to ensure that employers are complying with all their legal obligations towards  
18 employees and paying employees all their hard-earned wages. We rely on attorneys' fee awards in  
19 order to continue working to ensure California wage and hour protections are enforced. Recovery of  
20 our full lodestar plus an appropriate multiplier is necessary to compensate for the risk undertaken.  
21 Otherwise, we could not continue to represent employees who are denied wages, but whose cases may  
22 be time-consuming and difficult to prove. There have many class cases we have litigated where  
23 ultimately we get zero for our time because we are unable to meet certification requirements or the  
24 company becomes financially insolvent. Additionally, there are occasions, where the fee recovered  
25 actually results in a negative multiplier of our lodestar. *See e.g., McMahon v. Airco Mechanical, Inc.*,  
26 Case No. 34-2019-00259269 (Sac. Sup. Ct.) (-1.53 multiplier); *Uribe v. EcoGuard Pest Management,*  
27 *Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.) (-1.29 multiplier); *Blair v. Clark Wagaman Designs,*  
28 Case No. 34-2021-00313156 (Sac. Sup. Ct.) (-1.60 multiplier).

1           13.     I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique  
2 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I  
3 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I  
4 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &  
5 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working  
6 on individual, class action and PAGA employment cases throughout law school. I also participated in  
7 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal  
8 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,  
9 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,  
10 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and  
11 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,  
12 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I  
13 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented  
14 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and  
15 defended a client against five misdemeanor charges in a jury trial in the United States District Court for  
16 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock  
17 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law  
18 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with  
19 Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I  
20 received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure,  
21 Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super  
22 Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar  
23 Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in  
24 2021. I have over seven years of experience working on civil litigation and employment law matters.  
25 Most of that experience has been specific to analyzing and litigating wage and hour claims. As an  
26 associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and  
27 hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and  
28 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 • *Ferreyra 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.).

14. 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.

15. The partners, Justin P. Rodriguez, Esq. and Galen T. Shimoda, Esq., also worked with me on this matter and were 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.

16. 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.);
- *Barkhousen 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. AI 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 17. 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 18. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business  
22 Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and  
23 graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in  
24 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the  
25 Coif and Traynor Honor Society. Since graduating from McGeorge, he has authored a number of  
26 employment law articles for journals and regularly publishes articles on our firm's website.

27 19. He has been a regular panel speaker for the CEB (Continuing Education of the Bar)  
28 Employment Review seminars from 2014 to the present. His speaking engagements include the

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

21         20. He has practiced law in California since being admitted to the State Bar in 2003,  
22 litigating wage and hour class actions and individual wage and hour litigation among other cases. He  
23 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.  
24 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour  
25 law. He has litigated several class action cases in California State and Federal Courts, including up to  
26 certification, settlement, preliminary and final approval, and disbursement of monies, and has been  
27 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA  
28

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.);

- 1 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-  
2 00082201 (Sac Sup. Ct.);
- 3 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.  
4 Sup. Ct.);
- 5 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 6 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 7 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 8 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.  
9 Sup. Ct.);
- 10 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 11 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 12 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 13 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

17 22. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant  
18 to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v.*  
19 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980).  
20 Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class  
21 and equity counsels that the cost of the representation should be born equally amongst all class  
22 members receiving these benefits. The settlement recovery provides an excellent result and is the  
23 product of substantial time and effort in analyzing the facts and law applicable to this case. There was  
24 substantial risk in agreeing to take this case on a contingency basis and as a class action with the  
25 possibility that Plaintiff's Counsel would not receive any compensation their time and efforts due to  
26 issues regarding the merits and/or certification and have carried that risk over the course of the case. In  
27 my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within  
28 ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento

County Superior Court. For example, On May 5, 2016, the Honorable Alan G. Perkins, who presided over the Court's Complex Department at the time, awarded 35% of the \$4,000,000.00 common fund settlement for attorney's fees, which included a 1.23x multiplier of counsel's lodestar in that case. A true and correct copy of the May 5, 2016, Minute Order is filed with this Motion as Exhibit G.

23. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$237,884.50 based on approximately 432.2 hours, which include approximately 10 hours of time for myself preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Rodriguez and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of this summary chart is being filed with this Motion as Exhibit F. In reviewing the entries with Mr. Shimoda and Mr. Rodriguez, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

| <u><b>Timekeeper</b></u> | <u><b>Hours</b></u> | <u><b>Rate</b></u> | <u><b>Lodestar</b></u> |
|--------------------------|---------------------|--------------------|------------------------|
| Galen T. Shimoda         | 83.4                | \$725              | \$60,465.00            |
| Justin P. Rodriguez      | 145.7               | \$625              | \$91,062.50            |
| Brittany V. Berzin       | 203.1               | \$425              | \$86,317.50            |
| <b>Total:</b>            | <b>432.2</b>        |                    | <b>\$237,844.50</b>    |

24. I believe the requested rates of \$425 per hour for myself, \$625 per hour for Mr. Rodriguez, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Sacramento County and elsewhere. We have approximately 4 years, 12 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. As far back as May 2016, the

1 Sacramento County Superior Court also approved hourly rates in the amount of \$695 for a partner with  
2 approximately 18 years of experience, \$575 for partners with approximately 12 years of experience,  
3 and rates for associates with approximately 4 years of experience in the range of \$375-\$425 in a wage  
4 and hour class action settlement. *See* Exhibit G. According to the U.S. Bureau of Labor Statistics, the  
5 value of goods and services that cost \$575 in May 2016 have an equivalent value of \$710.42 in today's  
6 dollars as of September 2022. *See* [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm). In addition, in  
7 November 2022, the Sacramento County Superior Court approved Mr. Shimoda, Mr. Rodriguez, and  
8 myself at these rates in connection with a motion for final approval of a wage and hour class action  
9 settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup.  
10 Ct.). A true and correct copy of the final approval order in the *Strawn* matter is being filed with this  
11 Motion as Exhibit H. Awarding fees at the hourly rate in effect at the time of the fee request is an  
12 appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283  
13 (1989).

14 25. We are requesting a fee award of 35% of the gross settlement (*i.e.*, \$294,875). This  
15 request is reasonable considering our lodestar of \$237,884.50, which results in a 1.2 multiplier. *See*  
16 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480 (2016) (finding the trial court did not abuse its  
17 discretion in approving a fee award that resulted in a multiplier of 2.03 to 2.13). We rely on attorneys'  
18 fee awards in order to continue working to ensure enforcement of California wage and hour protections.  
19 Recovery of our full lodestar plus a multiplier is necessary to compensate for the risk undertaken in  
20 contingency cases in general and class action cases in particular. Otherwise, we could not continue to  
21 represent employees who are denied wages, but whose cases may be time-consuming and difficult to  
22 prove. Class cases are exceptionally difficult to litigate, often resulting in a negative multiplier of our  
23 lodestar when entering into settlements that are reasonable and beneficial to the class. There have been  
24 many class cases we have litigated where ultimately, we get zero for our time because we are unable to  
25 meet certification requirements, or the company becomes financially insolvent. I believe our fee  
26 request is reasonable and appropriate to compensate for the risk undertaken in this case considering  
27 what has been awarded in other class litigation cases. *See Wershba v. Apple Comput., Inc.*, 91 Cal.  
28 App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher").

1           26.     Although the Agreement set out a maximum of \$15,000 for potential attorney’s costs,  
2 the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is  
3 \$10,088.99. A true and correct copy of my firm’s itemized costs incurred prior to the filing of this  
4 Motion and the expected costs incurred through the final approval and compliance hearings is attached  
5 to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated  
6 under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

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

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

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

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

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

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

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

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

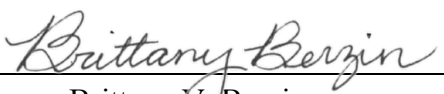
25 34. I have spoken with every other attorney at my firm to determine whether they have any  
26 relationship with either of the proposed *cy pres* beneficiaries.

27 35. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During  
28 law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I

1 have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic.  
2 Recently, I volunteered to be on the Board of Directors and am currently the Chair, which is an unpaid  
3 position. As Chair, I am one of seven Board Members, who are all from different law firms and/or local  
4 public and private organizations. No compensation or benefits, monetary or otherwise, are provided to  
5 any Board Member or organization a Board Member is associated with. The Executive Director of the  
6 CFWR supervises, directs, and controls the day-to-day operations of the CFWR, not myself or the Board  
7 of Directors. As Chair, my additional duties include scheduling meetings, drafting meeting agendas and  
8 presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda  
9 & Rodriguez Law, P.C. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times  
10 over the past several years, either directly in the advice clinics or by presenting seminars on wage and  
11 hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting  
12 on CPB's advisory committee. Mr. Rodriguez has never received payment or compensation of any kind  
13 in connection with any work he's done with the CPB or CFWR. Galen T. Shimoda has volunteered for  
14 both organizations on and off over the past several years through either presenting wage and hour  
15 seminars to law students who staff the free advice clinics or helping at the advice clinics themselves.  
16 However, Mr. Shimoda has not performed any volunteer work with either organization since  
17 approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in  
18 connection with any work he's done with CPB or CFWR.

19 36. Neither my firm, Mr. Rodriguez nor Mr. Shimoda have not received any compensation,  
20 direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection with any of  
21 the volunteer work we have done with the organizations.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
23 true and correct. Executed this 15th day of May 2023 in Elk Grove, California.

24  
25   
26 Brittany Berzin  
27  
28

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. 34-2021-00313156**

**CLASS ACTION**

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

Reservation No.: 2708842

Date: June 9, 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 Final 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. I began discussing a potential case with Shimoda & Rodriguez Law, PC in  
23 approximately September 2021 and began collecting and providing documents I believed were relevant  
24 to my claims. During the course of this litigation, I have given detailed accounts of all the facts related  
25 to my employment and kept in touch with my attorneys to keep apprised of any developments in the  
26 case and ensure steps were continually taken to advance the interests of Class Members. Prior to  
27 preparing for mediation, I spent several hours searching for any helpful information and documents,  
28 speaking with my attorneys to get updates, discussing claims and potential risks, and assisting with my

1 counsel's investigation of the claims. For example I provided details regarding Defendant's corporate  
2 structure, the roles of management personnel, details regarding Class Members' job duties, Defendant's  
3 practices regarding advertising job openings and hiring, Defendant's compensation policies and  
4 practices, Defendant's meal and rest period policies and practices, the level of control Defendant  
5 exercised over Class Members, Defendant's day-to-day operations, how and in what instances  
6 Defendant tracked Class Members' hours worked, and Defendant's policies and practices related to  
7 Class Members' use of personal cellphones and failure to pay reimbursements. I also provided my  
8 attorneys with witness information and extensive documentation that I believe supported the claims  
9 brought against Defendant. For example, I spent hours searching for helpful documents and  
10 information, including e-mails from Defendant, text messages, all documents I received from  
11 Defendant during my employment, including policy documents and time and pay records, Defendant's  
12 job postings/job descriptions, and videos posted to Defendant's Instagram account. I went over these  
13 documents in detail with my attorneys to help explain the process Defendant used to hire and classify  
14 Class Members as independent contractors, how Class Members were paid, and the scope and terms of  
15 Class Members' work for Defendant. This was very important as it helped provide evidence and  
16 support for my allegation that Defendant misclassified Class Members as independent contractors,  
17 which was the primary basis for the overtime, minimum wage, meal period, rest period, wage  
18 statement, unfair competition, waiting time, and PAGA claims alleged in the Complaint.

19         6. I also reviewed documents produced by Defendant to aid in mediation that were part of  
20 the informal information and document exchange, such as the payroll data sample, Defendant's  
21 policies, and independent contractor agreements. My attorneys also asked me questions about the  
22 payroll data sample and independent contractor agreements that were produced as part of informal  
23 discovery to engage in mediation. In addition, my attorneys requested I search for additional  
24 documents, such as Defendant's available online job postings and additional communications from  
25 Defendant I received related to my work. I searched online and went to websites I recall Defendant  
26 used to post jobs and downloaded and saved any job posting I could find. I also did another review of  
27 text messages and e-mails to ensure I had provided all documents to my attorneys. In addition, my  
28 attorneys requested that I try to locate additional witnesses to rebut Defendant's contentions. I had

1 already provided all the witness information I had, so this required reviewing social media contacts I  
2 had and searching for social media accounts of other individuals I knew from the company, obtaining  
3 their contact information, and inquiring whether they would be willing to speak with my attorneys.

4 7. I participated in the negotiations and settlement discussions in this case, including  
5 participating in mediation by phone, speaking with and answering questions from the mediator,  
6 speaking with my attorneys to answer questions, provide any additional information needed to assist  
7 the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.  
8 Throughout the course of this litigation, I have asked questions when I needed clarification about  
9 various aspects of this case to make sure there were continually steps taken to advance the interests of  
10 Class Members. After the case resolved, I estimate I spent addition time speaking with my attorneys,  
11 going over the settlement agreement, and receiving updates and asking questions regarding the court  
12 approval process.

13 8. In total, I estimate that I spent approximately 90 hours assisting with the prosecution of  
14 this case.

15 9. I have experienced substantial burdens as a result of filing the lawsuit that other Class  
16 Members were not subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay  
17 Defendant's costs if the Court or jury ruled against us on the claims. My understanding is that this is a  
18 substantial risk because the costs associated with litigation, in general, are very high and this cost is  
19 multiplied many times over in complex litigation like class actions. I have spent a substantial amount  
20 of time in this case, securing a monetary benefit for many individuals who have not had to do anything  
21 to have the opportunity to receive it. I have been employed full-time during the time this case has been  
22 pending. As a result, the time I have spent on this case has had to occur during my lunch and/or breaks  
23 times, after hours, and on my days off. This is particularly challenging because I have a young child.  
24 Based on my experience working with Defendant's owner, I knew bringing this lawsuit had the  
25 potential to subject myself or my family to potential retaliation. I experienced a lot of anxiety due to  
26 this throughout the case. This fear was amplified after I spoke with a potential witness and friend who  
27 believed he was experiencing retaliation as a result of my bringing the lawsuit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th of May 2023 in Sacramento, California.

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

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 Blvd., Suite 120  
6 Elk Grove, Ca 95624  
7 Telephone: (916) 525-0716  
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff ERIKA COLLAZO

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

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

14 Plaintiff,

15 vs.

16 T.O.P. MARKETING GROUP, INC., a New  
17 York Corporation; and DOES 1 to 100,  
18 Inclusive,

19 Defendants.

Case No. 34-2022-00314092

**DECLARATION OF NATHALIE  
HERNANDEZ OF ILYM GROUP, INC.,  
IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Reservation No.: 2708842

Date: June 9, 2023  
Time: 9:00 a.m.

Judge: Laurie A. Damrell  
Dept.: 28

1  
2 I, Nathalie Hernandez declare as follows:

3       1.       I am a resident of the United States of America and am over the age of 18. I am a  
4 Case Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional  
5 settlement services provider who has been retained by the parties’ counsel and subsequently  
6 appointed by the Court to serve as the Settlement Administrator for the above captioned *Collazo v.*  
7 *T.O.P. Marketing Group, Inc.* matter. I am authorized to make this declaration on behalf of ILYM  
8 Group and myself. I have personal knowledge of the facts herein, and, if called upon to testify, I  
9 could and would testify competently to such facts.

10       2.       ILYM Group has extensive experience in administering Class Action Settlements,  
11 including direct mail services, database management, claims processing and settlement fund  
12 distribution services for Class Actions ranging in size from 26 to 4.5 million Settlement Class  
13 Members.

14       3.       ILYM Group was engaged by the Parties’ Counsel and subsequently approved and  
15 appointed by the Court to provide notification services and claims administration, pursuant to the  
16 terms of the Settlement, in the above referenced Action. Duties performed to-date and to be  
17 performed after Final Approval of the Settlement is granted, include: (a) printing and mailing the  
18 *Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court*  
19 *Approval of Settlement* (referred to as “Notice Packet”); (b) receiving and processing requests for  
20 exclusion; (c) resolving Class Members’ disputes over the number of pay periods Defendants have  
21 record of them working during the Class Period, which was pre-printed on their individualized  
22 Notice of Settlement; (d) calculating individual settlement award amounts; (e) processing and  
23 mailing settlement award checks; (f) handling tax withholdings as required by the Settlement and  
24 the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h) handling  
25 the distribution of any unclaimed funds pursuant to the terms of the Settlement; (i) maintaining a  
26 website with a copy of the Complaint, Notice of Settlement, settlement agreement, and approval  
27 motion; and (j) performing other tasks as the Parties mutually agree to and/or the Court orders  
28 ILYM Group to perform.

1           4.       On January 31, 2023, ILYM Group received the Court approved text for the Notice  
2 Packet from counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice Packet,  
3 which was approved by the parties' counsel prior to mailing.

4           5.       On February 9, 2023, ILYM Group received the class data file from counsel for  
5 Defendants, which contained the name, social security number, last known mailing address, and  
6 the total number of applicable pay periods worked for each Class Member. The data file was  
7 uploaded to our database and checked for duplicates and other possible discrepancies. The class  
8 list contained 1,119 individuals.

9           6.       As part of the preparation for mailing, all 1,119 names and addresses contained in  
10 the class list were then processed against the National Change of Address ("NCOA") database,  
11 maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming  
12 the mailing addresses of the Class Members before mailing of the Notice Packet. The NCOA  
13 contains requested change of addresses filed with the USPS. To the extent that an updated address  
14 was found in the NCOA database, the updated address was used for the mailing of the Notice  
15 Packet. To the extent that no updated address was found in the NCOA database, the original  
16 address provided by counsel for Defendants was used for the mailing of the Notice Packet.

17           7.       On February 24, 2023, the Notice Packet was mailed, via U.S First Class Mail, to  
18 all 1,119 individuals contained in the class list. Attached hereto, as **Exhibit A**, is a true and correct  
19 copy of the mailed Notice Packet.

20           8.       As of the date of this declaration, 192 Notice Packets have been returned to our  
21 office as undeliverable. ILYM Group performed a computerized skip trace on the 192 returned  
22 Notice Packets that did not have a forwarding address, in an effort to obtain an updated address for  
23 the purpose of re-mailing the Notice Packet. As a result of this skip trace, 134 updated addresses  
24 were obtained and the Notice Packets were promptly re-mailed to those Class Members, via U.S  
25 First Class Mail.

26           9.       As of the date of this declaration, a total of 134 Notice Packets have been re-mailed.  
27 Specifically, 134 have been re-mailed as a result of ILYM Group's skip tracing efforts.

28 ///

1           10.     As of the date of this declaration, a total of 58 Notice Packets have been deemed  
2 undeliverable. Specifically, 58 have been deemed undeliverable as no updated address was found  
3 notwithstanding the skip tracing.

4           11.     As of the date of this declaration, ILYM Group has not received any requests for  
5 exclusion or pay period disputes. The deadline to request exclusion from the Settlement or submit  
6 a dispute was April 25, 2023.

7           12.     As of the date of this declaration, ILYM Group has not received any objections to  
8 the Settlement. The deadline to file an objection to the Settlement was April 25, 2023.

9           13.     As of the date of this declaration, ILYM Group will report a total of 1,119  
10 Participating Class Members, representing 100% of the 1,119 Class Members.

11           14.     Participating Class Members will receive a proportional share of the Net Settlement  
12 Fund through individual settlement payments, based on the number of pay periods worked by Class  
13 Members during the Class Period. The Net Settlement Fund is the amount remaining after  
14 deduction of the Court-approved payments from the Gross Settlement Amount for Class Counsel's  
15 Fees and litigation costs, the Class Representative Enhancement Award, Settlement Administration  
16 Fees to ILYM Group, and the PAGA Payment to the LWDA and the Aggrieved Employees, e.g.,

|                                      |                   |
|--------------------------------------|-------------------|
| 17 <b>Gross Settlement Fund</b>      | \$     842,500.00 |
| 18     Class Counsel Fees            | \$     294,875.00 |
| 19     Class Counsel Costs/ Expenses | \$     10,088.99  |
| 20     Enhancement Award             | \$     15,000.00  |
| 21     ILYM Group Fees               | \$     16,850.00  |
| 22     LWDA                          | \$     37,500.00  |
| 23     Aggrieved Employees           | \$     12,500.00  |
| 24 <b>Net Settlement Amount</b>      | \$     455,686.01 |

25 To determine a Participating Class Member's Individual Settlement Amount, the distribution shall  
26 be divided among all Class Members on a pro rata basis, based on the ratio of the Qualifying Pay  
27 Periods worked by each Class Member during the Class Period, to the total number of Qualifying  
28 Pay Periods worked by all Class Members during the Class Period. Based on these calculations, the

1 Participating Class Members will receive an estimated average gross payment of \$407.23 and the  
2 estimated highest gross payment being \$5,150.17.

3 15. ILYM Group's total fees and costs for services in connection with the administration  
4 of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and  
5 costs for completion of the settlement administration, are \$16,850.00. ILYM Group's work in  
6 connection with this matter will continue with the calculation of the settlement award payments,  
7 issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such  
8 payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM  
9 Group to perform.

10 I declare under penalty of perjury under the laws of the State of California and the United  
11 States that the foregoing is true and correct to the best of my knowledge and that this Declaration  
12 was executed this 11<sup>th</sup> day of May 2023, at Tustin, California.

13  
14  
15  
16 Nathalie Hernandez  
17 NATHALIE HERNANDEZ  
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# **EXHIBIT “A”**

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 «Class\_Pay\_Periods» pay periods during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be \$«Class\_Estimated\_Settlement\_Amount». 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 November 26, 2022 (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 November 26, 2022. Defendant’s records indicate that you worked «PAGA\_Pay\_Periods» pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$«PAGA\_Estimated\_Settlement\_Amount». 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 April 25, 2023. 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 **April 25, 2023**. 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 **April 25, 2023**. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.  
P.O. Box 2031  
Tustin, CA 92781

If you submit a request to opt out which is not postmarked by April 25, 2023, 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 receive 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 April 25, 2023. 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 9<sup>th</sup> Street, Sacramento, CA 95814, on June 9, 2023 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: [www.ilymgrouppclassaction.com/TOPMG](http://www.ilymgrouppclassaction.com/TOPMG). 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 888-250-6810.**

**BY ORDER OF THE COURT**

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

5 Attorneys for Plaintiff ERIKA COLLAZO

6  
7 **SUPERIOR COURT OF CALIFORNIA**  
8 **FOR THE COUNTY OF SACRAMENTO**  
9

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

12 Plaintiff,

13 vs.

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

17 Defendants.  
18  
19  
20  
21

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

**CLASS ACTION**

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

Reservation No.: 2708842

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

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

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

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

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

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

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

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

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

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.

## II. APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has again reviewed the preliminarily approved Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. Class Members were able to present any objections to the Agreement and its terms through the administration process and at a fairness hearing or opt-out of being bound by the preliminarily approved Agreement.

No objections were made by Class members and no Class Member opted out of the settlement. Because the court finds the Parties' settlement to have been agreed upon only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court gives final approval to the Agreement and all terms therein as if stated here in full, including the \$842,500 Gross Settlement Amount.

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

Class Counsel sought an award of attorneys' fees of 294,875, attorneys' costs of 10,088.99, an Enhancement Payment to the Class Representative in the amount of \$15,000, and for Settlement Administrator Costs in the amount of \$16,850. Defendant does not oppose these requests. The Notice of Settlement sent to Class Members included information regarding these amounts and that they would be requested in connection with final approval of the Agreement. Class Members have been given the opportunity to object to these amounts and no objections have been submitted in any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including

1 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time  
2 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and  
3 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by  
4 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens  
5 undertaken for the benefit of the class, and the cost information provided by the Settlement  
6 Administrator in its declaration. The Court finds that these amounts requested for attorneys' fees and  
7 costs, the Enhancement Payment, and the Settlement Administrator Costs are fair and reasonable, and  
8 awarded as requested and deducted from the gross settlement amount. This finding is further supported  
9 by the lack of objection by Class Members to these amounts. The difference between the actual  
10 attorneys' costs and Settlement Administrator Costs awarded and the originally allocated amounts under  
11 the Agreement for each payment will be added to the Net Settlement Amount pursuant to the terms of  
12 the Agreement.

### 13 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,** 14 **INCLUDING THE NOTICE OF SETTLEMENT**

15 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as  
16 Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class Members of the  
17 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number  
18 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how  
19 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and  
20 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and  
21 proposed distribution of such notice by first class mail to each identified Class Member at his or her  
22 most recent address based on a National Change of Address database search from the Class Members'  
23 last known address and a skip trace on any Class Members who have the Notice of Settlement returned  
24 as "undeliverable" or "not at this address" comported with all constitutional requirements, including  
25 those of due process.

### 26 **IV. IMPLEMENTATION SCHEDULE**

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

|                       |                                                                                                                                                                                                                                                                                                             |                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1<br>2<br>3<br>4<br>5 | 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                                                   |
| 6<br>7                | Last day for Defendant, Michael D'Adamo and Kevin D'Adamo to fund settlement                                                                                                                                                                                                                                | Within 21 calendar days after the Effective Date                                                  |
| 8<br>9<br>10<br>11    | 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                                                              |
| 12<br>13<br>14        | 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 |
| 15<br>16<br>17        | 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                                   |
| 18<br>19              | Last day for Settlement Administrator to provide Parties with compliance declaration                                                                                                                                                                                                                        | Within 21 calendar days after settlement check cashing deadline                                   |

20  
21 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each  
22 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to  
23 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved  
24 Agreement.

25 **IT IS SO ORDERED.**

26  
27 Date: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the Superior Court

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

5 Attorneys for Plaintiff ERIKA COLLAZO

6  
7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

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

13 Plaintiff,

14 vs.

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

18 Defendants.  
19  
20  
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28

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

**CLASS ACTION**

**PROOF OF SERVICE**

Reservation No.: 2708842

Date: June 9, 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 *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, Shaniya Baird, 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 May 15, 2023, I served the following documents on the party below:

- 9 • **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL**
- 10 **APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- 11 • **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
- 12 **PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION**
- 13 **AND PAGA SETTLEMENT**
- 14 • **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF’S**
- 15 **MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA**
- 16 **SETTLEMENT**
- 17 • **DECLARATION OF BRITTANY V. BERZIN IN SUPPORT OF**
- 18 **PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION**
- 19 **AND PAGA SETTLEMENT**
- 20 • **DECLARATION OF ERIKA COLLAZO IN SUPPORT OF PLAINTIFF’S**
- 21 **MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA**
- 22 **SETTLEMENT**
- 23 • **DECLARATION OF NATHALIE HERNANDEZ OF ILYM GROUP, INC.,**
- 24 **IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS**
- 25 **ACTION SETTLEMENT**
- 26 • **[PROPOSED ORDER GRANTING PLAINTIFF’S MOTION FOR**
- 27 **PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA**
- 28 **SETTLEMENT**

|                                                                                                                                                                                                                                                                                                                                                                                                                        |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Joel M. Van Parys (SBN 227387)<br>Tashayla Billington (SBN 307050)<br>CDF Labor Law LLP<br>900 University Ave, Suite 200<br>Sacramento, CA 95825<br>Phone: (916) 361-0991<br>Email: <a href="mailto:jvanparys@cdflaborlaw.com">jvanparys@cdflaborlaw.com</a><br><a href="mailto:ekastern@cdflaborlaw.com">ekastern@cdflaborlaw.com</a><br><a href="mailto:tbillington@cdflaborlaw.com">tbillington@cdflaborlaw.com</a> |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

[ ] [By Mail] I am familiar with my employer’s practice for the collection and  
processing of correspondence for mailing with the United States Postal

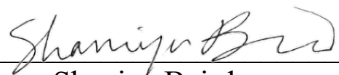
1 Service and that each day's mail is deposited with the United States Postal  
2 Service that same day in the ordinary course of business. On the date set forth  
3 above, I served the aforementioned document(s) on the parties in said action  
4 by placing a true copy thereof enclosed in a sealed envelope 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.

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

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

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

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
10 true and correct, and that this declaration was executed on May 15, 2023, at Salt Lake City, Utah.

11   
12 \_\_\_\_\_  
Shaniya Baird