

Kane Moon (SBN 249834)
E-mail: kane.moon@moonyanglaw.com
Brett Gunther (SBN 306448)
E-mail: brett.gunther@moonyanglaw.com
AnaKaren Jimenez (SBN 345420)
E-mail: ana.jimenez@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiffs Maria Fernanda Zapien,
Rosalba Gonzalez Maldonado and Angelica
Lopez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF STANISLAUS

MARIA FERNANDA ZAPIEN, ROSALBA
GONZALEZ MALONADO, and ANGELICA
LOPEZ, individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

WENDY'S OF THE PACIFIC, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CV-21-006838

CLASS ACTION

[Hon. Stacy Speiller]

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

Complaint filed: December 12, 2022
Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs MARIA FERNANDA ZAPIEN, ROSALBA GONZALEZ MALONADO, and ANGELICA LOPEZ (collectively “Plaintiffs”) and defendant WENDY’S OF THE PACIFIC, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Maria Fernanda Zapien et al. v. Wendy’s of The Pacific Inc.*, initiated on December 27, 2021, as amended on January 7, 2022, and pending in Superior Court of the State of California, County of Stanislaus.
- 1.2. “Administrator” means the ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant in California and classified as non-exempt who worked for Defendant during the Class Period.
- 1.6. “Class Counsel” means Kane Moon, Brett Gunther, and AnaKaren Jimenez of Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number,

and number of Class Period Workweeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

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

1.11. “Class Notice” means the “Notice of Proposed Class Action Settlement” , to be mailed to Class Members in English with a Spanish translation (if applicable) 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 December 27, 2017 to November 10, 2022.

1.13. “Class Representative” means Maria Fernanda Zapien, Rosalba Gonzalez Maldonado, and Angelica Lopez the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.

1.14. “Class Representative Service Payment” means the up to \$7,500 payment to each of the named Class Representatives for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Stanislaus.

1.16. “Defendant” means named Defendant Wendy’s of The Pacific, Inc.

1.17. “Defense Counsel” means Laura Wolfe, Esq. of McCormick Barstow 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 Six Hundred Ninety Thousand Dollars and Zero Cents (\$690,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 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 § 2699(i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(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 December 27, 2020 to November 10, 2022.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. “PAGA Notices” means Plaintiffs’ December 24, 2021, March 17, 2021, and January 4, 2022 letters to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$12,500) and the 75% to LWDA (\$37,500) 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. “Plaintiffs” means Maria Fernanda Zapien, Rosalba Gonzalez Maldonado, and Angelica Lopez, the named plaintiffs 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 past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future officers, directors, shareholders, partners, agents,

1 insurers, employee, advisors, accountants, representatives, trustees, heirs, executors,
2 administrators, predecessors, successors or assigns.

3 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be
4 excluded from the Class Settlement signed by the Class Member.

5 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class
6 Members and Aggrieved Employees, and shall be the last date on which Class Members
7 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email,
8 or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are
9 resent after having been returned undeliverable to the Administrator shall have an
10 additional 14 calendar days beyond the Response Deadline has expired.

11 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the
12 Judgment.

13 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at
14 least one day, during the Class Period.

15
16 **2. RECITALS.**

17 2.1. On December 27, 2021, Plaintiff Zapien commenced this Action by filing a Complaint
18 alleging causes of action against Defendant for 1) failure to pay minimum wages; 2) failure
19 to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize
20 and permit rest breaks; 5) failure to indemnify necessary business expenses; 6) failure to
21 timely pay final wages at termination; 7) failure to provide accurate itemized wage
22 statements; and 8) unfair business practices. On January 7, 2022, Plaintiff filed a First
23 Amended Complaint adding a Ninth Cause of Action against Defendant for PAGA civil
24 penalties. On November 1, 2022, Plaintiff filed a Second Amended Complaint adding
25 Plaintiffs Maldonado and Lopez as parties to the complaint. The Second Amended
26 Complaint is the operative complaint in the Action (the "Operative Complaint.")
27 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
28 with the laws identified in in the Operative Complaint and denies any and all liability for

the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.

2.3. On November 10, 2022, the Parties participated in an all-day mediation presided over by Mark Rudy, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, information sufficient to meaningfully evaluate the claims at issue, including applicable policy documents and a sample of time and pay records for the Class. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay Six Hundred Ninety Thousand Dollars and Zero Cents (\$690,000.00) as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the

1 Court in the Final Approval:

2 3.2.1. To Plaintiff: Class Representative Service Payment to the named Class

3 Representatives of not more than Seven Thousand Five Hundred Dollars and Zero
4 Cents (\$7,500.00) to each person (in addition to any Individual Class Payment and
5 any Individual PAGA Payment the Class Representatives are entitled to receive as
6 Participating Class Members). Defendant will not oppose Plaintiffs' request for a
7 Class Representative Service Payment that does not exceed this amount as to each
8 Plaintiff. As part of the motion for Class Counsel Fees Payment and Class
9 Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class
10 Representative Service Payments no later than [16 court] days prior to the Final
11 Approval Hearing. If the Court approves Class Representative Service Payments
12 less than the amount requested, the Administrator will retain the remainder in the
13 Net Settlement Amount. The Administrator will pay the Class Representative
14 Service Payments using IRS Form 1099. Plaintiffs assumes full responsibility and
15 liability for employee taxes owed on the Class Representative Service Payments.

16 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 3 3 1 / 3 %,
17 which is currently estimated to be Two Hundred and Thirty Thousand Dollars and
18 Zero Cents (\$230,000) and a Class Counsel Litigation Expenses Payment of not
19 more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).

20 Defendant will not oppose requests for these payments provided that do not exceed
21 these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel
22 Fees Payment and Class Litigation Expenses Payment no later than 16 court days
23 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
24 Payment and/or a Class Counsel Litigation Expenses Payment less than the
25 amounts requested, the Administrator will allocate the remainder to the Net
26 Settlement Amount. Released Parties shall have no liability to Class Counsel or
27 any other Plaintiff's Counsel arising from any claim to any portion any Class
28 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The

1 Administrator will pay the Class Counsel Fees Payment and Class Counsel
2 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
3 responsibility and liability for taxes owed on the Class Counsel Fees Payment and
4 the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and
5 indemnifies Defendant, from any dispute or controversy regarding any division or
6 sharing of any of these Payments.

7 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Thirty
8 Thousand Dollars and Zero Cents (\$30,000.00) except for a showing of good
9 cause and as approved by the Court. To the extent the Administration Expenses
10 are less or the Court approves payment less than \$30,000.00, the Administrator will
11 retain the remainder in the Net Settlement Amount.

12 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
13 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
14 by all Participating Class Members during the Class Period and (b) multiplying the
15 result by each Participating Class Member's Workweeks.

16 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
17 Class Member's Individual Class Payment will be allocated to settlement
18 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
19 withholding and will be reported on an IRS W-2 Form. The 80% of each
20 Participating Class Member's Individual Class Payment will be allocated
21 to settlement of claims for interest and penalties (the "Non-Wage
22 Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings
23 and will be reported on IRS 1099 Forms. Participating Class Members
24 assume full responsibility and liability for any employee taxes owed on
25 their Individual Class Payment.

26 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
27 Class Payments. Non-Participating Class Members will not receive any
28 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 Fifty Thousand Dollars and Zero Cents (\$50,000.00) to be paid from the Gross Settlement Amount, with 75% (i.e., Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00)) allocated to the LWDA PAGA Payment and 25% (i.e., Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500)) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., \$12,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 2,559 Class Members who collectively worked a total of 135,788 Workweeks as of April 10, 2022, and approximately 1,311 of Aggrieved Employees who worked a total of 25,247 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in

the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Nothing in this Paragraph will prevent or preclude Class Counsel from performing their ethical or fiduciary duties to the Class Members. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, no later than thirty (30) days after the Effective Date. Defendant will be responsible for the employer's share of payroll taxes, separate and apart from the Class Fund.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel 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

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

11 4.4.2. The Administrator must conduct a Class Member Address Search for all other
12 Class Members whose checks are returned undelivered without USPS forwarding
13 address. Within seven (7) of receiving a returned check the Administrator must re-
14 mail checks to the USPS forwarding address provided or to an address ascertained
15 through the Class Member Address Search. The Administrator need not take
16 further steps to deliver checks to Class Members whose re-mailed checks are
17 returned as undelivered. The Administrator shall promptly send a replacement
18 check to any Class Member whose original check was lost or misplaced, requested
19 by the Class Member prior to the void date.

20 4.4.3. For any Class Member whose Individual Class Payment check or Individual
21 PAGA Payment check is uncashed and cancelled after the void date, the
22 Administrator shall transmit the funds represented by such checks to the California
23 Controller's Unclaimed Property Fund in the name of the Class Member thereby
24 leaving no "unpaid residue" subject to the requirements of California Code of Civil
25 Procedure § 384(b).

26 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
27 not obligate Defendant to confer any additional benefits or make any additional
28 payments to Class Members (such as 401(k) contributions or bonuses) beyond

those specified in this Agreement.

4.4.5. The Administrator shall remit payment for Employer Payroll Taxes to the appropriate taxing authorities within the deadlines established by law.

5. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer 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.

5.1.1. Scope of Plaintiff's Release. Plaintiffs and their former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences from the beginning of time through the date Plaintiff signs this Agreement, including, but not limited to: all claims under the California Labor Code; the California Fair Employment and Housing Act; the California Family Rights Act; the California Constitution; the California Government Code; the California Civil Code; any Industrial Welfare Commission Wage Order; the Americans with Disabilities Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; 42 U.S.C. § 1981, as amended; the Age Discrimination in Employment Act, as amended; the Fair Labor Standards Act, as amended; the Equal Pay Act; the Rehabilitation Act of 1973; the Family and Medical Leave Act; any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and all claims based on constitutional, statutory, common law, or regulatory grounds, as well as all other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, intentional and/or negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release

is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorneys' fees and costs ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions that cannot be released as a matter of law, including claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. 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 Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California 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 spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business

1 expenses; failure to timely pay final wages; failure to timely pay wages during
2 employment; failure to provide accurate wage statements; failure to keep adequate
3 records; and unfair business practices arising under California Business and Professions
4 Code section 17200 *et seq.* Excluded from this portion of the release are claims for
5 PAGA penalties that were alleged, or reasonably could have been alleged, based on the
6 PAGA Period facts stated in the Operative Complaint and the Plaintiff's PAGA Notice.
7 Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
8 release any other claims, including claims for vested benefits, wrongful termination,
9 violation of the Fair Employment and Housing Act, unemployment insurance, disability,
10 social security, workers' compensation, or claims based on facts occurring outside the
11 Class Period.

12 5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
13 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
14 former and present spouses, family members, representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, the Released Parties from all claims for PAGA
16 penalties that were alleged, or reasonably could have been alleged, based on the PAGA
17 Period facts stated in the Operative Complaint and/or the Plaintiffs' PAGA Notices,
18 including any claim for PAGA penalties based on alleged violations of California Labor
19 Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194,
20 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders
21 based on any alleged failure to pay minimum wage; failure to pay overtime
22 compensation; failure to provide meal periods; failure to authorize and permit rest
23 periods; failure to indemnify necessary business expenses; failure to timely pay final
24 wages; failure to timely pay wages during employment; failure to provide accurate wage
25 statements; and/or failure to keep adequate records.

26
27 **6. MOTION FOR PRELIMINARY APPROVAL.**

28 The Parties agree to prepare and file a motion for preliminary approval ("Motion for Preliminary

Approval”) upon the full execution of this Agreement.

6.1. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a copy of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a copy of the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a copy of the 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; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs 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; (v) 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 (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs 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 will be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (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 Order 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 IYLM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, IYLM Group, Inc. 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 § 468B-1.

7.4. Notice to Class Members.

7.4.1. 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.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation (if applicable), 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.

7.4.3. Not later than three (3) 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.

7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) 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.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet

1 and confer in person or by telephone, and in good faith, in an effort to agree on
2 whether to include them as Class Members. If the Parties agree, such persons will
3 be Class Members entitled to the same rights as other Class Members, and the
4 Administrator will send, via email or overnight delivery, a Class Notice requiring
5 them to exercise options under this Agreement not later than fourteen (14) days
6 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever
7 are later.

8 7.5. Requests for Exclusion (Opt-Outs).

9 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
10 must send the Administrator, by fax, email, or mail, a signed written Request for
11 Exclusion not later than forty-five (45) days after the Administrator mails the Class
12 Notice (plus an additional fourteen (14) days for Class Members whose Class
13 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
14 his/her representative that reasonably communicates the Class Member's election
15 to be excluded from the Settlement and includes the Class Member's name,
16 address and email address or telephone number. To be valid, a Request for
17 Exclusion must be timely faxed, emailed, or postmarked by the Response
18 Deadline.

19 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
20 fails to contain all the information specified in the Class Notice. The Administrator
21 shall accept any Request for Exclusion as valid if the Administrator can reasonably
22 ascertain the identity of the person as a Class Member and the Class Member's
23 desire to be excluded. The Administrator's determination shall be final and not
24 appealable or otherwise susceptible to challenge. If the Administrator has reason to
25 question the authenticity of a Request for Exclusion, the Administrator may
26 demand additional proof of the Class Member's identity. The Administrator's
27 determination of authenticity shall be final and not appealable or otherwise
28 susceptible to challenge.

1 7.5.3. Every Class Member who does not submit a timely and valid Request for
2 Exclusion is deemed to be a Participating Class Member under this Agreement,
3 entitled to all benefits and bound by all terms and conditions of the Settlement,
4 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
5 of this Agreement, regardless whether the Participating Class Member actually
6 receives the Class Notice or objects to the Settlement.

7 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
8 Non-Participating Class Member and shall not receive an Individual Class
9 Payment or have the right to object to the class action components of the
10 Settlement. Because future PAGA claims are subject to claim preclusion upon
11 entry of the Judgment, Non-Participating Class Members who are Aggrieved
12 Employees are deemed to release the claims identified in Paragraph 5.3 of this
13 Agreement and are eligible for an Individual PAGA Payment.

14 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
15 days after the Administrator mails the Class Notice (plus an additional seven (7) days for
16 Class Members whose Class Notice is re-mailed) to challenge the number of Class
17 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
18 Notice. The Class Member may challenge the allocation by communicating with the
19 Administrator via fax, email or mail. The Administrator must encourage the challenging
20 Class Member to submit supporting documentation. In the absence of any contrary
21 documentation, the Administrator is entitled to presume that the Workweeks contained in
22 the Class Notice are correct so long as they are consistent with the Class Data. The
23 Administrator's determination of each Class Member's allocation of Workweeks and/or
24 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
25 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
26 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's
27 determination the challenges.
28

1 7.7. Objections to Settlement.

2 7.7.1. Only Participating Class Members may object to the class action components of
3 the Settlement and/or this Agreement, including contesting the fairness of the
4 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and/or Class Representative Service
6 Payment.

7 7.7.2. For any Participating Class Member to object, the Class Member must send written
8 objections to the Administrator, signed by the Class Member, by fax or mail, no
9 later than forty-five (45) days after the Administrator's mailing of the Class Notice
10 (plus an additional seven (7) days for Class Members whose Class Notice was re-
11 mailed). The Settlement Administrator shall send all objections it receives to
12 Defense Counsel and Class Counsel within three (3) business days of receipt.
13 Participating Class Members may also appear in Court (or hire an attorney to
14 appear in Court) to present verbal objections at the Final Approval Hearing. The
15 Court retains final authority with respect to the consideration and admissibility of
16 any Class Member objections.

17 7.7.3. Non-Participating Class Members have no right to object to any of the class action
18 components of the Settlement.

19 7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the
20 Settlement and shall be bound by the Release of claims identified in Paragraph 5.3
21 of this Agreement.

22 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
23 performed or observed by the Administrator contained in this Agreement or otherwise.

24 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
25 and maintain and use an internet website to post information of interest to Class
26 Members including the date, time and location for the Final Approval Hearing and
27 copies of the Settlement Agreement, Motion for Preliminary Approval, the
28 Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion

1 for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and
2 Class Representative Service Payment, the Final Approval and the Judgment. The
3 Administrator will also maintain and monitor an email address and a toll-free
4 telephone number to receive Class Member calls, faxes and emails.

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

14 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
15 reports to Class Counsel and Defense Counsel that, among other things, tally the
16 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
17 Requests for Exclusion (whether valid or invalid) received, objections received,
18 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
19 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
20 Report”). The Weekly Reports must include provide the Administrator’s
21 assessment of the validity of Requests for Exclusion and attach copies of all
22 Requests for Exclusion and objections received.

23 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
24 address and make final decisions consistent with the terms of this Agreement on all
25 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
26 The Administrator’s decision shall be final and not appealable or otherwise
27 susceptible to challenge.

28 7.8.5. Administrator’s Declaration. Not later than fourteen (14) days before the date by

1 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
2 the Administrator will provide to Class Counsel and Defense Counsel, a signed
3 declaration suitable for filing in Court attesting to its due diligence and compliance
4 with all of its obligations under this Agreement, including, but not limited to, its
5 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
6 of Class Notices, attempts to locate Class Members, the total number of Requests
7 for Exclusion from Settlement it received (both valid or invalid), the number of
8 written objections and attach the Exclusion List. The Administrator will
9 supplement its declaration as needed or requested by the Parties and/or the Court.
10 Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

11 7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the
12 Administrator disburses all funds in the Gross Settlement Amount, the
13 Administrator will provide Class Counsel and Defense Counsel with a final report
14 detailing its disbursements by employee identification number only of all payments
15 made under this Agreement. At least fifteen (15) days before any deadline set by
16 the Court, the Administrator will prepare, and submit to Class Counsel and
17 Defense Counsel, a signed declaration suitable for filing in Court attesting to its
18 disbursement of all payments required under this Agreement. Class Counsel is
19 responsible for filing the Administrator's declaration in Court.
20

21 **8. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]**

22 Based on its records, Defendant estimates that, as of April 10, 2022, (1) there are 2,559 Class
23 Members and 135,788 Total Workweeks during the Class period and (2) there were approximately 1,311
24 Aggrieved Employees who worked 25,247 Pay Periods during the PAGA Period. In the event the total
25 number of Class Members is more than 10% from original estimate of 2,559 class members, or 2,815 or
26 more, the settlement amount shall be increased by the percentage that the actual number of class members
27 exceeds 2,815.
28

1 **9. DEFENDANT’S RIGHT TO WITHDRAW.**

2 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the
3 total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement.
4 The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or
5 effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement;
6 provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses
7 incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not
8 later than thirty (30) days after the expiration of the 45-day opt-out/exclusion period; late elections will
9 have no effect.

10
11 **10. MOTION FOR FINAL APPROVAL.**

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

18 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
19 a Participating Class Member, including the right to file responsive documents in Court no
20 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered
21 or accepted by the Court.

22 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
23 Approval on any material change to the Settlement (including, but not limited to, the scope
24 of release to be granted by Class Members), the Parties will expeditiously work together in
25 good faith to address the Court’s concerns by revising the Agreement as necessary to
26 obtain Final Approval. The Court’s decision to award less than the amounts requested for
27 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
28 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 reflected 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 § 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's 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, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve 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. Plaintiffs, 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,

1 accountants, or spouses, all of whom will be instructed to keep this Agreement
2 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
3 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
4 response to an inquiry or subpoena issued by a state or federal government agency. Each
5 Party agrees to immediately notify each other Party of any judicial or agency order,
6 inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and
7 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
8 other communication, before the filing of the Motion for Preliminary Approval, any with
9 third party regarding this Agreement or the matters giving rise to this Agreement except to
10 respond only that “the matter was resolved,” or words to that effect. This paragraph does
11 not restrict Class Counsel’s communications with Class Members in accordance with Class
12 Counsel’s ethical obligations owed to Class Members.

13 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
14 employees will not solicit any Class Member to opt out of or object to the Settlement, or
15 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s
17 ethical obligations owed to Class Members.

18 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
19 together with its attached exhibits shall constitute the entire agreement between the Parties
20 relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
23 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this
25 Agreement to effectuate its terms, and to execute any other documents reasonably required
26 to effectuate the terms of this Agreement including any amendments to this Agreement.

27 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
28 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 Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

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

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

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

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

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to

Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 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, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

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

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

To Plaintiff:

Kane Moon, Esq.
Brett Gunther, Esq.
AnaKaren Jimenez, Esq.
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, CA 90017

To Defendant:

Laura A. Wolfe, Esq.

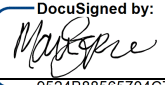
MCCORMICK BARSTOW LLP
7647 North Fresno Street
Fresno, CA 93720

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

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

Plaintiffs & Class Representatives:

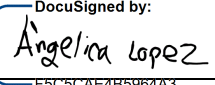
Dated: March 22, 2023

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By: 
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MARIA FERNANDA ZAPIEN

Dated: March 22, 2023

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By: 
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ROSALBA GONZALEZ MALDONADO

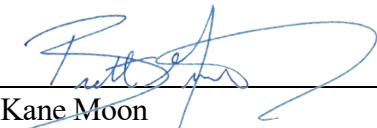
Dated: March 27, 2023

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By: 
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ANGELICA LOPEZ

Plaintiffs' Counsel:

Dated: March 27, 2023

MOON & YANG, APC

By: 
Kane Moon
Brett Gunther

Attorneys for Plaintiff

1
2
3 **Defendant:**

4 Dated: March 27, 2023

WENDY'S OF THE PACIFIC, INC.

5 By: Joe Johal
6 Print Name

7 Joe Johal
8 Signature

9 CEO
10 Title

11 **Defendant's Counsel:**

12 Dated: March 27, 2023

MCCORMICK BARSTOW LLP

13 LAW
14 By: LAW
15 Laura A. Wolfe

16 Attorneys for Defendant
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EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Maria Fernanda Zapien et al. v. Wendy's of The Pacific Inc.
Stanislaus County Superior Court Case No. CV-21-006838

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

IF YOU WORKED AS A NON-EXEMPT EMPLOYEE OF WENDY'S OF THE PACIFIC, INC. IN CALIFORNIA AT ANY TIME BETWEEN DECEMBER 27, 2017 AND NOVEMBER 10, 2022, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Maria Fernanda Zapien et al. v. Wendy's of The Pacific Inc., et al.*, Stanislaus County Superior Court Case No. CV-21-006838 (the "Action"). The purpose of this Notice of Proposed Class Action Settlement ("Notice") is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

The proposed Settlement will resolve all claims in the Action. A hearing concerning final approval of the proposed Settlement will be held before the Hon. Stacy P. Speiller on <<**FA Date and Time**>> in Department Dept. 22 of the Stanislaus County Superior Court, Civil Division, located at 801 10th Street, Modesto, California 95354 to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE >>	You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement. Except that, even if you request exclusion, you will receive payment for PAGA Penalties, and you will release PAGA claims as discussed below.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE >>	To object to the Settlement, you may mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DATE >>. You may arrange to appear at the hearing remotely by following the instructions for making a remote appearance posted on the Court's website at https://www.stanislaus.courts.ca.gov/online-services/remote-telephonic-hearings

Who is affected by this proposed Settlement?

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

All persons who worked for Defendant Wendy’s of the Pacific, Inc. in California as an hourly, non-exempt employee at any time between December 27, 2017 and November 10, 2022.

According to Defendant’s records, you are a member of the Class (“Class Member”).

What is this case about?

In the Action, Plaintiffs Maria Fernanda Zapien, Rosalba Gonzalez Maldonado, and Angelica Lopez (“Plaintiffs”) allege on behalf of themselves and the Class that Defendant: (1) Failed to Pay Minimum Wages; (2) Failed to Pay Overtime Compensation; (3) Failed to Provide Meal Periods; (4) Failed to Authorize and Permit Rest Breaks; (5) Failed to Indemnify Necessary Business Expenses; (6) Failed to Timely Pay Final Wages at Termination; (7) Failed to Provide Accurate Itemized Wage Statements; (8) committed Unfair Business Practices; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiffs seek unpaid wages, reimbursement for necessary business expenses, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

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

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

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
Brett Gunther
AnaKaren Jimenez
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
brett.gunther@moonyanglaw.com
ana.jimenez@moonyanglaw.com

Defendant’s Counsel

Laura A. Wolfe, Esq.
Laura.Wolfe@mccormickbarstow.com
MCCORMICK BARSTOW LLP
7647 North Fresno Street
Fresno, CA 93720

Attorneys for Defendant Wendy’s of the
Pacific, Inc.

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$690,000 (the “Gross Settlement Amount”) for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payments to Plaintiffs (up to \$7,500 each); (c) the Court-approved attorneys’ fees and costs to Class Counsel (\$230,000 in fees and up to \$25,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (\$37,500 of a total of \$50,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of \$30,000).

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

Defendant will make the settlement payment within 30 calendar days of the effective date of the settlement to the third-party administrator. Your Individual Settlement Payment will be mailed to you 14 days after the administrator receives the settlement payment from Defendant.

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

Your estimated minimum settlement payment is <<Estimated Payment>> and your covered Work Weeks worked during the relevant period between December 27, 2017 and November 10, 2022 are <<Work Weeks>>. To the extent you dispute the number of Work Weeks, you must make your dispute ("Work Week Dispute") in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<+45 days from date of mailing>> (the "Response Deadline") to:

ILYM Group, Inc., <<Mailing Address>>

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

For tax reporting purposes, the payments to Settlement Class Members will be allocated 20% as wages, 80% as penalties and interest, excluding the PAGA Settlement Payments, which will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

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

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

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$230,000 (one-third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$25,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Payments of \$7,500 for each Plaintiff for their efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$30,000.00. A payment in the amount of \$37,500 will also

be made to the LWDA for PAGA penalties, which represents 75% of the \$50,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

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

Identity of Released Parties. The released parties are Defendant and each of its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns. (collectively “Releasees”).

Date Release Becomes Active. The Released Claims will be released upon the Settlement’s Effective Date and payment by Defendant of all funds due under the settlement. Class Members will not release the Released Claims or Released PAGA Claims until the Effective Date and payment by Defendant of all funds due under the settlement.

Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

- 1) All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 et seq. 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;
- 2) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member’s consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly; and
- 3) in addition, as to *all* Class Members who are Aggrieved Employees are deemed to release, whether requesting exclusion from the Settlement or not, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the

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

What are my options in this matter?

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

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

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

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

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

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

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

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be

deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement – except that you will still receive payment for and release claims for Civil Penalties Under PAGA. You will not be able to complain to the Court about any aspect of the Settlement.

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

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department 22 of the Stanislaus County Superior Court, Civil Division, located at 801 10th Street, Modesto, California 95354.

Due to the COVID-19 pandemic, Class Members may arrange to attend the Final Approval hearing remotely and can make arrangements to do so by visiting the Court's website and following the instructions to request a remote appearance at <https://www.stanislaus.courts.ca.gov/online-services/remote-telephonic-hearings>.

The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

How can I get additional information?

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

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