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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

ERNEST GARCIA, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

SOUTH VALLEY COMPANIES, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-22-100465

**CLASS AND REPRESENTATIVE
ACTION**

[Assigned for all purposes to Honorable
Thomas S. Clark, Dept. 17]

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

Action Filed: February 25, 2022
Trial Date: Not Scheduled

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Ernest Garcia (“Plaintiff”) and Defendant South Valley Companies, 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 and related violations against Defendant captioned *Garcia v. South Valley Companies, Inc.* initiated on February 25, 2022, Case Number BCV-22-100465.
- 1.2. “Administrator” or “Settlement Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” or “PAGA Employee” means any Class Member who worked for Defendant for at least one shift during the PAGA Period.
- 1.5. “Class” means all current and former non-exempt employees of Defendant within the State of California at any time during the Class Period.
- 1.6. “Class Counsel” means Kane Moon, Allen Feghali, and Charlotte Mikat-Stevens 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 Workweeks and PAGA Workweeks.

- 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 and PAGA Settlement” to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from February 25, 2018 through the date of entry of order for preliminary approval of the settlement.
- 1.13. “Class Representative” means Ernest Garcia, the named Plaintiff in the Action seeking Court approval to serve as 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 Kern.
- 1.16. “Defendant” means South Valley Companies, Inc., the named Defendant in the Action.
- 1.17. “Defense Counsel” means Chris C. Scheithauer and John T. Egley of Call & Jensen, A Professional Corporation.
- 1.18. “Final Approval” means the Court’s Order Granting Final Approval of the Class Action and PAGA Settlement.

- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Class Action and PAGA Settlement.
- 1.20. “Final Judgment” or “Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Class Action and PAGA Settlement.
- 1.21. “Gross Settlement Amount” means One Hundred Eighty-Two Thousand Dollars and Zero Cents (\$182,000.00) which is the total amount Defendant agrees to pay under this Settlement. In no event shall Defendant be obligated to pay more than the Gross Settlement Amount except as provided in Paragraphs 4.3 and 8 below (employer’s share of payroll taxes and escalator provision). The Gross Settlement Amount will be used to pay: (i) Individual Class Payments, (ii) Individual PAGA Payments, (iii) the LWDA PAGA Payment, (iv) Class Counsel Fees, (v) the Class Counsel Litigation Expenses, (vi) Class Representative Service Payment, and (vii) the Administration Expense Payment.
- 1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks employed during the Class Period.
- 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Workweeks employed during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties (i.e., \$15,000.00) paid to the LWDA under Labor Code § 2699(i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (i) the LWDA PAGA Payment,

(ii) the Class Representative Service Payment, (iii) Class Counsel Fees Payment, (iv) Class Counsel Litigation Expenses Payment, and (v) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments and to Aggrieved Employees as Individual PAGA Payments.

1.28. “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.

1.29. “PAGA Period” means the period from February 19, 2021 through the date of entry of order for preliminary approval of the settlement.

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

1.31. “PAGA Amended Notice” means Plaintiff’s November 10, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.32. “PAGA Notice” means Plaintiff’s February 19, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.33. “PAGA Penalties” means Twenty Thousand Dollars and Zero Cents (\$20,000.00), which is the total amount allocated for settlement of PAGA civil penalties claims, allocated as 25% to the Aggrieved Employees (\$5,000.00) and as 75% to LWDA (\$15,000.00).

1.34. “PAGA Workweeks” means any week during the PAGA Period during which an Aggrieved Employee worked for Defendant for at least one shift.

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 Ernest Garcia, the named Plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Class Action and PAGA Settlement.

1.38. “Preliminary Approval Order” means the Proposed Order Granting Preliminary Approval of the Class Action and 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 with respect to claims for civil penalties under PAGA.
- 1.41. “Released Parties” means: Defendant and any parent, subsidiary, affiliate, predecessor, or successor, and all agents, employees (current and former), officers, directors, insurers, and attorneys thereof.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “Workweek” means any week during the Class Period during which a Class Member was employed by Defendant for at least one day.

2. **RECITALS.**

- 2.1. On February 25, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) failure to pay minimum wages; 2) failure to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize and permit rest breaks; 5) failure to indemnify necessary business expenses; 6) failure to timely pay final wages at termination; 7) failure to provide accurate itemized wage statements; and 8) unfair business practices. On May 2, 2022, Plaintiff filed a First Amended Complaint adding a Ninth Cause of Action

1 against Defendant for PAGA civil penalties under California Labor Code § 2699, *et*
2 *seq.*

3 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to
4 Defendant and the LWDA by sending the PAGA Notice and, later, the PAGA
5 Amended Notice.

6 2.3. On February 3, 2023, the Parties participated in an all-day mediation presided over
7 by experienced employment mediator Steven Rottman, Esq. which led to this
8 Agreement to settle the Action.

9 2.4. Prior to mediation, Plaintiff obtained, through informal discovery from Defendant,
10 information sufficient to meaningfully evaluate the claims at issue, including
11 applicable policy documents and almost all of time and pay records for the Class
12 (they were produced through much of 2022). Plaintiff's investigation was sufficient
13 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*
14 (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)
15 168 Cal. App. 4th 116, 129–130 ("*Dunk/Kullar*").

16 2.5. The Court has not granted class certification.

17 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of
18 any other pending matter or action asserting claims that will be extinguished or
19 affected by the Settlement.

20 **3. MONETARY TERMS.**

21 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 4.3 and 8
22 below, Defendant promises to pay the total amount of One Hundred Eighty-Two
23 Thousand Dollars and Zero Cents (\$182,000.00). Defendant has no obligation to pay
24 the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this
25 Agreement. The Administrator will disburse the entire Gross Settlement Amount
26 without asking or requiring Participating Class Members or Aggrieved Employees to
27 submit any claim as a condition of payment. None of the Gross Settlement Amount

will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order and Judgment:

3.2.1. To Plaintiff: Class Representative Service Payment to the named Class Representative of not more than Five Thousand Dollars and Zero Cents (\$5,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third percent (33.33%) of the Gross Settlement Amount (i.e., Sixty Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$60,666.67) and a Class Counsel Litigation Expenses Payment of not more than Twenty Thousand Dollars and Zero Cents (\$20,000.00). Defendant will not oppose requests for these payments provided that the payments do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days

1 prior to the Final Approval Hearing. If the Court approves a Class Counsel
2 Fees Payment and/or a Class Counsel Litigation Expenses Payment less than
3 the amounts requested, the Administrator will retain the remainder in the Net
4 Settlement Amount. Released Parties shall have no liability to Class
5 Counsel or any other Plaintiff's Counsel arising from any claim to any
6 portion of any Class Counsel Fee Payment and/or Class Counsel Litigation
7 Expenses Payment. The Administrator will pay the Class Counsel Fees
8 Payment and Class Counsel Expenses Payment using one or more IRS 1099
9 Forms. Class Counsel assumes full responsibility and liability for taxes
10 owed on the Class Counsel Fees Payment and the Class Counsel Litigation
11 Expenses Payment and holds Defendant harmless, and indemnifies
12 Defendant from any dispute or controversy regarding any division or sharing
13 of any of these Payments.

14 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
15 Twenty Thousand Dollars and Zero Cents (\$20,000.00) except for a showing of
16 good cause and as approved by the Court. To the extent the Administration
17 Expenses are less or the Court approves payment less than \$20,000.00, the
18 Administrator will retain the remainder in the Net Settlement Amount.

19 3.2.4. Individual Class Payments to Each Participating Class Member: An
20 Individual Class Payment is payable to each Participating Class Member on
21 a pro-rata basis as calculated by the Settlement Administrator using the
22 following formula: (a) subtracting the amount allocated to Aggrieved
23 Employees for PAGA Penalties (\$5,000.00) from the Net Settlement
24 Amount, (b) dividing that resulting amount by the total number of
25 Workweeks employed by all Participating Class Members during the Class
26 Period, and (c) multiplying the result by each Participating Class Member's
27 Workweeks during the Class Period.

1 3.2.4.1. Tax Allocation of Individual Class Payments. Thirty Percent
2 (30%) of each Participating Class Member's Individual Class
3 Payment will be allocated to settlement of wage claims (the
4 "Wage Portion"). The Wage Portions are subject to tax
5 withholding and will be reported on an IRS W-2 Form. The
6 remaining portion of each Participating Class Member's
7 Individual Class Payment will be allocated to settlement of claims
8 as Thirty-Five Percent (35%) for interest and Thirty-Five Percent
9 (35%) penalties (the "Non-Wage Portion"). The Non-Wage
10 Portions are not subject to wage withholdings and will be reported
11 on IRS 1099 Forms. Participating Class Members assume full
12 responsibility and liability for any employee taxes owed on their
13 Individual Class Payment.

14 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
15 Individual Class Payments. Non-Participating Class Members will
16 not receive any Individual Class Payments. The Administrator
17 will retain amounts equal to their Individual Class Payments in the
18 Net Settlement Amount for distribution to Participating Class
19 Members on a pro-rata basis.

20 3.2.5. Individual PAGA Payments to Aggrieved Employees: An Individual PAGA
21 Payment is payable to each Aggrieved Employee from the Net Settlement
22 Amount on a pro-rata basis as calculated by the Settlement Administrator.
23 The Administrator will calculate each Individual PAGA Payment by (a)
24 dividing the amount of the Aggrieved Employees' 25% share of PAGA
25 Penalties (i.e., \$5,000.00) by the total number of PAGA Workweeks
26 employed by all Aggrieved Employees during the PAGA Period and (b)
27 multiplying the result by each Aggrieved Employee's PAGA Workweeks

employed during the PAGA Period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.1. 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.

3.2.6. To the LWDA: From the Gross Settlement Amount, a LWDA PAGA Payment for penalties is to be paid to the LWDA in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00), which constitutes Seventy-Five Percent (75%) of the total amount allocated for PAGA Penalties.

3.2.6.1. 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 PAGA Workweeks. Based on a review of its records to date, Defendant estimates there are approximately (1) 135 Class Members who collectively worked a total of 9,532 Workweeks, and (2) 79 Aggrieved Employees who worked a total of 3902 PAGA Workweeks.

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Nothing in this

confidentiality provision shall be construed or work to preclude Class Counsel from performing their fiduciary duties to the Class. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, no later than six (6) months after the Court signs the Final Approval Order. Defendant will be responsible for the employer's share of payroll taxes, separate and apart from the Gross Settlement Amount.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days of Defendant having funded 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 ("USPS"), 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 a USPS forwarding address. Within seven (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, if 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 California Code of Civil Procedure § 384(b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments

shall not obligate Defendant 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.

Claims will be released against all Released Parties, according to the terms provided below, effective only on the date when both of the following events have occurred: (a) the Court enters an order granting Final Approval of this Settlement and (b) Defendant fully funds the entire Gross Settlement Amount.

5.1. General Release by Plaintiff.

5.1.1. Scope of Plaintiff's Release. In addition to the release made in Paragraph 5.2, Plaintiff will make the following additional general release ("General Release"): Plaintiff releases the Released Parties from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof.

5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's General Release, Plaintiff stipulates and agrees that he has expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

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.

5.1.3. The Parties understand that the General Release does not release any claims that Plaintiff cannot lawfully release. It is also understood and agreed by Defendant that this release does not limit Plaintiff from filing and seeking damages for any Workers' Compensation claims and/or unemployment insurance claims that are currently pending, or may be filed in the future.

5.2. Release of Claims by Settlement Class. Each member of the Settlement Class releases the Released Parties from all claims which arise from the facts asserted in the Action, including all claims under the California Labor Code as alleged in the Action, including violations for meal periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, unreimbursed business expenses, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, which shall be fully, finally, and forever released, relinquished, and discharged

5.3. Release of Claims by Non-Participating Class Members Who Are Aggrieved Employees. All Non-Participating Class Members who are Aggrieved Employees release, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, the Released Parties from all claims for penalties under PAGA which arise from the facts asserted in the Action and/or the PAGA Amended Notice.

6. MOTION FOR PRELIMINARY APPROVAL.

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

6.1. Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support of the Motion for Preliminary Approval that includes an

analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval of the Class Action and PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve as Class Representative; (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (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 and/or the Administrator.

6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval following 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 signed 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.

1 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to
2 serve as the Administrator and verified that, as a condition of appointment, ILYM
3 Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all
4 duties specified in this Agreement in exchange for payment of Administration
5 Expenses. The Parties and their Counsel represent that they have no interest or
6 relationship, financial or otherwise, with the Administrator other than a professional
7 relationship arising out of prior experiences administering settlements.

8 7.2. Employer Identification Number. The Administrator shall have and use its own
9 Employer Identification Number for purposes of calculating payroll tax
10 withholdings and providing reports to the state and federal tax authorities.

11 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
12 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
13 Regulation § 468B-1.

14 7.4. Notice to Class Members.

15 7.4.1. No later than three (3) business days after receipt of the Class Data, the
16 Administrator shall notify Class Counsel that the list has been received and
17 state the number of Class Members, Aggrieved Employees, Workweeks, and
18 PAGA Workweeks in the Class Data.

19 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
20 fourteen (14) days after receiving the Class Data, the Administrator will
21 send to all Class Members identified in the Class Data, via first-class United
22 States Postal Service (“USPS”) mail, the Class Notice with Spanish
23 translation, substantially in the form attached to this Agreement as Exhibit
24 A. The first page of the Class Notice shall prominently estimate the dollar
25 amounts of any Individual Class Payment and Individual PAGA Payment (if
26 applicable) payable to the Class Member, and the number of Workweeks and
27 PAGA Workweeks (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 PAGA Workweeks, 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 and confer, in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

7.5. Requests for Exclusion (Opt-Outs).

1 7.5.1. Class Members who wish to exclude themselves (i.e., opt-out of) the Class
2 Settlement must send the Administrator, by fax, email, or mail, a signed
3 written Request for Exclusion not later than forty-five (45) days after the
4 Administrator mails the Class Notice (plus an additional fourteen (14) days
5 for Class Members whose Class Notice is re-mailed). A Request for
6 Exclusion is a letter from a Class Member or his/her representative that
7 reasonably communicates the Class Member's election to be excluded from
8 the Settlement and includes the Class Member's name, address, and email
9 address or telephone number. To be valid, a Request for Exclusion must be
10 timely faxed, emailed, or postmarked by the Response Deadline.

11 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because
12 it fails to contain all the information specified in the Class Notice. The
13 Administrator shall accept any Request for Exclusion as valid if the
14 Administrator can reasonably ascertain the identity of the person as a Class
15 Member and the Class Member's desire to be excluded. The Administrator's
16 determination shall be final and not appealable or otherwise susceptible to
17 challenge. If the Administrator has reason to question the authenticity of a
18 Request for Exclusion, the Administrator may demand additional proof of
19 the Class Member's identity. The Administrator's determination of
20 authenticity shall be final and not appealable or otherwise susceptible to
21 challenge.

22 7.5.3. Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this
24 Agreement, entitled to all benefits and bound by all terms and conditions of
25 the Settlement, including the Participating Class Members' Releases under
26 Paragraph 5.2 of this Agreement, regardless of whether the Participating
27 Class Member actually receives the Class Notice or objects to the

Settlement.

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

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator in writing via fax, email, or mail. The Administrator must request that the challenging Class Member submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Workweeks (if any) 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 PAGA Workweeks 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 PAGA Workweeks to Defense Counsel and Class Counsel as well as the Administrator's determination as to the challenges.

7.7. Objections to Settlement.

1 7.7.1. Only Participating Class Members (i.e., Class Members who do not submit
2 valid and timely Requests for Exclusion) may object to the class action
3 components of the Settlement and/or this Agreement, including contesting
4 the fairness of the Settlement, and/or amounts requested for the Class
5 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or
6 Class Representative Service Payment. Aggrieved Employees have no right
7 to object to the PAGA portion of the Settlement.

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

19 7.7.3. Non-Participating Class Members (i.e., Class Members who submit valid
20 and timely Requests for Exclusion) have no right to object to any of the class
21 action components of the Settlement.

22 7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of
23 the Settlement and shall be bound by the Release of claims identified in
24 Paragraph 5.3 of this Agreement.

25 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks
26 to be performed or observed by the Administrator contained in this Agreement or
27 otherwise.

1 7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
2 will promptly review, on a rolling basis, Requests for Exclusion to ascertain
3 their validity. Not later than five (5) days after the expiration of the deadline
4 for submitting Requests for Exclusion, the Administrator shall email a list to
5 Class Counsel and Defense Counsel containing (a) the names and other
6 identifying information of Class Members who have timely submitted valid
7 Requests for Exclusion (“Exclusion List”); (b) the names and other
8 identifying information of Class Members who have submitted invalid
9 Requests for Exclusion; and (c) copies of all Requests for Exclusion from
10 the Settlement submitted (whether valid or invalid).

11 7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide
12 written reports to Class Counsel and Defense Counsel that, among other
13 things, tally the number of: Class Notices mailed or re-mailed, Class Notices
14 returned as undelivered, Requests for Exclusion (whether valid or invalid)
15 received, objections received, challenges to Workweeks and/or PAGA
16 Workweeks received and/or resolved, and checks mailed for Individual Class
17 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
18 Reports must include the Administrator’s assessment of the validity of
19 Requests for Exclusion and attach copies of all Requests for Exclusion and
20 objections received.

21 7.8.3. Challenges to Workweeks and/or PAGA Workweeks. The Administrator
22 has the authority to address and make final decisions consistent with the
23 terms of this Agreement on all Class Member challenges over the calculation
24 of Workweeks and/or PAGA Workweeks. The Administrator’s decision
25 shall be final and not appealable or otherwise susceptible to challenge.

26 7.8.4. Administrator’s Declaration. Not later than fourteen (14) days before the
27 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 any written objections received, and the total number of any Requests for Exclusion from Settlement received (both valid or invalid), attaching thereto the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are approximately 135 Class Members who worked a total of 9,532 Workweeks during the Class Period. The Parties stipulate to a ten percent (10%) escalation of the estimated Workweeks without any increase to the Gross Settlement Amount. If the number of

1 actual Workweeks during the Class Period exceeds ten percent (10%) of the estimated
2 Workweeks (i.e., exceeds 10,485 Workweeks), Defendant, at its option, can either choose to (a)
3 have the Class Period end as of the date that the Workweeks during the Class Period reach
4 10,485 Workweeks, or (b) increase the Gross Settlement Amount by a pro-rata dollar value equal
5 to the number of Workweeks in excess of 10,485 (i.e., if there is a one percent (1%) increase
6 over ten percent (10%), then the Gross Settlement Amount increases by one percent (1%)).

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

8 If the number of valid and timely Requests for Exclusion identified in the Exclusion List
9 exceeds three percent (3%) of the total of all Class Members, Defendant may, but is not obligated
10 to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the
11 Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will
12 have any further obligation to perform under this Agreement; provided, however, Defendant will
13 remain responsible for paying all Settlement Administration Expenses incurred to that point.
14 Defendant must notify Class Counsel and the Court of its election to withdraw not later than
15 fourteen (14) days after the Administrator sends the final Exclusion List to Defense Counsel; late
16 elections will have no effect.

17 **10. MOTION FOR FINAL APPROVAL.**

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

24 10.1. Response to Objections. Each Party retains the right to respond to any objection
25 raised by a Participating Class Member, including the right to file responsive
26 documents in Court no later than five (5) court days prior to the Final Approval
27 Hearing, or as otherwise ordered or accepted by the Court.

1 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
2 Approval on any material change to the Settlement (including, but not limited to,
3 the scope of release to be granted by Class Members), the Parties will expeditiously
4 work together in good faith to address the Court's concerns by revising the
5 Agreement as necessary to obtain Final Approval. The Court's decision to award
6 less than the amounts requested for the Class Representative Service Payment, Class
7 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or
8 Administrator Expenses Payment shall not constitute a material modification to the
9 Agreement within the meaning of this Paragraph.

10 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
11 Judgment, the Court will retain jurisdiction over the Parties, Action, and the
12 Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii)
13 addressing settlement administration matters, and (iii) addressing such post-
14 Judgment matters as are permitted by law.

15 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
16 conditions of this Agreement, specifically including the Class Counsel Fees
17 Payment and Class Counsel Litigation Expenses Payment as set forth in this
18 Settlement, the Parties, their respective counsel, and all Participating Class
19 Members who did not object to the Settlement as provided for in this Agreement,
20 waive all rights to appeal the Judgment, including all rights to post-Judgment and
21 appellate proceedings, the right to file motions to vacate Judgment, motions for new
22 trial, extraordinary writs, and appeals. The waiver of appeal does not include any
23 waiver of the right to oppose such motions, writs, or appeals. If an objector appeals
24 the Judgment, the Parties' obligations to perform under this Agreement will be
25 suspended until such time as the appeal is finally resolved and the Judgment
26 becomes final, except as to matters that do not affect the amount of the Net
27 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, so 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 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 Action have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff 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 not 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 Plaintiff reserves the right to

1 move for class certification on any grounds available and to contest Defendant's
2 defenses. The Settlement, this Agreement, and the Parties' willingness to settle the
3 Action will have no bearing on, and will not be admissible in connection with, any
4 litigation (except for proceedings to enforce or effectuate the Settlement and this
5 Agreement).

6 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant,
7 and Defense Counsel separately agree that, until the Motion for Preliminary
8 Approval of Settlement is filed, they and each of them will not disclose,
9 disseminate, or publicize, or cause or permit another person to disclose,
10 disseminate, or publicize, any of the terms of the Agreement, directly or indirectly,
11 specifically or generally, to any person, corporation, association, government
12 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
13 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
14 related matter only as necessary to litigate each related matter; (3) to the extent
15 necessary to report income to appropriate taxing authorities; (4) in response to a
16 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a
17 state or federal governmental agency. Each Party agrees to immediately notify each
18 other Party of any judicial or agency order, inquiry, or subpoena seeking such
19 information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately
20 agree not to, directly or indirectly, initiate any conversation or other
21 communication, before the filing of the Motion for Preliminary Approval, with any
22 third party regarding this Agreement or the matters giving rise to this Agreement,
23 except to respond only that "the matter was resolved," or words to that effect. This
24 Paragraph does not restrict Class Counsel's communications with Class Members in
25 accordance with Class Counsel's ethical obligations owed to Class Members.

26 12.3. No Solicitation. The Parties separately agree that they and their respective counsel
27 and employees will not solicit any Class Member to opt out of or object to the

1 Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be
2 construed to restrict Class Counsel's ability to communicate with Class Members in
3 accordance with Class Counsel's ethical obligations owed to Class Members.

4 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
5 Agreement, together with its attached exhibit, shall constitute the entire agreement
6 between the Parties relating to the Settlement, superseding any and all oral
7 representations, warranties, covenants, or inducements made to or by any Party.

8 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
9 represent that they are authorized by Plaintiff and Defendant, respectively, to take
10 all appropriate action required or permitted to be taken by such Parties pursuant to
11 this Agreement to effectuate its terms, and to execute any other documents
12 reasonably required to effectuate the terms of this Agreement, including any
13 amendments to this Agreement.

14 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts, in good faith, to implement the Settlement by, among other things,
16 amending the Settlement Agreement, submitting supplemental evidence, and
17 submitting supplementing points and authorities as needed or as requested by the
18 Court. In the event the Parties are unable to agree upon the form or content of any
19 document necessary to implement the Settlement, or on any modification of the
20 Agreement that may become necessary to implement the Settlement, the Parties will
21 seek the assistance of a mediator and/or the Court for resolution.

22 12.7. No Prior Assignments. The Parties separately represent and warrant that they have
23 not directly or indirectly assigned, transferred, encumbered, or purported to assign,
24 transfer, or encumber to any person or entity any portion of any liability, claim,
25 demand, action, cause of action, or right released and discharged by the Party in this
26 Settlement.

27 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 of the Agreement.

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

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final disbursement of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from

Defendant, unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the 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. Computation of 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 e-mail or messenger, addressed as follows:

To Plaintiff:

Kane Moon, Esq.
E-mail: kane.moon@moonyanglaw.com
Allen Feghali, Esq.
E-mail: allen.feghali@moonyanglaw.com
Charlotte Mikat-Stevens, Esq.
E-mail: charlotte.mikat-stevens@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

To Defendant:

Chris C. Scheithauer, Esq.
E-mail: cscheithauer@calljensen.com
John T. Egley, Esq.
E-mail: jegley@calljensen.com
CALL & JENSEN, A PROFESSIONAL CORPORATION
610 Newport Center Drive, Suite 700
Newport Beach, California 92660

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., Adobe, 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 upon the signing of this Agreement, pursuant to Code of Civil Procedure § 583.330, to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this Settlement process.

AGREED AND UNDERSTOOD BY:

Plaintiff & Class Representative:

Dated: 4/10/23

By: 
ernest.garcia (Apr 10, 2023 15:42 PDT)
Ernest Garcia

Defendant:

Dated: SOUTH VALLEY COMPANIES, INC.

By: 
Bryan Ollivier, Chief Operating Officer

APPROVED AS TO FORM BY:

Plaintiff's Counsel:

Dated: 4/11/2023

MOON & YANG, APC

By: 
Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiff

1 **Defendant's Counsel:**

2 Dated: April 13, 2023

CALL & JENSEN,
A PROFESSIONAL CORPORATION

3
4 By: 

Chris C. Scheithauer

John T. Egley

Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

Ernest Garcia v. South Valley Companies, Inc.
Kern County Superior Court Case No. BCV-22-100465

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 SOUTH VALLEY COMPANIES, INC. (“DEFENDANT”) IN CALIFORNIA AT ANY TIME BETWEEN FEBRUARY 25, 2018 AND <<**DATE OF PRELIMINARY APPROVAL**>>, THIS PROPOSED CLASS ACTION AND PAGA 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 *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court Case No. BCV-22-100465 (the “Action”). The purpose of this Notice of Proposed Class Action and PAGA 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 Honorable Thomas S. Clark on <<**FA Date and Time**>> in Department 17 of the Kern County Superior Court, located at 1415 Truxtun Avenue, Bakersfield, CA 93301, 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 in the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

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

Who is affected by this proposed Settlement?

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

All current and former non-exempt employees of Defendant within the State of California at any time between February 25, 2018 and <<the date of preliminary approval>>.

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

What is this case about?

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

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

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

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

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

MOON & YANG, APC

Kane Moon, Esq.

E-mail: kane.moon@moonyanglaw.com

Allen Feghali, Esq.

E-mail: allen.feghali@moonyanglaw.com

Charlotte Mikat-Stevens, Esq.

E-mail: charlotte.mikat-stevens@moonyanglaw.com

1055 W. Seventh St., Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

Defendant's Counsel

CALL & JENSEN, A PROFESSIONAL CORPORATION

Chris C. Scheithauer, Esq.

E-mail: cscheithauer@calljensen.com

John T. Egley, Esq.

E-mail: jegley@calljensen.com

610 Newport Center Drive, Suite 700

Newport Beach, California 92660

Telephone: (949) 717-3000

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$182,000.00 (the "Gross Settlement Amount") for: (a) Individual Class Payments to Settlement Participating Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff (\$5,000.00); (c) the Court-approved attorneys' fees and costs to Class

Counsel (\$60,666.67 in fees and up to \$20,000.00 in costs, to be requested); (d) payment to the California Labor and Workforce Development Agency (“LWDA”) as PAGA penalties (\$15,000.00 of a total of \$20,000.00 allocated to PAGA penalties); (e) Individual PAGA Payments to Aggrieved Employees (\$5,000.00 of a total of \$20,000.00 allocated to PAGA penalties); and (f) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of \$20,000.00).

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an Individual Class Payment to each Class Member who does not request to be excluded from the Settlement (“Settlement Class Members”), as well as an Individual PAGA Payment to each Class Member who is also an Aggrieved Employee entitled to a share of PAGA penalties regardless of whether the Aggrieved Employee requested to be excluded from the Settlement. Your total individual distribution amount, whether it includes both an Individual Class Payment and an Individual PAGA Payment, is referred to as Individual Settlement Payment (“Individual Settlement Payment”). If you are entitled to an Individual PAGA Payment, it may be combined with your Individual Class Payment in a single check.

An Aggrieved Employee means any Class Member who worked for Defendant for at least one shift during the PAGA Period (“Aggrieved Employee”). The PAGA Period means between February 19, 2021 and <<the date of preliminary approval>> (the “PAGA Period”).

Within six (6) months following preliminary approval of the Settlement by the Court, Defendant will make a one-time Gross Settlement Amount payment of \$182,000.00 into a qualified settlement account established by the Settlement Administrator. A pro-rated portion of your Individual Settlement Payment will be mailed to you within fourteen (14) days after Defendant makes its one-time payment into the qualified settlement account.

From the Net Settlement Amount, \$5,000.00 shall be divided among all Aggrieved Employees on a pro-rata basis based upon the total number of PAGA Workweeks employed by each Aggrieved Employee between the PAGA Period. If you qualify as an Aggrieved Employee, your estimated Individual PAGA Payment is listed below.

The amount remaining from the Net Settlement Amount shall be divided among all Settlement Class Members on a pro-rata basis based upon the total number of Workweeks each respective Settlement Class Member was employed by Defendant as a non-exempt employee in the State of California during the Class Period. Your estimated Individual Class Payment is listed below.

Your estimated Individual Class Payment is <<Estimated Payment>> (less applicable withholdings) and your covered Workweeks worked during the relevant period between February 25, 2018 and <<Date of Preliminary Approval>> are <<Workweeks>>. Your estimated Individual PAGA Payment is <<Estimated Payment>> based on Defendant’s records showing that had <<PAGA Workweeks>> during the relevant period between February 19, 2021 and <<Date of Preliminary Approval>>. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.) To the extent you dispute the number of Workweeks or PAGA Workweeks (if applicable), you must make your dispute (“Work Week Dispute”) in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<+45 days from date of mailing>> (the “Response Deadline”) to:

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

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

For tax reporting purposes, the Individual Class Payments to Settlement Class Members will be allocated 30% as wages, 35% as penalties, and 35% as interest, excluding the Individual PAGA Payments, which will be allocated as 100% penalties. The wage portion of the Individual Class 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 Class Payments. The portion of the Individual Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. Defendant will be responsible for the employer's share of payroll taxes, separate and apart from the Gross Settlement Amount Fund.

All checks for Individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a Settlement 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 the Class Member who failed to cash his or her Settlement Payment check prior to the void date. The Settlement Administrator shall void any tax documents issued to Settlement Class Members who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any 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 \$60,666.67 (one-third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$20,000.00. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of up to \$5,000.00 to Plaintiff for his efforts undertaken and risks assumed in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$20,000.00. A payment in the amount of \$15,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$20,000.00 set aside for payment under PAGA; the remaining 25% (i.e., \$5,000.00) shall be paid to Aggrieved Employees on a pro-rata basis.

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, Plaintiff and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claims, will release claims as follows:

- (a) **Identity of Released Parties.** Defendant and any parent, subsidiary, affiliate, predecessor, or successor, and all agents, employees (current and former), officers, directors, insurers, and attorneys thereof.
- (b) **Date Release Becomes Active.** Claims will be released against all Released Parties, according to the terms provided below, effective only on the date when both of the following events have occurred: (a) the Court enters an order granting Final Approval of this Settlement and (b) Defendant fully funds the entire Gross Settlement Amount.
- (c) **Release of Claims by Settlement Class.** Each member of the Settlement Class releases the Released Parties from all claims which arise from the facts asserted in the Action, including all claims under the California Labor Code as alleged in the Action, including violations for meal periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, unreimbursed business expenses, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, which shall be fully, finally, and forever released, relinquished, and discharged.
- (d) **Release of Claims by Non-Participating Class Members Who Are Aggrieved Employees.** All Non-Participating Class Members who are Aggrieved Employees release, on behalf of themselves and each of their heirs, representatives, successors, assigns, and

attorneys, the Released Parties from all claims for penalties under PAGA which arise from the facts asserted in the Action and/or the PAGA Amended Notice.

What are my options in this matter?

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

If you remain in the Class, you will receive an Individual Class Payment and you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above, unless the Settlement is not finally approved by the Court. If you exclude yourself from the Settlement but qualify as an Aggrieved Employee, you will still receive an Individual PAGA Payment, unless the Settlement is not finally approved by the Court.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Class 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.

OPTION B. Object 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, and/or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<Response Deadline>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to verbally state any objections you may have at the Final Approval Hearing on the Settlement. **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 requirements that a Settlement Class Member must satisfy to 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* (2018) 4 Cal. 5th 260.

OPTION C. Request to Be Excluded 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 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 also be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Participating Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement—except that you may still receive an Individual PAGA Payment and release the Released Claims with respect to claims for civil penalties under the Private Attorneys General Act (Lab. Code §§ 2698, *et seq.*). If you submit a request to be excluded, 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, the request for Class Counsel 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 17 of the Kern County Superior Court, located at 1415 Truxtun Avenue, Bakersfield, CA 93301. If you wish to attend the Final Approval Hearing telephonically, you may arrange to appear at the hearing remotely via CourtCall by dialing 1-888-882-6878 or by visiting the CourtCall website at www.courtcall.com to schedule a remote appearance prior to the date of the Final Approval Hearing. Arrangements to make appearances through CourtCall must be made at least five (5) court days prior to the Hearing date. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

How can I get additional information?

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

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