

1 Adam M. Rose (210880)  
adam@frontierlawcenter.com  
2 Theodore R. Tang (313294)  
theodore@frontierlawcenter.com  
3 Manny M. Starr (319778)  
manny@frontierlawcenter.com  
4 FRONTIER LAW CENTER  
23901 Calabasas Road, STE #1084  
5 Calabasas, CA 91302  
Telephone: (818) 914-3433  
6 Facsimile: (818) 914-3433

7 Attorneys for Plaintiff  
Danielle Smalling, on behalf of herself and  
8 all others similarly situated  
9  
10

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF HUMBOLDT**

13 DANIELLE DENISE SMALLING, individually ) CASE NO. CV2200387  
14 and all others similarly situated, )  
15 Plaintiff, ) **DECLARATION OF THEODORE TANG**  
16 v. ) **IN SUPPORT OF MOTION FOR**  
17 BIG OIL & TIRE CO.; and DOES 1 through 100; ) **PRELIMINARY APPROVAL**  
18 Defendants. )  
19 )  
20 )  
21 )

22 I, Theodore Tang, declare the following:

- 23 1. I am an attorney at Frontier Law Center, attorneys of record for Plaintiff Danielle Smalling,  
24 and one of the attorneys assigned to this case. I have personal knowledge of the facts in this  
25 declaration and if called to testify about the facts I could and would competently do so.
- 26 2. On January 10, 2022, our office filed a letter with the Labor and Workforce Development  
27 Agency ("LWDA") via its online portal, with a copy sent to defendant Big Oil & Tire Co.  
28 ("BO&T") via certified mail. On May 4, 2022, our office filed a Supplemental PAGA letter with the

1 LWDA via its online portal, with a copy sent to BO&T, outlining additional theories and facts. On  
2 March 18, 2022, our office filed the complaint for Danielle Smalling (“Plaintiff”) on behalf of  
3 herself and all others similarly situated in the Superior Court of California for the County of  
4 Humboldt.

5 3. On August 22, 2022, our office, on behalf of Plaintiff, filed a First Amended Complaint  
6 (“FAC”), setting forth the claims included in the supplemental PAGA letter. The FAC is the  
7 operative complaint in the action.

8 4. The Parties agreed shortly thereafter that early mediation would have a high chance of  
9 success, and, to that end, engaged mediator Robert Murray.

10 5. To make sure the mediation was fruitful, our office requested informal discovery from  
11 Defendants into the total class members, total workweeks, total Aggrieved Employees, the number  
12 of PAGA Workweeks, a sampling of class members’ pay and time records, and copies of written  
13 policies.

14 6. After some scheduling delays, and a change of counsel for Defendant, the case was  
15 eventually mediated with mediator David Lowe.

16 7. Although the Parties attended a full-day mediation, a settlement could not be reached that  
17 day. However, a settlement was reached shortly thereafter.

18 8. The Parties began to negotiate specific terms, and a longform Class Action and PAGA  
19 Settlement (the “Agreement”), a true and correct copy of which is attached hereto as **Exhibit 1**.

20 9. At mediation, we estimated the maximum liability Defendants could face is \$6,571,374.  
21 This estimate was based on the sample data of 57 employees, extrapolated out for the total number  
22 of class members (approximately 285) and the total class period. This calculation assumed a 100%  
23 violation rate on applicable shifts (except for meal period violations, which could be estimated from  
24 the data at 28.4%), as well as stacking PAGA Penalties.

25 10. Corrected for the evidence and arguments presented at mediation and the risks specific to  
26 each claim, the amount that Plaintiff could reasonably expect to recover at trial (i.e. the Risk  
27 Adjusted Value or RAV) is \$1,620,495.75.

28 11. The gross settlement of \$195,000 represents approximately 3% of the maximum liability,

1 and 12% of the RAV.

2 12. The recovery per class member (approximately \$257.02 per class member by dividing the  
3 expected Net Settlement Amount by total number of Class Members) is a good result for a wage and  
4 hour class action.

5 13. Therefore, I strongly believe that the settlement is in the best interests of the members of the  
6 Collective and that it is fair, reasonable, and adequate.

7 14. After reaching the settlement in principle, I solicited bids from three different settlement  
8 administrators for administration of the case. The winning bid is attached hereto as **Exhibit 2**.

9 15. Since I graduated from UCLA School of Law in 2016, I was a volunteer attorney for the Los  
10 Angeles City Attorney's office, where I quickly gained trial experience. Since March 2017, I have  
11 worked as an attorney for Frontier Law Center, prosecuting primarily wage and hour cases,  
12 including PAGA claims and Class Actions, which are now my primary focus as a litigator.

13 16. In terms of my experience in this field, I have been named as Class Counsel in several Class  
14 Actions, and have been lead counsel in numerous representative PAGA settlements that have been  
15 granted approval, including the following:

- 16 a. *Joshua Albright, et al. v. Loma Linda Shared Services*, Case No. CIVDS1818361:  
17 Class action and PAGA case involving failure to pay wages, meal and rest break  
18 violations, and failure to indemnify work related expenses; \$600,000.00 settlement;  
19 final approval granted;
- 20 b. *Tri Nguyen v First Alarm Security & Patrol, Inc.*, Case No. 18CV332369: class  
21 action and PAGA case on behalf of security guards involving various wage and hour  
22 issues; \$7,250,000 settlement; final approval granted;
- 23 c. *Ronnie McNeal v. Platinum Security, Inc.*, Case No. 19STCV05709: PAGA action on  
24 behalf of security guards involving meal and rest break violations and failure to pay  
25 wages in a timely manner; \$300,000 settlement; PAGA settlement approved;
- 26 d. *Kevin Hernandez v. Contemporary Services Corporation*, Case No. BC684206:  
27 PAGA action on behalf of security guards involving various wage and hour issues;  
28 \$795,000 settlement; PAGA settlement approved;

- e. *Keosia Green v. American Guard Services, Inc.* Case No. BC688437: PAGA action on behalf of security guards involving wage and hour issues; \$315,000 settlement; PAGA settlement approved;
- f. *James Rushing v. Security Intelligence Specialist Corporation*, Case No. 18-civ-1808, class action and PAGA case on behalf of security guards for breaks and wage statement violations; \$480,000 settlement; final approval granted;
- g. *Anthony Gaines, et al. v. Triple Canopy, Inc.*, l Case No. 9CV345169, class action and PAGA case on behalf of approximately 550 security guards relating to meal and rest break violations and other wage and hour issues; \$2,300,000 settlement; final approval granted;
- h. *Amy Migdal v. Purple Communications, Inc.*, Case No. S-CV-0046377, Class and PAGA action on behalf of 73 employees for regular rate violations; \$127,500.00 settlement, final approval granted;
- i. *Destinee Robinson-Moore v. Media All Stars, Inc.* Case No. 37-2021-00050573-CU-OE-CTL, Class and PAGA case on behalf of employees relating to rest breaks, regular rate violations and minimum wage violations; \$185,000.00 settlement; final approval granted.

17. The litigation costs expended to aid in the representation of the Class include the following; \$1,652.35 filing fee for filing the complaint with the court (including the complex fee), a mediation fee of \$9,261 (for Plaintiff's portion of the mediation), \$6,952.41 for our retained expert for damages analysis, \$1,831.04 in fees for various court filings and service, and \$300 nonrefundable fee for a canceled mediation session. Including these expenses and various other mail and filing fees, the total of this is \$20,100.78. I anticipate additional costs, including filing this motion, Courtcall Appearance, and any supplement required by the Court, may be as high as \$200, bringing the total to \$20,300.78. All of these costs are documented and reasonably incurred. All costs include any fee charged by One Legal or InfoTrack, Plaintiff Counsel's electronic filing processors, where applicable

18. Our office will file a declaration setting forth the total lodestar of attorney fees in the present

1 case at the time of final approval. However, in the interest of assuring the court that the amount  
2 requested for attorney fees is within the range of reasonable settlements, I can state that as of the  
3 time of this declaration, Plaintiff's counsel has spent over 145 hours litigating this case, for a total  
4 lodestar fee of over \$75,000, based on the rates agreed to for the various professionals who have  
5 worked on the case.

6 19. Therefore, based on the above experience and the arguments in the motion, I respectfully  
7 request the court to grant the motion for preliminary approval and to approve the issuance of notice  
8 to the members of the Class.

9 20. On June 14, 2024 I uploaded a copy of this motion and all supporting papers, including this  
10 declaration, to the LWDA website at [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)  
11 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

12  
13 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
14 and correct.

15  
16  
17 Date: June 20, 2024 in Carlsbad, California.

/s/



## **EXHIBIT 1**

# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Danielle Smalling ("Plaintiff") and Defendant Big Oil & Tire Co. ("Defendant"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

## 1. DEFINITIONS.

- 1.1 "Action" means the Plaintiff's lawsuit alleging wage and hour violations against Defendants captioned *Danielle Smalling v. Big Oil & Tire Co.*, case number CV2200387 initiated on March 18, 2022, and pending in Superior Court of the State of California, County of Humboldt.
- 1.2 "Administrator" means ILYM, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 "Aggrieved Employee" means all persons who worked for Big Oil & Tire Co. as an hourly paid, non-exempt employee during the PAGA Period.
- 1.5 "Class" means all persons who worked for Big Oil & Tire Co. in California as an hourly paid, non-exempt employee during the Class Period.
- 1.6 "Class Counsel" means Frontier Law Center.
- 1.7 "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 "Class Member Address Search" means the Administrator's investigation and

search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 "Class Period" means the period from March 18, 2018 to November 9, 2023.
- 1.13 "Class Representative" means the named Plaintiff Danielle Smalling in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 "Court" means the Superior Court of California, County of Humboldt.
- 1.16 "Defendant" means Big Oil & Tire Co.
- 1.17 "Defense Counsel" means Gordon Rees Scully Mansukhani, LLP.
- 1.18 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20 "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21 "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 "Gross Settlement Amount" means \$195,000, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel

Expenses, Class Representative Service Payment and the Administrator's Expenses.

- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31 "PAGA Period" means the period from January 10, 2021 to the date of final approval.
- 1.32 "PAGA" means the Private Attorneys General Act (Lab. Code § 2698 et seq.).
- 1.33 "PAGA Notice" means Plaintiff's January 10, 2022 and May 14, 2022 letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.34 "PAGA Penalties" means the total amount of PAGA civil penalties (\$20,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.35 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.36 "Plaintiff" means Danielle Smalling, the named plaintiff in the Action.
- 1.37 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40 "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41 "Released Parties" means Defendant and each of its former and current employees, agents, principals, officers, directors, shareholders, investors, affiliated, related, parent company, subsidiaries, insurers, attorneys, accountants, trustees, representatives, businesses, predecessors, successors, subrogees, assigns and fiduciaries, and all other individuals, firms, or corporations with whom any of the former have been, are now or may hereafter be affiliated.
- 1.42 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 "Workweek" means any compensable week during which a Class Member worked for Defendant for at least one day, during the Class Period.

## **2. RECITALS.**

- 2.1 On March 18, 2022, Plaintiff commenced this Action by filing a Complaint in Humboldt County Court entitled *Danielle Denise Smalling v. Big Oil & Tire Co.*, Case Number CV2200387 alleging causes of action against Defendant for 1) Meal Period Violations, 2) Rest Period Violations, 3) Failure to Pay Overtime, 4) Failure to Pay Minimum Wages, 5) Waiting Time Penalties, 6) Wage Statement Penalties, 7) Violation of the Unfair Competition Law, and 8) Penalties under PAGA. On August 22, 2022, Plaintiff filed a First Amended Complaint, adding a cause of action for work expense

reimbursement violations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.")

- 2.2 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.4 On November 9, 2023, the Parties participated in an all-day mediation presided over by David Lowe which led to this Agreement to settle the Action.
- 2.5 Prior to mediation, Plaintiff obtained, through informal discovery, samples of class time records and payroll records, exemplar employee handbooks, Plaintiff's personnel file, and On Duty Meal Period Agreement. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.6 The Court has not yet granted class certification.
- 2.7 The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. MONETARY TERMS.

- 3.1.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant agrees to pay \$195,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
  - 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. Plaintiff will seek approval of the Representative Service Payment to the Class

Representative, Class Counsel's Attorney Fees, and Costs within the Motion for Final Approval. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one third (approximately 33.33%), which is currently estimated to be \$65,000, and a Class Counsel Litigation Expenses Payment of not more than \$19,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file the request for Class Counsel Fees Payment and Class Litigation Expenses Payment as part of the Motion for Final Approval. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$7,750 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,750, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1 Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage

Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

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

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates that as of the date of mediation, November 9, 2023, there were approximately 285 Class Members who collectively worked a total of no more than 10,119 Workweeks.

4.2 Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best

efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3 **Funding of Gross Settlement Amount.** Defendant shall fund 50% of the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the Effective Date. The remainder of the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, shall be transmitted to the Administrator not later than 10 months after the Effective Date.
- 4.4 **Payments from the Gross Settlement Amount.** Within 14 days after Defendant funds the Gross Settlement Amount in full, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer-side payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1 **Plaintiff's Release.** Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and forever discharge Released Parties from any and all past, present, and future claims, demands, obligations, actions, causes of action, rights, damages, losses of services, wages, costs, expenses, and compensation whatsoever, occurring from the beginning of time to Plaintiff's execution of this agreement, including, but not limited to:
- (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, and Plaintiff's PAGA Notice, as well as ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 **Plaintiff's Waiver of Rights Under Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.**

**5.2 Release by Participating Class Members:**

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged under the Labor Code and IWC Wage Orders, based on the Class Period facts stated in the Operative Complaint including e.g., any and all claims involving (a) Meal Period Violations, (b) Rest Period Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wage, (e) Waiting Time Penalties, (f) Wage Statement Penalties, (g) Violations of the Unfair Competition Law, (h) work expense reimbursement violations, and (i) failure to provide suitable seating. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

**5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:**

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, e.g., any and all claims for PAGA Penalties for (a) Meal Period Violations, (b) Rest Period Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wages, (e) Failure to Pay Wages Promptly During Employment and/or Upon Termination, (f) Failure to Provide Accurate Wage Statements, (g) Failure to Reimburse Work Related Expenses, and (h) Failure to Provide Suitable Seating.

**6. MOTION FOR PRELIMINARY APPROVAL.**

The Parties agree to cooperate in preparing and filing a motion for preliminary approval ("Motion for Preliminary Approval").

**6.1 Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and

extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (1)(1)), this Agreement (Lab. Code § 2699, subd. (1)(2)); (vii) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

## 7. SETTLEMENT ADMINISTRATION.

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

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

- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members. No later than three 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks and Pay Periods in the Class Data.
- 7.4.1 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.2 Not later than 31 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.3 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.4 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's

determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

**7.7        Objections to Settlement.**

**7.7.1**        Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

**7.7.2**        Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than [60] days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class Members whose Class Notice was re-mailed).

**7.7.3**        Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

**7.8.1        Website, Email Address and Toll-Free Number.** The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## **8. CLASS SIZE ESTIMATES AND ESCALATOR.**

Defendant understands and believes there were no more than 10,119 workweeks through November 9, 2023. If the number of workweeks exceeds 10,119 by more than ten percent (10%), then Defendant shall have the option of either: (a) closing the release period on the date the Class Members reach the ten percent (10%) threshold, or (b) increasing the Gross Settlement Amount by the percentage difference beyond the ten percent (10%) between the

certified amount of 10,119 and the actual number of workweeks

## **9. DEFENDANT'S RIGHT TO WITHDRAW.**

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

## **10. MOTION FOR FINAL APPROVAL.**

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms

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

**10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment.**

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

**11. AMENDED JUDGMENT.**

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

**12. ADDITIONAL PROVISIONS.**

**12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be

admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 12.5 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to

implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff and Class Counsel shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this

Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

To Plaintiff:

Danielle Smalling  
c/o FRONTIER LAW CENTER  
23901 Calabasas Road, Suite 1084  
Calabasas, CA 91302

To Defendant:

Big Oil & Tire Co.  
c/o Marie Trimble Holvick; [mholvick@grsm.com](mailto:mholvick@grsm.com)  
Rich Pomrehn; [Rich@bigoiltireco.com](mailto:Rich@bigoiltireco.com)

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

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

On Behalf of Plaintiff:

\_\_\_\_\_  
Dated: \_\_\_\_\_,  
Danielle Smalling, Plaintiff

On Behalf of Defendant Big Oil & Tire Co.:

  
\_\_\_\_\_  
Dated: April 19, 2024

\_\_\_\_\_  
Name: Richard W. Pomrehn

Title:  
Plaintiff's Counsel:

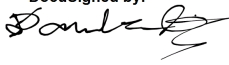
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Dated: \_\_\_\_\_

\_\_\_\_\_  
FRONTIER LAW CENTER.

Theodore Tang, Esq.  
Manny Starr, Esq.  
Daniel V. Ginzburg, Esq.  
Attorneys for Plaintiff and the Class

Defendant Big Oil and Tire Co.'s Counsel:

  
\_\_\_\_\_  
Dated: April 22, 2024  
GORDON REES SCULLY MANSUKHANI  
\_\_\_\_\_  
Marie Trimble Holvick, Esq.  
Attorney for Defendant Big Oil & Tire Co.

DocuSigned by:  
  
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Dated: 04/16/24 | 4:32 PDT  
Danielle Smalling, Plaintiff

On Behalf of Defendant Big Oil & Tire Co.:

Dated: \_\_\_\_\_, 2024

Name:

Title:  
Plaintiff's Counsel:

DocuSigned by:  
  
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Dated: 04/16/24 | 4:43 PDT

FRONTIER LAW CENTER.

Theodore Tang, Esq.  
Manny Starr, Esq.  
Daniel V. Ginzburg, Esq.  
Attorneys for Plaintiff and the Class

Defendant Big Oil and Tire Co.'s Counsel:

Dated: \_\_\_\_\_, 2024  
GORDON REES SCULLY MANSUKHANI  
Marie Trimble Holvick, Esq.  
Attorney for Defendant Big Oil & Tire Co.

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING  
DATE FOR FINAL COURT APPROVAL  
DANIELLE SMALLING v. BIG OIL & TIRE CO.  
Humboldt County Superior Court Case No. CV2200387**

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

**You may be eligible to receive money** from an employee class action lawsuit ("Action") against Big Oil & Tire Co. ("Defendant") for alleged wage and hour violations. The Action was filed by a former employee ("Plaintiff") and seeks payment of (1) back wages and statutory penalties for a class of hourly paid, non-exempt employees ("Class Members") who worked for Defendant during the Class Period March 18, 2018 to November 9, 2023; and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly paid, non-exempt employees who worked for NPH during the PAGA Period January 10, 2021 to November 9, 2023 ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendant's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$\_\_\_\_\_ (less withholding) and your Individual PAGA Payment is estimated to be \$\_\_\_\_\_**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendant's records showing that **you worked \_\_\_\_ workweeks** during the Class Period and **you worked \_\_\_\_\_workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

**DEFENDANT will not retaliate against you for any actions you take with respect to the proposed Settlement.**

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

|                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b>                                                                                         | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is _____</b>                                        | <p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p> |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by _____</b> | All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice. |

|                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Can Participate in the _____ Final Approval Hearing</b>                                                                     | The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.                                                                                                                                                                                          |
| <b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b><br><br><b>Written Challenges Must be Submitted by _____</b> | The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice. |

## 1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Big Oil & Tire. The Action accuses Big Oil & Tire of violating California labor laws by failing to pay correct overtime wages and regular wages, failing to provide meal periods, rest breaks and accurate itemized wage statements, failing to reimburse employees for work-related expenses, and failing to provide adequate seating. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Lab. Code, § 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action ("Class Counsel"):

FRONTIER LAW CENTER  
23901 Calabasas Road, Suite 1084  
Calabasas, CA 91302  
[info@frontierlawcenter.com](mailto:info@frontierlawcenter.com)

Defendant denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

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

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

1. Defendant will pay \$195,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - A. Up to \$65,000 (one third) of the Gross Settlement to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
  - B. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiffs Individual Class Payment and any Individual PAGA Payment.
  - C. Up to \$7,500 to the Administrator for services administering the Settlement.
  - D. Up to \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

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

4. **Taxes Owed on Payments to Class Members.** Plaintiff and Defendant are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages ("Wage Portion") and 75% to statutory penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. **Need to Promptly Cash Payment Checks.** The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is unclaimed after the void date, and the funds sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. **Requests for Exclusion from the Class Settlement (Opt-Outs).** You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than \_\_\_\_\_, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the \_\_\_\_\_ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

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

7. **The Proposed Settlement Will be Void if the Court Denies Final Approval.** It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims

against Defendant.

8. **Administrator.** The Court has appointed a neutral company, ILYM (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. **Participating Class Members' Release.** After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged under the Labor Code and IWC Wage Orders, based on the Class Period facts stated in the Operative Complaint including e.g., any and all claims involving (a) Meal Period Violations, (b) Rest Period Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wage, (e) Waiting Time Penalties, (f) Wage Statement Penalties, (g) Violations of the Unfair Competition Law, (h) work expense reimbursement violations, and (i) failure to provide suitable seating. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

10. **Aggrieved Employees' PAGA Release.** After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the

Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, e.g., any and all claims for PAGA Penalties for (a) Meal Period Violations, (b) Rest Period Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wages, (e) Failure to Pay Wages Promptly During Employment and/or Upon Termination, (f) Failure to Provide Accurate Wage Statements, (g) Failure to Reimburse Work Related Expenses, and (h) Failure to Provide Suitable Seating.

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

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. **Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. **Workweek/Pay Period Challenges.** The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until \_\_\_\_\_ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs, or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

#### **5. HOW WILL I GET PAID?**

1. **Participating Class Members.** The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. **Non-Participating Class Members.** The Administrator will send, by U.S. mail, a single

Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

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

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Danielle Smalling v. Big Oil & Tire Co.*, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must sign the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by \_\_\_\_\_, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

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

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least \_\_\_\_\_ days before the \_\_\_\_\_ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website \_\_\_\_\_.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is \_\_\_\_\_.** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action as *Danielle Smalling v. Big Oil & Tire Co.*. And include your name, current address, telephone number and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

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

You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_ in Department \_\_ of the Humboldt County Superior Court, 421 I Street, Eureka, CA 95501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website at <https://www.humboldt.courts.ca.gov> for the most current information.

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

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ILYM's website at \_\_\_\_\_. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

### **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

#### Class Counsel:

Manny Starr, Dan Ginzburg, and  
Theodore Tang

[info@frontierlawcenter.com](mailto:info@frontierlawcenter.com):

**FROTIER LAW CENTER:**

Telephone: (818) 914-3433

#### Settlement Administrator:

Name of Company: ILYM Group

Email Address:

Mailing Address:

Telephone:

Fax Number:

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

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the State Controller's website at [www.sco.ca.gov](http://www.sco.ca.gov) for instructions on how to retrieve the funds.

## **11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

## **EXHIBIT 2**

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## Case Name: Smalling v. Big Oil and Tire Co

Thursday, April 18, 2024

|                            |                                |
|----------------------------|--------------------------------|
| Requesting Attorneys Name: | Theodore Tang                  |
| E-Mail                     | theodore@frontierlawcenter.com |
| ILYM Contact               | Lisa Mullins                   |
| E-Mail                     | Lisa@ilymgroup.com             |
| Contact Number             | 714.878.8836                   |

### ESTIMATE FOR ADMINISTRATION SOLUTIONS

| ASSUMPTIONS                              |     |
|------------------------------------------|-----|
| Total Number of Class Members            | 285 |
| Estimated Mail Returned as Undeliverable | 15% |
| NCOA                                     | Yes |
| Certified Spanish Translation            | No  |
| ILYM Group Static Website                | No  |

| Activity                                                                                                                                                                                        | Rate Type | Unit Cost | Volume | Amount   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|--------|----------|
| CASE STARTUP                                                                                                                                                                                    |           |           |        |          |
| Initial Setup - Import and Formatting of Data*                                                                                                                                                  | Hourly    | \$150.00  | 2      | \$300.00 |
| Programming of Class Database                                                                                                                                                                   | Hourly    | \$175.00  | 2      | \$350.00 |
| *ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour. |           |           |        |          |
| Subtotal                                                                                                                                                                                        |           |           |        | \$650.00 |

| PROJECT MANAGEMENT & NOTICING                                |           |          |   |            |
|--------------------------------------------------------------|-----------|----------|---|------------|
| Project Manager (Case notification and maintenance)          | Hourly    | \$120.00 | 6 | \$720.00   |
| Staff Hours for Processing Returned Mail                     | Hourly    | \$70.00  | 3 | \$210.00   |
| Staff Hours for Processing Opt-Outs, Disputes & Objection(s) | Hourly    | \$70.00  | 3 | \$210.00   |
| Report Processing                                            | Hourly    | \$70.00  | 4 | \$280.00   |
| NCOA                                                         | Flat Rate | \$100.00 | 1 | \$100.00   |
| Toll Free Customer Service Representative                    | Flat Fee  | \$150.00 | 1 | \$150.00   |
| Weekly Reports                                               | Flat Rate | \$750.00 | 1 | Waived     |
| Subtotal                                                     |           |          |   | \$1,670.00 |

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

| Activity                                     | Rate Type | Unit Cost | Volume | Amount   |
|----------------------------------------------|-----------|-----------|--------|----------|
| <b>NOTIFICATION/MAILING</b>                  |           |           |        |          |
| Fulfillment of Notice, English only          | Per Piece | \$1.50    | 285    | \$427.50 |
| USPS First Class Postage                     | Per Piece | \$0.64    | 285    | \$182.40 |
| Re-Mails (Forward/Skip trace Undeliverables) | Per Piece | \$2.00    | 57     | \$114.00 |
| Storage, Photocopies, Deliveries             | Flat Fee  | \$117.17  | 1      | \$117.17 |

**Subtotal \$841.07**

|                                                                 |           |            |     |            |
|-----------------------------------------------------------------|-----------|------------|-----|------------|
| <b>DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)</b>      |           |            |     |            |
| Distribution Setup & Management                                 | Hourly    | \$150.00   | 10  | \$1,500.00 |
| Account Reconciliation & Distribution Reporting                 | Hourly    | \$125.00   | 10  | \$1,250.00 |
| 1st Distribution Check, Stub & Release - Print & Mail (W2/1099) | Per Check | \$1.00     | 285 | \$285.00   |
| USPS First Class Postage                                        | Per Piece | \$0.64     | 285 | \$182.40   |
| Re-Mails (Forward/Skip trace Undeliverables up to 10%)          | Per Piece | \$1.50     | 29  | \$42.75    |
| 2nd Distribution Check, Stub & Release - Print & Mail (W2/1099) | Per Check | \$1.00     | 285 | \$285.00   |
| USPS First Class Postage                                        | Per Piece | \$0.64     | 285 | \$182.40   |
| Re-Mails (Forward/Skip trace Undeliverables up to 10%)          | Per Piece | \$1.50     | 14  | \$21.38    |
| Preparation of Taxes                                            | Hourly    | \$120.00   | 14  | \$1,680.00 |
| Annual Filing of Tax Return                                     | Per Year  | \$1,500.00 | 2   | \$3,000.00 |

\*Additional Bank fees may apply

**Subtotal \$8,428.93**

|                                      |          |          |   |          |
|--------------------------------------|----------|----------|---|----------|
| <b>CASE CONCLUSION</b>               |          |          |   |          |
| Data Manager Final Reporting         | Hourly   | \$100.00 | 2 | \$200.00 |
| Project Manager Final Reporting      | Hourly   | \$120.00 | 3 | \$360.00 |
| Process Unclaimed Funds to the State | Flat Fee | \$550.00 | 1 | \$550.00 |
| Declaration                          | Hourly   | \$125.00 | 2 | \$250.00 |

**Subtotal \$1,360.00**

**Total Case Estimate: \$12,950.00**

# Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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