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Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MICHAEL FORD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AVARTARA LLC; and DOES 1 through 50,
inclusive,

Defendants

CASE NO.: 22STCV10348

**DECLARATION OF ROMAN
OTKUPMAN IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AND
PROVISIONAL CERTIFICATION OF
CLASS**

Date: October 30, 2024

Time: 10:00 a.m.

Dept.: 9

1 **I, Roman Otkupman, declare as follows:**

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am a
3 principal of Otkupman Law Firm, A Law Corporation, and one of the proposed Class Counsel in this
4 action. I have personal knowledge of the facts set forth herein and if called as a witness to testify to
5 them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my Bachelor's degree from the University of California at Los Angeles in
8 2003. I majored in Economics at the Anderson School of Business and obtained a Minor in Slavic
9 Languages.

10 3. Thereafter, I attended the Thomas Jefferson School of Law, where I focused on studies
11 on Employment law and related litigation. After completing my first year of legal studies, I secured
12 an externship at the Equal Employment Opportunity Commission ("EEOC"), where I worked under
13 the Supervisory Administrative Judge, Larry A. Abrams. While at EEOC, I evaluated the merits of
14 federal employment discrimination claims and recommended dispositions. I further reviewed
15 motions, researched case law, prepared summaries of arguments, and assisted in the preparation of
16 court rulings on summary judgments, motions to compel, and motion to strike decisions. Furthermore,
17 I attended numerous conferences, hearings, and trials pertaining to employee complaints.

18 4. Thereafter, I volunteered at the Employee Rights Center of San Diego where I
19 informed numerous employees about their options and legal avenues in wage and hour and/or
20 employment discrimination disputes.

21 5. Otkupman Law Firm, ALC prosecutes wage and hour cases on behalf of the
22 employees whose rights have been violated. Otkupman Law Firm, either on its own or with co-
23 counsel is currently serving as Plaintiff's counsel of record in dozens of wage and hour and
24 employment class action cases pending in both state and federal court.

25 6. Otkupman Law Firm, ALC has successfully litigated and resolved numerous wage
26 and hour class actions involving failure to pay wages, wage statement violations and derivative Labor
27 Code claims and penalties. *See Barrios v. Freeway*, Superior Court of California County of
28 Sacramento, Case No. 34-2015-00183162-CU-OE-GDS; *Hernandez v. CoWorx*, Superior Court of

1 California, County of San Joaquin, Case No. 39-2015-0032567-CU-OE-STK; *Sigourney Esh v.*
2 *Be.Group*, Superior Court of California, County of San Diego, Case No. 37-2014-00006162-CU-OE-
3 NC; *Pakiza A. Ali v. Rainbow USA Inc.*, Superior Court of California, County of San Joaquin, Case
4 No. 39-2015-00320655-CU-OE-STK; *Rosie Orta v. Walgreen Co.*, Superior Court of California,
5 County of Los Angeles, Case No. BC530605; *Jennifer Underwood v. Payroll Direct, Inc.*, Superior
6 Court of California, County of Merced, Case No. 15CV-03112; *Jeremiah Putnam v. Sagar Diner,*
7 *Inc.*, Superior Court of California, County of Merced, Case No. SCV011040; *Amanda Maniord v.*
8 *Hue & Cry, Inc.*, Superior Court of California, County of Shasta, Case No. 182115; *Andrew Mojica*
9 *v. Dedicated Fleet Systems Inc., and Osterkamp Transportation Group*, Superior Court of California,
10 County of Los Angeles, Central Civil West, Case No. BC621739; *Holly Pinheiro v. Stanton Optical*
11 *Florida LLC, Vision Precision Holdings, LLC*, Superior Court of California, County of San Joaquin,
12 Case No. 39-2015-00323663-CU-OE-STK; *Jared Sewell v. Gary D Nelson Associates Inc.*, Superior
13 Court of California, County of Sonoma, Case No. SCV 254929; *David Jimenez v. Modern Interiors,*
14 *Superior Court of California, County of Los Angeles, Case No. BC549815; Patricia Mosley v. Shields*
15 *for Families*, Superior Court of California, County of Los Angeles, Case No. BC590656; *Teri Parker*
16 *v. Toms Sierra Co, Inc.*, Superior Court of California, County of Placer, Case No. SCV0036376.

17 7. Upon becoming a member of the bar, I worked at a boutique employment firm
18 specializing in defense of multi-plaintiff and single plaintiff defense of Wage and Hour claims as well
19 as other various employment claims. There, I was involved in numerous wage and hour actions as
20 well as employment discrimination lawsuits including but not limited to: violation of Labor Code
21 226, failure to pay overtime, PAGA claims Labor Code 2699 et seq., sexual harassment, gender
22 discrimination, racial discrimination, intentional infliction of emotional distress, breach of contract,
23 conspiracy, breach of good faith and fair dealing, disability discrimination and failure to
24 accommodate, as well as Labor Code Section 132 (a) claims under worker's compensation law.

25 8. I have written numerous articles on various wage and hour and related employment
26 litigation issues, three of which were published in recent years¹.

27 ¹ 1. Employment Equality in the Workplace – Published in the Valley Lawyer Magazine October 2010 issue.

28 (footnote continued)

1 9. Based on my own investigation and evaluation, I am of the opinion that the Settlement,
2 its allocation among Class Members, and the recovery for each Class Member, is fair and reasonable.
3 I believe I have a strong understanding of the trends in both the likelihood of certification of wage
4 and hour cases and the value of settlements of cases such as this one.

5 10. My opinion takes into consideration, the amounts received in other similar class
6 actions, which I have litigated and/or am familiar with, the risks inherent in litigation of this genre,
7 and the reasonable tailoring of each Class Member's claim to the amount received in the settlement.
8 Based on that knowledge, I am of the opinion the settlement is fair, reasonable and adequate and is
9 in the best interests of the Class.

10 **Factual Background and Procedural Posture**

11 11. Defendant is a California limited liability company doing business in California.

12 12. Defendant employed Plaintiffs during the relevant time period.

13 13. On March 24, 2022, Plaintiff Michael Ford ("Plaintiff Ford") filed a written notice
14 with the California Labor & Workforce Development Agency ("LWDA") alleging that Defendant
15 violated Labor Code sections 204 and 226, pursuant to Labor Code section 2699 ("Ford PAGA
16 Notice"). Ford PAGA Notice is attached hereto as **Exhibit "A"**.

17 14. On March 24, 2022, Plaintiff Ford initiated this Consolidated Action in Los Angeles
18 County Superior Court. The initial complaint asserted a single class action claim for violation of
19 Labor Code section 226. Plaintiff Ford subsequently filed the First Amended Class Action Complaint
20 for Damages.

21 15. On June 15, 2022, Plaintiff Ford filed a representative action under the Private
22 Attorney General Act, entitled *Michael Ford v. Avartara LLC*, Los Angeles Superior Court Case No.
23 22STCV19614 (the "*Ford PAGA Action*").

24 16. On August 25, 2022, Plaintiff Anthony Williams ("Plaintiff Williams") filed a written
25 notice with the LWDA alleging that Defendant violated Labor Code sections 226.7, 512, 558, 510,
26 1194, 1194.2, 222, 226(a), 226(e), 226.3, 1174(d), 201-203, 2802, 227.3, 6400, 6401, 6402, 6403,

27 2. Applying Cat's Paw Theory to Discrimination Cases - Published in the Valley Lawyer Magazine August 2011 issue.

28 3. ADR in the Employment Arena – Published In the Valley Lawyer Magazine issue June 2012 issue.

1 6404, and 6407, pursuant to Labor Code section 2699 (“Williams PAGA Notice”). Williams PAGA
2 Notice is attached hereto as **Exhibit “B”**.

3 17. On August 25, 2022, Plaintiff Williams filed a Class Action Complaint in Los Angeles
4 County Superior Court, entitled *Anthony Williams, et al v. Avartara LLC, et al.*, Los Angeles
5 Superior Court Case No. 22STCV27658, alleging ten (10) causes of action as follows: (1) failure to
6 provide meal periods in violation of Labor Code sections 226.7, 512, 558; (2) failure to provide rest
7 periods in violation of Labor Code sections 226.7, 512, 558; (3) failure to pay all wages in violation
8 of Labor Code sections 510, 1194, 1194.2; (4) knowing and intentional failure to comply with
9 itemized employee wage statement provisions in violation of Labor Code sections 226(a), 226(e),
10 1174(d); (5) failure to timely pay wages due at termination in violation of Labor Code sections 201-
11 203; (6) failure to reimburse for business expenses in violation of Labor Code section 2802; (7) failure
12 to pay all accrued and vested vacation/PTO wages in violation of Labor Code section 227.3; (8)
13 failure to pay for all hours worked, including overtime hours worked in violation of Labor Code
14 sections 218, 222; (9) failure to provide a place of employment that is safe and healthful in violation
15 of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; and (10) violation of Business
and Professions Code section 17200 (the “*Williams Action*”).

16 18. In connection with the Settlement, the Parties agreed to the filing of Second Amended
17 Consolidated Class and Representative Action Complaint in the Action to include the claims alleged
18 in both the *Ford* PAGA Action and *Williams* Action.

19 19. Consistent with the terms of the Settlement, on June 25, 2024, Plaintiff Ford filed a
20 stipulation for leave to file the Second Amended Consolidated Class and Representative Action
21 Complaint. The Second Amended Consolidated Class and Representative Action Complaint is the
22 operative Complaint (“Complaint”). As alleged in the Complaint, Plaintiffs contend that Defendant:
23 (1) failed to provide meal and rest periods, in violation of Labor Code sections 226.7, 512, 558; (2)
24 failed to pay minimum and/or overtime wages, in violation of Labor Code sections 510, 1194, 1194.2;
25 (3) failed to provide accurate itemized wage statements, and maintain accurate timekeeping records,
26 in violation of Labor Code sections 226(a) and 1174(d); (4) failed to timely pay wages due at
27 separation of employment, in violation of Labor Code sections 201, 202 and 203; (5) failed to

1 reimburse employees for business expenses, in violation of Labor Code section 2802; (6) failed to
2 pay all accrued and vested vacation/PTO wages, in violation of Labor Code section 227.3; (7) failed
3 to provide a place of employment that is safe and healthful, in violation of Labor Code sections 6400,
4 6401, 6403, 6404, 6407 and 8 CCR 3202; (8) engaged in Unfair Business Practices in violation of
5 the UCL, the California Labor Code, and the applicable IWC Wage Order; and (9) violated PAGA,
6 Labor Code section 2698 *et. seq.* Plaintiffs seek to represent the Class and other PAGA Employees,
7 and seek damages, penalties, attorneys' fees, and costs.

8 20. Prior to attending mediation, the parties informally exchanged information and
9 documentation. Specifically, Defendant provided access to extensive payroll data, including data
10 relating to the number of Class Members, the number of shifts worked by Class Members, the number
11 of workweeks and pay periods at issue, the average hourly rates of Class Members, the number of
12 wage statements issued to Class Members, and the number of Class Members who separated
13 employment, which allowed Class Counsel to conduct a full damage analysis. Based on the written
14 policies, workweeks, pay periods, and class size numbers as well as the time punch and payroll
15 documents for the class members, Plaintiff analyzed the number of potential violations and potential
16 penalties for the class and the PAGA group and created a damage exposure. The data provided by
17 Defendant was sufficient to calculate the realistic exposure of Defendant's potential liability.

17 **Settlement Negotiations and Due Diligence**

18 21. After engaging in informal discussions about the case, discovery and comprehensive
19 information exchange, the parties participated in an all-day mediation session with mediator Michael
20 D. Young, a mediator with experience in wage and hour class actions, on June 28, 2023 which
21 included lengthy and fully informed negotiations. Respective counsel represented each party during
22 the good-faith negotiations facilitated by Mr. Young.

23 22. Although the Parties made progress towards settlement at the mediation, they did not
24 reach a resolution of the matters. However, after the exchange of further information and extended
25 negotiations, and with assistance of the mediator, the Parties reached the present class-wide
26 settlement. The settlement discussions were conducted at arm's-length. Defendant also provided
27 Plaintiffs' counsel with its tax records over the past few years, which Plaintiffs took into consideration

1 in deciding to resolve this case.

2 23. The Parties came to an arm's length mutually agreed upon settlement as outlined in
3 the Joint Stipulation of Class and Representative PAGA Consolidated Action Complaint ("Settlement
4 Agreement"), which is attached hereto as **Exhibit "C"**. The Settlement Agreement includes all terms
5 of the Parties' agreement. The parties have further agreed on a Class Notice, which is attached hereto
6 as Exhibit "A" to the Settlement Agreement.

7 24. Discussions between counsel for the Parties, informal discovery, as well as the
8 investigation and evaluation of the claims of Plaintiff by the Parties, have permitted each side to
9 assess the relative merits of the claims and the defenses to those claims. At all times, the Parties'
10 settlement negotiations have been non-collusive, adversarial and at arm's length. The parties agree
11 that the above-described investigation and evaluation, and the information exchanged during
12 settlement negotiations and mediation, are more than sufficient to assess the merits of the respective
13 Parties' positions and to compromise the issues on a fair and equitable basis. Based on our
14 independent investigation and evaluation, I am of the opinion that the consideration and terms of the
15 Settlement, considering the risk inherent in asserting and prevailing on the representative and the
16 class claims, and the risk of loss on the merits, is fair, reasonable, and adequate in light of all known
17 facts and circumstances, and is in the best interest of the Class. I am also of the opinion that the total
18 consideration and payment outlined in the Settlement Agreement is adequate in light of the
19 uncertainties surrounding the risk of further litigation, and the possible defenses that Defendant has
20 asserted and could assert.

21 **The Nature of Plaintiffs' Claims and Risks of Continued Litigation:**

22 25. Although Plaintiffs are reasonably confident they would have prevailed on their
23 motion for class certification, there was a risk the Court would deny certification and find that
24 individual issues predominate over class members' claims. Thus, the risk that Defendants would
25 defeat certification on some or all of Plaintiffs' claims supports settlement at this juncture, especially
26 because most Class Members' claims are so small that individual litigation of their claims (required
27 in the event certification was denied) is simply not feasible or realistic.

1 26. Prevailing on the merits, in this case, was by no means guaranteed. Plaintiffs assert
2 novel claims. Defendant denies any liability or wrongdoing of any kind associated with the claims
3 alleged in the Operative Complaint. Defendant contends that its employment policies and practices
4 did not violate applicable wage and hour laws. Defendant contends that it has complied at all times
5 with the California Labor Code and the Industrial Welfare Commission Wage Orders. Defendant
6 claims that none of Plaintiffs' claims are suitable for class certification because individual issues
7 predominate over common issues on these claims. Individualized inquiries preclude class
8 certification because a class action cannot be maintained where the existence of damage, the cause of
9 damage and the extent of damage have to be determined on a case-by-case basis, even if there are
10 some common questions. See *Brinker Restaurant Corp. v. Superior Ct.*, 54 Cal.4th 1004, 1021 (2012);
11 (whether common issues predominate turns on whether the theory of recovery advanced by
12 proponents of certification is, as an analytical matter, likely to prove amenable to class treatment).
13 Here, the individualized inquiry could be focused on each individual who was not paid their requisite
14 wages.

15 27. Defendant is represented by competent and experienced counsel, and would
16 undoubtedly have raised all of the above arguments, and more, in continued litigation. Despite
17 Plaintiffs' confidence in their ability to prove all of their claims on a class-wide basis, any one of the
18 above defenses, if decided in favor of Defendant could reduce or even eliminate any potential damage
19 award.

20 28. Defendant's defenses to liability on Plaintiffs' claims are an important basis for further
21 validating the reasonableness of the settlement amount. Put simply, Plaintiffs face substantial risk in
22 prevailing on their claims. The Settlement compromises this risk.

23 **The Settlement Terms in Light of These Risks:**

24 29. It is our judgment that Defendant's defenses to certification and liability are an
25 important basis for validating the reasonableness of the settlement amount. Defendant has
26 consistently maintained that it has ample legal and factual grounds for defending this action on both
27 class and merits issues. Considering the risks going forward, the present settlement represents an
28 excellent compromise of Plaintiffs' and Class Members' claims.

1 30. The settlement for each participating Class Member is fair, reasonable, and adequate,
2 given the inherent risk of litigation, the risk relative to class certification and the costs of pursuing
3 such litigation. The fairness and reasonableness are demonstrated by the uncertainty and risks to the
4 Plaintiffs and the Class both in not prevailing on one or more causes of action or theories alleged in
5 the Complaint and non-certification. Although we are confident that all of the elements necessary for
6 certification are satisfied in this case, the risk of non-certification is always present. Defendant has
7 adamantly disputed that Plaintiffs will be able to certify any class and that the Class Members were
8 entitled to recovery under any of the theories alleged. If the Class was not certified, most Class
9 Members would not be able to pursue their individual claims against Defendant because 1) their
10 individual claims would not be large enough to provide an incentive to litigate individually, and 2)
11 they may not know their claims even exist. The settlement takes these risks into account and is a good
12 compromise for the damages of absent Class Members.

13 31. Prosecution of this case will result in tangible benefits for the Class Members in the
14 following respects: (1) by this settlement, Class Members will receive their recoveries over a
15 reasonably short period of time as opposed to waiting additional years for the same, or a possibly
16 worse, result; and (2) settlement at this juncture will translate into significant savings in our attorney's
17 fees and costs which would have only increased exponentially had the case progressed through trial,
18 appeals, etc.

19 **Suitability of the Action for Class Certification:**

20 32. To date, no class has been certified. The Settlement reached between the Parties
21 contains a provision pursuant to which we stipulate to the Court's provisional certification of the
22 Settlement Class and, but do so for purposes of this Settlement only.

23 33. As proposed Class Counsel, and based on the discovery to date, I am confident that
24 Plaintiffs could successfully prove that this action meets the requirements of class certification. Here,
25 based on Defendant's records and representations, the class consists of approximately 784 Class
26 Members and approximately 24,558 workweeks during the Class Period. Therefore, joinder of their
27 individual claims would be impractical, and the numerosity requirement is satisfied for settlement
28 purposes.

34. Here, the Settlement Class Members all seek the same remedies under identical laws, all relating to Defendant's alleged uniform policies and practices related to the requirements of wage and hour laws. Plaintiffs submit that the same factual predicates apply to each and every Class Member and the Settlement compensates Class Members for these common claims.

35. It is Plaintiffs' position that Plaintiffs' claims are not only typical of those of all Class Members – they are identical. Plaintiffs allege that the same failure to provide meal and rest breaks, failure to pay all wages, failure to timely pay employees, failure to timely pay all wages due at termination, failure to provide Labor Code compliant wage statements, failure to reimburse employees for business expenses, and failure to provide a safe and healthful place of employment is typical of numerous employees of Defendant.

36. Plaintiffs contend that Plaintiffs are adequate Class Representatives and their chosen counsel are qualified to act as Class Counsel in this litigation. Here, Plaintiffs have interests directly aligned with all Class Members and have vigorously prosecuted this case on their behalf. They have no apparent conflicts with Class Members. They have demonstrated their commitment to prosecute this Action on their behalf through its conclusion. Under the proposed Settlement, Plaintiffs will request a modest Enhancement Payment up to ten thousand dollars (\$10,000.00) each for their significant time and efforts assisting Class Counsel with factual issues surrounding the case and for their participation in the litigation. Plaintiffs assisted with providing the relevant documents to Plaintiffs' counsel and assisted with the investigation of the data provided by the Defendant. Furthermore, there is no indication of any actual (or potential) conflicts between the Plaintiffs and the Class.

37. With respect to the predominance inquiry, Plaintiffs submit that the proposed Settlement Class is sufficiently cohesive because all Settlement Class Members share a common nucleus of facts and potential legal remedies – the same facts and law govern their claims; this Court could try their claims in representative fashion by common evidence regarding Plaintiffs’ and Class Members’ claims, and identical law applies. Few factual issues are individualized to Class Members – the policies applied by Defendant to all Class Members will drive the resolution of the litigation.

1 All of the Settlement Class Members seek relief based on the same allegations and factual predicates.
2 As a result, common questions of law and fact predominate here.

3 38. Perhaps the most persuasive argument in favor of the superiority of class treatment
4 here is the relative size of the alleged violations by Defendant; were a class not certified, many (if not
5 all) Class Members would not bring claims for the violations alleged, because few (if any) know that
6 Defendant conduct is allegedly unlawful, and few would have the incentive to pursue litigation over
7 these small claims. As a result, class treatment is a superior method for adjudicating these claims, and
8 a class action is the preferred method of resolution.

9 **Class Counsel's Attorneys' Fees and Costs:**

10 39. The Parties have agreed that Class Counsel will seek no more than seventy thousand
11 dollars (\$70,000.00) (i.e., 35% of the Gross Settlement Amount) in attorneys' fees, which will be less
12 than our projected lodestar through the conclusion of this matter. This agreement is fully disclosed in
13 the Settlement Agreement. Any attorneys' fees awarded are subject to this Court's approval at the
14 final approval hearing, in advance of which Plaintiffs will file a formal noticed motion.

15 40. This Court can appreciate that litigating a high stakes case against a large Defendant
16 represented by a highly respected law firm in an evolving area of law is not appealing to most lawyers,
17 particularly when the Plaintiffs' lawyers will have to finance the litigation. This case was taken solely
18 on a contingency basis and is not a case undertaken lightly. The risk of advancing substantial costs
19 in this type of litigation can be very high.

20 41. We have expended substantial time to date litigating the case and bringing it to
21 fruition. We expect to expend substantially more time through a comprehensive notice and claims
22 program and final approval process. We have aggressively litigated this case from the start. Plaintiffs'
23 counsel achieved a result whereby each member of the class will receive a payment depending on the
24 number of workweeks that person worked during the relevant time. The class members will not be
25 obliged to submit a claim form or worry about sending it in. Moreover, Plaintiffs' counsel's work is
26 not yet complete, as we will spend a significant amount of time overseeing and participating in the
27 settlement administration process and final approval proceedings.

1 42. Finally, the Settlement Agreement provides that we will seek to recover litigation costs
2 of no more than twenty-five thousand dollars (\$25,000.00) from the Gross Settlement Amount. At
3 the final approval stage, we will submit an itemized statement of costs incurred to the Court for its
4 approval.

5 **Attorney's Estimate of Total Damages Recoverable:**

6 43. In evaluating the allegations, Plaintiffs determined that the estimated maximum
7 potential recovery for a total victory in this case would be **\$1,662,969.17**. The Parties settled for
8 **\$200,000.00**, which equates to approximately **12%** of the maximum potential recovery. To assist
9 the parties in coming to the settlement, the parties relied upon the following exposure calculations:

10 **Overtime Violations:** Plaintiffs maintained that Plaintiffs and Defendant's California
11 employees were not properly compensated for all overtime hours worked. Based on our
12 investigation, which included discussing the merits with our clients and reviewing and analyzing
13 the informal data provided by Defendant, we concluded that approximately 10 unpaid overtime
14 minutes were worked without adequate compensation per workweek. There are a total of
15 approximately 24,558 workweeks in the class and the average overtime rate is \$21.95. The total
16 amount was calculated to be \$91,638.18. Counsel believed we had a 30% probability of prevailing
17 on this claim based on the sample data provided by Defendant and because Defendant had lawful
18 policies. As such, Plaintiffs felt the real exposure of this claim was **\$27,491.45**.

19 **Rest Break Violations:** Counsel's investigation from speaking with Plaintiffs, reviewing
20 Defendant's policies and addressing the practices with Plaintiff, and analyzing the data, revealed
21 that approximately twice per week, Plaintiffs' and other Class Member's rest breaks were
22 interrupted. Therefore, based on Plaintiffs' allegations and the investigation, it was estimated that
23 there were 2 missed rest breaks per workweek with no premium pay during the Class Period. Based
24 on this estimate, Plaintiffs and other putative Class Members missed a total of 49,116 rest periods
25 at an average hourly rate of \$14.63 for a total of \$718,567.08 in rest period exposure. We believed
26 we had a 20% probability of prevailing on this claim. The law further does not require that Defendant
27 keep the necessary records of the rest breaks taken so proving this claim on a class basis would be
28 a challenge. Yet another challenge with this claim is that the failure to take the rest breaks may

1 require an individualized inquiry, something that may have contributed to the class not being
2 certified. This settlement avoided that risk. As such, Plaintiffs felt that the real exposure for this
3 claim was approximately **\$143,713.42**.

4 **Meal Break Violations:** According to Plaintiffs, approximately once per week, theirs and
5 other Class Members' meal breaks were interrupted. Based on the sample data provided, which
6 included punch records, and according to Plaintiff, it was determined that Defendant's employees
7 were provided the opportunity to take uninterrupted meal breaks, and the majority of deviations
8 were voluntary on the part of the employees. Therefore, it was estimated that there was 1 missed
9 meal break per workweek with no premium pay during the Class Period. Based on this
10 determination, Plaintiff and other putative Class Members missed a total of 24,558 meal breaks at
11 an average hourly rate of \$14.63 for a total of \$359,283.54 in meal period exposure. We believed
12 we had a 30% probability of prevailing on this claim as several risk factors exist as follows:
13 Defendant had a legally compliant meal period policy in place. Plaintiffs and the rest of the Class
14 would have to prove that their reason for failure to take a compliant meal break was not unique and
15 that a similar practice applied to the rest of the Class. This can be especially difficult considering
16 that Defendant had a compliant meal period policy. As such, the realistic exposure was
approximately **\$107,785.06**.

17 **Reimbursement for Business Expenses Claim:** According to Plaintiffs, they and other
18 employees of Defendant were not reimbursed for using their personal cell phones to perform work
19 for Defendant. Plaintiffs estimated \$5.00 per workweek in reimbursements owed to Plaintiffs and
20 others, for a total of **\$122,790.00**.

21 **Derivative Wage Statement Claim:** Based on our investigation and the extrapolation of
22 data, it was calculated that there would have been a 30% violation rate if this case was taken to trial.
23 Defendant issued approximately 12,279 wage statements during the relevant period. Plaintiff used
24 a penalty of \$50 for the initial violation and \$100 for all subsequent violations to determine the
25 potential penalty for wage statement violations if this case was taken to trial. As such the damages
26 are as follows: $50 \times 1 + 100 \times 12,278 \times 0.30 = \mathbf{\$368,355.00}$.

1 **Derivative Waiting Time Penalty Claim:** Based on our investigation and the extrapolation
2 of data, it was calculated that there would have been a 30% violation rate if this case was taken to
3 trial. Plaintiff used the number of former employees in the class (784 employees) and calculated
4 their average rate of pay (\$14.63) times 8 hours a day times 30 days to determine that potential
5 penalty for waiting time penalties at a 30% violation rate was **\$825,834.24**.

6 **PAGA Claim:** Maximum exposure was based upon an analysis of a 100% violation rate.
7 While this would be unlikely, even for the purposes of the maximum exposure, Plaintiffs calculated
8 the PAGA liability at 100%. Plaintiffs used the data provided by Defendant and determined that
9 there were approximately 6,700 PAGA pay periods. Since the Labor Code allows for a maximum
10 of \$100 per pay period and there were 6,700 pay periods in the PAGA Period, the maximum
11 exposure was \$670,000.00. PAGA claims are subject to a one-year statute of limitations, and
12 penalties can be recovered for a period of one year prior to the date notice is sent to the LWDA.
13 *Taylor v. Interstate Grp., LLC*, No. 15-CV-05462-YGR, 2016 WL 335226, at *1 (N.D. Cal. Jan. 28,
14 2016). Unless a Labor Code provision provides for a specific civil penalty, PAGA imposes a default
15 civil penalty of “one hundred dollars (\$100) for each aggrieved employee per pay period for the
16 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
17 each subsequent violation.” Cal. Lab. Code § 2699(f)(2). Some courts have held that subsequent
18 violations are all violations after the first; no notice to the employer is required. *See, e.g., Gonzalez*
19 *v. CoreCivic of Tennessee, LLC*, No. 16 Civ. 01891, 2018 WL 4388425, at *8 (E.D. Cal. Sept. 13,
20 2018) (applying heightened rate to penalties in calculating amount of controversy without
21 considering notice to defendant); *Gaasterland v. Ameriprise Fin. Servs., Inc.*, No. 16 Civ. 03367,
22 2016 WL 4917018, at *4 (N.D. Cal. Sept. 15, 2016) (same). Other courts have held that subsequent
23 violations constitute violations that occur after the plaintiff has put the employer on notice that its
24 conduct is unlawful. *See, e.g., Bernstein v. Virgin Am., Inc.*, No. 15 Civ. 02277, 2018 WL 3344316,
25 at *9 (N.D. Cal. July 9, 2018) (in awarding penalties, subsequent violations subject to heightened
26 penalty were those after plaintiff gave written notice to employer); *Steenhuyse v. UBS Fin. Servs.,*
27 *Inc.*, 317 F. Supp. 3d 1062, 1067–68 (N.D. Cal. 2018) (in calculating amount in controversy,
28 subsequent violations are those after plaintiff served LWDA notice). The California Court of Appeal

1 has not issued a binding decision on which approach is proper. Here, PAGA penalties were
2 discounted by using only initial violation rates, based on Defendant's argument that "courts have
3 held that employers are not subject to heightened penalties for subsequent violations unless and until
4 a court or commissioner notifies the employer that it is in violation of the Labor Code." *Vieyara-*
5 *Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019). Counsel believed that
6 since the violations were not willful and Defendant had compliant policies as to meals and rest
7 breaks, that the Court would award a small portion of the potential PAGA Claim. Plaintiffs believed
8 that it would be difficult to obtain penalties for wage statement violations and waiting time penalties
9 in addition to the PAGA penalties. Plaintiffs believed that the realistic exposure was 10% probability
10 of success. As such, Plaintiffs estimated their realistic value if prevailed at trial would be at
11 **\$67,000.00.**

12 **Notice to LWDA**

13 44. Counsel for Plaintiff gave notice of the Settlement Agreement to the LWDA. Attached
14 hereto as **Exhibit "D"** is proof of that notice.

15 I declare under penalty and perjury under the laws of the States of California that the foregoing
16 is true and correct.

17 Executed this 1st day of July 2024 at Westlake Village, California.

18 

19 _____
20 Roman Otkupman

EXHIBIT A

MICHAEL FORD

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

March 16, 2022

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: Ford v. Avartara LLC

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly situated aggrieved employees against my former employer, Avartara LLC (the "Company"). I allege that the Company:

1. Violated Labor Code § 204 by failing to pay all similarly situated employees, including myself, their earned wages in a timely manner. For example, for the pay period of June 16, 2021 through June 30, 2021, the wages earned during such pay period were not paid until July 15, 2021, which is more than 10 days after the end of the pay period.

2. Violated Labor Code § 226 by failing to provide accurate and complete wage statements to myself and other similarly situated aggrieved employees as the Company failed to list the accurate total hours worked for wage statements furnished to me and/or other similarly aggrieved non-exempt employees. For example, for the pay period of June 16, 2021 through June 30, 2021, identifies me as having worked a total of 128 hours. However, I was not paid any overtime wages during this pay period.

The address for the Company is as follows:

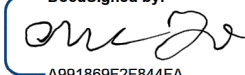
Avartara LLC
400 Hutch Mountain Rd
Fletcher, NC 28732

March 16, 2022

Page 2

As part of this Notice, I also demand that Defendant cure all violations and pay all applicable penalties. Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

A991869F2F844FA...
Michael Ford

cc: Avartara LLC (via certified mail)

EXHIBIT B

OTKUPMAN LAW FIRM, A LAW CORPORATION

**5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310**

August 25, 2022

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Avartara LLC
1237 West O'Farrell Street
San Pedro, CA 90732
Defendant certified mail # 7022 0410 0002 9572 0335

VIA CERTIFIED MAIL

Agent for Service of Process
Patti Jackson
1237 West O'Farrell Street
San Pedro, CA 90732
Agent certified mail # 7021 2720 0002 8202 0553

VIA CERTIFIED MAIL

Avartara LLC
1854 Hendersonville Road Ste A-16
Asheville, NC 28803
Defendant certified mail # 7021 2720 0002 8202 0355

VIA CERTIFIED MAIL

Avartara LLC
16111 Plummer St
North Hills, CA 91343
Defendant certified mail # 7022 0410 0002 9933 7720

Re: ***Anthony Williams v. Avartara LLC – Labor Code Violations of Avartara LLC –
Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Anthony Williams ("Plaintiff"), a former California employee of Avartara LLC ("Defendants"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non – exempt employees.

Plaintiff began working for Defendants in or around February of 2022. While working for Defendant as a Janitor, Plaintiff was earning (\$20.00) dollars per hour.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. Additionally, Plaintiff and Defendant California employees also claim that Defendant automatically deducted 30-minutes for meal periods, regardless of whether an actual full 30-minute meal period was taken. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendant's California employees claim that Defendant engaged in "rounding." This essentially means that the Defendant underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state

all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item in violation of Labor Code § 226(a)(4), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, due to the illegal shaving or rounding as well as automatic deduction of meal breaks. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hours worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant failed to reimburse Plaintiff and Defendant's California employees for the uniforms they purchased to wear at work. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Plaintiff further alleges that Defendant failed to comply with Labor Code Section 227.3, which states that unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time,

shall apply the principles of equity and fairness, pursuant to Labor Code § 227.3. Defendant violated Labor Code § 227.3 because they failed to pay Plaintiff and the Aggrieved Employees wages for unused vested vacation time.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendant’s California employees were also required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.
Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Roman Otkupman', is written over a horizontal line.

ROMAN OTKUPMAN

EXHIBIT C

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiffs and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MICHAEL FORD, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

AVARTARA LLC; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 22STCV10348
Related Case No. 22STCV19614

[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Department 9]

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE PAGA CONSOLIDATED
ACTION SETTLEMENT**

Complaint Filed: March 24, 2022
Trial Date: None Set

1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation of Class and Representative PAGA Consolidated Action Settlement
3 ("Agreement" or "Settlement Agreement") is made and entered into by and between Plaintiffs
4 Michael Ford and Anthony Williams (collectively, "Plaintiffs") and Defendant Avartara LLC
5 ("Defendant"). Plaintiffs and Defendant collectively are referred to in the Agreement as "the
6 Parties."

7 **A. DEFINITIONS**

8 The following definitions are applicable to this Agreement. Definitions contained
9 elsewhere in this Agreement shall also be effective:

10 1. "Consolidated Action" means *Michael Ford v. Avartara LLC*, filed on March 24,
11 2022, in the Superior Court of the State of California, County of Los Angeles, Case No.
12 22STCV10348. The parties have agreed to stipulate to consolidate three related case into the
13 Consolidated Action: *Michael Ford v. Avartara, LLC*, Los Angeles Superior Court Case No.
14 22STCV10348 ("*Ford Class Action*"), *Michael Ford v. Avartara, LLC*, Los Angeles Superior
15 Court Case No. 22STCV19614 ("*Ford PAGA Action*"), and *Anthony Williams v. Avartara, LLC*,
16 Los Angeles Superior Court Case No. 22-STCV27658 ("*Williams Class Action*").

17 2. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Class and
18 Representative PAGA Consolidated Action Settlement.

19 3. "Class" or "Class Member(s)" means all current and former non-exempt employees
20 who are or previously were employed by Avartara LLC in the State of California during the Class
21 Period.

22 4. "Class Counsel" means Larry W. Lee and Kristen M. Agnew of Diversity Law
23 Group, P.C., and Roman Otkupman of Otkupman Law Firm.

24 5. "Class Counsel Award" means such award of fees and costs and expenses as the
25 Court may authorize to be paid to Class Counsel for the services they have rendered and will render
26 to Plaintiffs and the Class in the Consolidated Action. Defendant agrees not to oppose a Class
27 Counsel Award of up to thirty-five percent (35%) of the Maximum Settlement Fund (\$200,000),
28 *i.e.*, the sum of Seventy Thousand Dollars (\$70,000.00), and costs in the amount of up to Twenty-

Five Thousand Dollars (\$25,000.00), subject to the Court finally approving this Settlement.

6. “Class Data and List” means a true and complete list of all Class Members that Defendant will compile, based on its business records, and provide to the Settlement Administrator within fifteen (15) days after the Court grants preliminary approval of the Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include each employee’s full name, his or her last known home address, telephone number, Social Security Number, beginning and ending dates of employment, number of workweeks worked during the Class Period, and number of pay periods worked during the PAGA Period.

7. “Class Representatives” or “Plaintiffs” means Michael Ford and Anthony Williams

8. “Complaint” means the operative Second Amended Consolidated Class and Representative PAGA Action Complaint (“SAC”) filed by Plaintiffs in this Consolidated Action.

9. “Counsel for Defendants” or “Defense Counsel” means Thomas E. Daugherty of Klinedinst PC.

10. “Court” means the Superior Court for the State of California, County of Los Angeles, or any other court taking jurisdiction of the Consolidated Action.

11. “Class Period” means the period from August 25, 2018, and ending on April 25, 2024.

12. “Defendant” means Defendant Avartara LLC.

13. “Effective Date” shall be the latest of the following dates: (a) the Court’s final approval of the Settlement, if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) if an objection is filed, the time for appeal has expired and no appeal has been filed or withdrawn; or (c) if a timely appeal is filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

14. “Enhancement Payment” means the amount that the Court authorizes to be paid to the Class Representatives, in addition to their Individual Settlement Class Payment, in recognition of their efforts and risks in assisting with the prosecution of the Consolidated Action. Subject to the Court granting final approval, the Parties agree that each Class Representative shall be paid up

to Ten Thousand Dollars (\$10,000.00) each (collectively, Twenty Thousand Dollars [\$20,000]) from the Maximum Settlement Fund.

15. “Final Approval” means that the Final Approval Order and Judgment have been entered by the Court.

16. “Gross PAGA Payment” means the portion of the Maximum Settlement Fund that the Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private Attorneys General Act of 2004 (Lab. Code § 2698, *et seq.*, “PAGA”). Subject to Court approval and pursuant to California Labor Code § 2699(l), the Parties agree that the Gross PAGA Payment shall be Twenty Thousand Dollars (\$20,000.00).

17. “Individual PAGA Penalty Payment” means each PAGA Employee’s portion of the Gross PAGA Payment calculated in accordance with the calculations described in Section D of this Settlement.

18. “Individual Settlement Class Payment” means the amount payable from the Net Class Settlement Amount to each Settlement Class Member.

19. “Maximum Settlement Fund” means the Maximum Settlement Fund of Two Hundred Thousand Dollars (\$200,000.00) to be paid by Defendant as a result of this Agreement. The Maximum Settlement Fund includes all Individual Settlement Class Payments, the Enhancement Payments to Plaintiffs, Settlement Administration Costs to the Settlement Administrator, the Gross PAGA Payment, and Class Counsel Award.

20. “Net Class Settlement Amount” means the balance of the Maximum Settlement Fund remaining after deduction of the approved Enhancement Payment to Plaintiffs, Settlement Administration Costs, the Gross PAGA Payment, and Class Counsel Award. The entire Net Class Settlement Amount is the maximum amount that will be available for distribution to Settlement Class Members.

21. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement. For the Notice of Objection to be valid, it must include: (a) the objector’s full name, signature, address, and telephone number; (b) a written statement of basis for the objection; and (c) any copies of papers, briefs, or documents upon which the objection is based. The Notice

of Objection must be returned by mail to the Settlement Administrator at the specified address indicated in the Notice Packet and must be postmarked by the Response Deadline.

22. “Notice Packet” means the Notice of Proposed Class Consolidated Action Settlement, substantially in the form attached as Exhibit A.

23. “PAGA Employee(s)” means all current and former non-exempt employees who are or previously were employed by Avartara LLC in the State of California during the PAGA Period.

24. “PAGA Period” means the period from March 24, 2021, and ending on April 25, 2024.

25. “Parties” means Plaintiffs, on behalf of themselves, Settlement Class Members and PAGA Employees, and Defendant collectively.

26. “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

27. “Released Class Claims” means all claims that were pled or could have been pled against Defendant based on the factual allegations set forth in the Second Amended Consolidated Class and Representative PAGA Action Complaint, and that accrued during the Class Period, including without limitation all claims arising out of any violation of Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and Business and Professions Code section 17200.

28. “Released PAGA Claims” means all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 204, 226(a), 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, and 6407, that accrued during the PAGA Period and were or could have been alleged in the Second Amended Consolidated Class and Representative PAGA Action Complaint, the Ford PAGA Notice and the Williams PAGA Notice, based on the factual allegations set forth therein.

29. “Released Parties” means (a) Defendant and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of each Defendant, including Avartara of Los

Angeles, LLC, and Avartara of Long Beach, LLC; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present or future employees, officers, directors, owners, affiliates, partners, joint venturers, co-venturers, licensors, licensees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, their, or its capacity as such.

30. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (1) clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth the name, address, telephone number, and last four digits of the Social Security Number of the Class Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement Administrator at the specified address indicated in the Notice Packet; and (5) be postmarked on or before the Response Deadline.

31. “Response Deadline” means sixty (60) days after the Settlement Administrator initially mails the Notice Packet to Class Members, and the last date on which Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement.

32. “Settlement” means the agreement among the Parties to resolve the Consolidated Action, as set forth in this Stipulation.

33. “Settlement Administration Costs” means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, which are estimated at Eleven Thousand Dollars (\$11,000.00). Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Class Settlement Amount.

34. “Settlement Administrator” means Phoenix Settlement Administrators.

35. “Settlement Class” or “Settlement Class Members” means all Class Members who do not submit valid and timely Requests for Exclusion.

36. “Settlement Payment Check” means the payment of the Individual Settlement Class Payment to Settlement Class Members and Individual PAGA Penalty Payment to PAGA

Employees.

B. FACTUAL BACKGROUND

1. On March 24, 2022, Plaintiff Michael Ford (“Plaintiff Ford”) filed a written notice with the California Labor & Workforce Development Agency (“LWDA”) alleging that Defendant violated Labor Code sections 204 and 226, pursuant to Labor Code section 2699 (“Ford PAGA Notice”).

2. On March 24, 2022, Plaintiff Ford initiated this Consolidated Action in Los Angeles County Superior Court. The initial complaint asserted a single class action claim for violation of Labor Code section 226. Plaintiff Ford subsequently filed the First Amended Class Action Complaint for Damages.

3. On June 15, 2022, Plaintiff Ford filed a representative action under the Private Attorney General Act, entitled *Michael Ford v. Avartara LLC*, Los Angeles Superior Court Case No. 22STCV19614 (the “Ford PAGA Action”).

4. On August 25, 2022, Plaintiff Anthony Williams (“Plaintiff Williams”) filed a written notice with the LWDA alleging that Defendant violated Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 222, 226(a), 226(e), 226.3, 1174(d), 201-203, 2802, 227.3, 6400, 6401, 6402, 6403, 6404, and 6407, pursuant to Labor Code section 2699 (“Williams PAGA Notice”).

5. On August 25, 2022, Plaintiff Williams filed a Class Action Complaint in Los Angeles County Superior Court, entitled *Anthony Williams, et al v. Avartara LLC, et al.*, Los Angeles Superior Court Case No. 22STCV27658, alleging ten (10) causes of action as follows: (1) failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558; (2) failure to provide rest periods in violation of Labor Code sections 226.7, 512, 558; (3) failure to pay all wages in violation of Labor Code sections 510, 1194, 1194.2; (4) knowing and intentional failure to comply with itemized employee wage statement provisions in violation of Labor Code sections 226(a), 226(e), 1174(d); (5) failure to timely pay wages due at termination in violation of Labor Code sections 201-203; (6) failure to reimburse for business expenses in violation of Labor Code section 2802; (7) failure to pay all accrued and vested vacation/PTO wages in violation of Labor Code section 227.3; (8) failure to pay for all hours worked, including overtime hours worked in

violation of Labor Code sections 218, 222; (9) failure to provide a place of employment that is safe and healthful in violation of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; and (10) violation of Business and Professions Code section 17200 (the “*Williams* Action”).

6. In or about September 2022, the Parties agreed to participate in private mediation. In connection with the mediation, Defendant provided access to extensive payroll data, including data relating to the number of Class Members, the number of shifts worked by Class Members, the number of workweeks and pay periods at issue, the average hourly rates of Class Members, the number of wage statements issued to Class Members, and the number of Class Members who separated employment, which allowed Class Counsel to conduct a full damage analysis.

7. On June 28, 2023, the Parties engaged in mediation with Michael D. Young , an experienced wage and hour class action and PAGA mediator. Although the Parties made progress towards settlement at the mediation, they did not reach a resolution of the matters. However, after the exchange of further information and extended negotiations, and with assistance of the mediator, the Parties reached the present class-wide settlement. The settlement discussions were conducted at arm’s-length.

8. The Parties recognize the risk, expense, and delay in continuing the Consolidated Action, and therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the Consolidated Action.

C. DISMISSAL OF *FORD* PAGA ACTION AND *WILLIAMS* ACTION

1. In connection with the Settlement, the Parties agreed to the filing of Second Amended Consolidated Class and Representative Action Complaint in the Action to include the claims alleged in both the *Ford* PAGA Action and *Williams* Action.

2. Within ten (10) calendar days following the filing of the SAC: (1) Plaintiff Ford will file a request for dismissal without prejudice of the *Ford* PAGA Action; and (2) Plaintiff Williams will file a request for dismissal without prejudice of the *Williams* Action.

3. Consistent with the terms of the Settlement, on June 25, 2024, Plaintiff Ford filed a stipulation for leave to file the Second Amended Consolidated Class and Representative Action

Complaint. The Second Amended Consolidated Class and Representative Action Complaint is the operative Complaint (“Complaint”). As alleged in the Complaint, Plaintiffs contends that Defendant: (1) failed to provide meal and rest periods, in violation of Labor Code sections 226.7, 512, 558; (2) failed to pay minimum and/or overtime wages, in violation of Labor Code sections 510, 1194, 1194.2; (3) failed to provide accurate itemized wage statements, and maintain accurate timekeeping records, in violation of Labor Code sections 226(a) and 1174(d); (4) failed to timely pay wages due at separation of employment, in violation of Labor Code sections 201, 202 and 203; (5) failed to reimburse employees for business expenses, in violation of Labor Code section 2802; (6) failed to pay all accrued and vested vacation/PTO wages, in violation of Labor Code section 227.3; (7) failed to provide a place of employment that is safe and healthful, in violation of Labor Code sections 6400, 6401, 6403, 6404, 6407 and 8 CCR 3202; (8) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Order; and (9) violated PAGA, Labor Code section 2698 *et. seq.* Plaintiffs seek to represent the Class and other PAGA Employees, and seek damages, penalties, attorneys’ fees, and costs.

D. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

1. Settlement Consideration. Defendant shall pay the sum of the Maximum Settlement Fund as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Class Payments; (2) Class Counsel Award; (3) Enhancement Payments; (4) Settlement Administration Costs; and (5) the Gross PAGA Payment. The Parties agree that this is a non-reversionary Settlement and that no portion of the Maximum Settlement Fund shall revert to Defendant. In no event shall Defendant be required to pay more than the Maximum Settlement Fund as specified in this Agreement, with the exception of employer-side payroll taxes owed on Individual Settlement Class Payments classified as wages.

2. Calculation of Maximum Settlement Fund. The Maximum Settlement Fund was calculated with, and is premised on, Defendant’s representation that there are approximately 24,558 workweeks in which Class Members worked at least one shift during the Class Period. In the event the number of workweeks at issue exceeds 24,558 by more than ten percent (*i.e.*, 27,014), the Maximum Settlement Fund shall increase proportionately for the percentage increase over ten

1 percent (10%). For example, if the number of workweeks increases by fourteen percent (14%),
2 then the Maximum Settlement Fund would increase by four percent (4%); or in the alternative,
3 Defendant shall have the option to roll back the Class Period end date to the date that the Class
4 Members worked 27,014 workweeks.

5 3. Funding of the Maximum Settlement Fund. Defendant shall pay the Maximum
6 Settlement Fund in twenty-four (24) equal installment payments following preliminary court
7 approval of the Settlement. The first installment payment shall be deposited into a Qualified
8 Settlement Fund to be established by the Settlement Administrator within thirty (30) calendar days
9 of the Court's order granting preliminary approval of the Settlement. The remaining twenty-three
10 (23) installment payments shall be made on the 30th of each month, beginning with the month
11 following the month in which the first installment payment is made, until the full amount of the
12 Maximum Settlement Fund is paid to the Settlement Administrator. For example, if the first
13 installment payment is made September 24, 2024, the next monthly installment is due no later than
14 October 30, 2024.

15 4. Class Counsel Award. Defendant agrees not to oppose or impede any application
16 or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of the Maximum
17 Settlement Fund (\$200,000.00), *i.e.*, the sum of Seventy Thousand Dollars (\$70,000.00), and costs
18 in the amount of up to Twenty-Five Thousand Dollars (\$25,000.00), which shall be paid from the
19 Maximum Settlement Fund. It is understood by Class Counsel that the Court has final discretion
20 in any fee award. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel
21 reflecting the awarded attorneys' fees, costs, and expenses. Any portion of the Class Counsel
22 Award not awarded to Class Counsel shall be added to the Net Class Settlement Amount and shall
23 be distributed to Settlement Class Members as provided in this Agreement. Notwithstanding any
24 other provision of this Agreement, if the Court should fail to award attorneys' fees to Class Counsel
25 in the full amount provided for in this Agreement, no order of the Court or modification of any
26 order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class
27 Counsel pursuant to this settlement shall constitute grounds for cancellation or termination of the
28 Agreement or grounds for limiting any other provision of the Judgment. It is agreed that no order

of the Court, including any order concerning attorneys' fees, may alter or otherwise increase the Maximum Settlement Fund.

5. Class Representative Enhancement Payments. Defendant agrees not to oppose or impede any application or motion by Plaintiffs for an Enhancement Payments of up to Ten Thousand Dollars (\$10,000.00) each (collectively, Twenty Thousand Dollars [\$20,000.00]). The Enhancement Payments shall be paid from the Maximum Settlement Fund, and shall be paid in addition to Plaintiffs' Individual Settlement Class Payments as Settlement Class Members and Individual PAGA Penalty Payment as an PAGA Employees. It is understood by Class Counsel and Plaintiffs that the Court has final discretion in any Enhancement Payments. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs reflecting their respective Enhancement Payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payments not awarded to Plaintiffs shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

6. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Maximum Settlement Fund, currently estimated at Eleven Thousand Dollars (\$11,000.00). These costs, which shall be paid from the Maximum Settlement Fund, shall include, *inter alia*, the required tax reporting on the Individual Settlement Class Payments and Individual PAGA Penalty Payments, the issuing of W-2 and 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Maximum Settlement Fund and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

7. Gross PAGA Payment. Subject to Court approval, the Parties agree that the amount of Twenty Thousand Dollars (\$20,000.00) of the Maximum Settlement Fund shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall

1 pay seventy-five percent (75%) of the Gross PAGA Payment, *i.e.*, the sum of Fifteen Thousand
2 Dollars (\$15,000.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.*, the sum of
3 Five Thousand Dollars (\$5,000.00), shall be distributed to PAGA Employees (“Net PAGA
4 Payment”).

5 8. Individual PAGA Penalty Payment Calculation. The Net PAGA Payment shall be
6 allocated proportionally to PAGA Employees on a pro rata basis, based on the number of pay
7 periods they worked during the PAGA Period. The Settlement Administrator will calculate the
8 Individual PAGA Penalty Payments by first dividing the Net PAGA Payment by the total number
9 of pay periods worked by all PAGA Employees during the PAGA Period. That value will then
10 be multiplied by the number of pay periods that each respective PAGA Employee worked during
11 the PAGA Period. PAGA Employees are entitled to 100% of the Net PAGA Payment. Defendant
12 maintains no reversionary right to any portion of the Net PAGA Payment.

13 9. Net Class Settlement Amount. The Net Class Settlement Amount shall be used to
14 satisfy Individual Settlement Class Payments to Settlement Class Members in accordance with the
15 terms of this Agreement. The Settlement Administrator will calculate the Individual Settlement
16 Class Payments by first dividing the Net Class Settlement Amount by the total number of
17 workweeks worked by all Class Members during the Class Period. That value will then be
18 multiplied by the number of workweeks that each respective Class Member worked during the
19 Class Period. Settlement Class Members are entitled to 100% of the Net Class Settlement
20 Amount. Defendant maintains no reversionary right to any portion of the Net Class Settlement
21 Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator
22 shall proportionately increase the Individual Settlement Class Payments for each Settlement
23 Class Member so that the amount actually distributed to Settlement Class Members equals 100%
24 of the Net Class Settlement Amount.

25 10. Distribution of Payments Under the Settlement. In no event shall any payments be
26 made pursuant to this section prior to the Effective Date.

27 a. Within ten (10) calendar days of the transfer to the Settlement Administrator
28 of the portion of the Maximum Settlement Fund sufficient to pay the Net Class Settlement Amount,

Gross PAGA Payment and Enhancement Payments, the Settlement Administrator shall pay: (1) the Individual Settlement Class Payments to Settlement Class Members; (2) the Individual PAGA Penalty Payments to PAGA Employees; (3) seventy-five percent (75%) of the Gross PAGA Payment to the Labor and Workforce Development Agency; and (4) the Enhancement Payments to Plaintiffs.

b. The Class Counsel Award shall be paid to Class Counsel pursuant to Class Counsel's instructions, after the distribution of the Net Class Settlement Amount to Settlement Class Members, Gross PAGA Payment and Enhancement Payments, and only when sufficient amounts of the Maximum Settlement Fund are received by the Settlement Administrator to cover such fees and costs of Class Counsel.

c. The Settlement Administration Costs shall be paid to the Settlement Administrator pursuant to Class Counsel's instructions, after the distribution of the Net Class Settlement Amount to Settlement Class Members, Gross PAGA Payment and Enhancement Payments, and only when sufficient amounts of the Maximum Settlement Fund are received by the Settlement Administrator to cover the Settlement Administration Costs.

11. Non-Negotiated Settlement Checks. Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Employees shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by settlement checks returned as undeliverable and the funds which correspond with the settlement checks that are not negotiated within one hundred and eighty (180) calendar days after issuance shall be to the Unclaimed Property Fund maintained by the State Controller's Office in the name of the Settlement Class Member or PAGA Employee.

12. No Credit Toward Benefit Plans. The Individual Settlement Class Payments made to Settlement Class Members, the Individual PAGA Penalty Payments made to PAGA Employees, the Enhancement Payments made to Plaintiffs, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Class Members and PAGA Employees may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave

plans, PTO plans, and any other benefit plans. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

13. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement. The Settlement Administrator shall provide the following services:

- a. Establish and maintain a Qualified Settlement Fund account;
- b. Calculate the amount of the settlement each Class Member/PAGA Employee is eligible to receive;
- c. Verify the last known address for each Class Member through a generally utilized, national address update database prior to mailing the Notice Packet;
- d. Print and mail the Notice Packet;
- e. Establish and maintain a toll-free informational telephone support line to assist Class Members who have questions regarding the Notice Packet;
- f. Conduct additional address searches for mailed Notice Packets that are returned as undeliverable and, to the extent new and more current addresses are found, also reprint and re-mail Notice Packets accordingly;
- g. Calculate Settlement Class Members/PAGA Employees' settlement share, field inquiries from Class Members, and administer any Requests for Exclusion. This service will include settlement proceed calculations, printing and issuance of checks, and preparation of W-2 and 1099 Forms;
- h. Provide declarations and/or other information to the Court as requested; and
- i. Establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment (if separate from the Motion for Final Approval), Class Counsel's litigation costs,

Enhancement Payments to Plaintiffs, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

14. Delivery of the Class Data and List. Within ten (10) business days of Preliminary Approval, Defendant shall provide the Class Data and List to the Settlement Administrator.

15. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the Class Data and List from Defendant, the Settlement Administrator shall mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

16. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes.

17. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated Individual Settlement Class Payment and the formula for calculating Individual Settlement Class Payments; (5) each PAGA Employee's estimated Individual PAGA Penalty Payment and the formula for calculating Individual PAGA Penalty Payments; (6) the dates that comprise the Class Period and PAGA Period; (7) instructions on how to submit valid Requests for Exclusion, or objections; (8) the deadlines by which the Class Member must submit a Request for Exclusion or Notice of Objection to the Settlement; (9) the date for the final approval hearing; and (10) the claims to be released. The Notice Packet will also inform Class Members that, in order to receive the Individual Settlement Class Payment and Individual PAGA Penalty Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses.

18. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement

1 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
2 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
3 address using a skip-trace, or other search using the name, address and/or Social Security Number
4 of the Class Member involved and shall then perform a re-mailing. Those Class Members who
5 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days
6 from the original Response Deadline.

7 19. Request for Exclusion Procedures. Any Class Member, other than Plaintiffs, may
8 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
9 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) clearly
10 state that the Class Member does not wish to be included in the Settlement; (2) set forth the name,
11 address, telephone number, and last four digits of the Social Security Number of the Class Member
12 requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
13 Administrator at the specified address indicated in the Notice Packet; and (5) be postmarked on or
14 before the Response Deadline. The date of the postmark shall be the exclusive means to determine
15 whether a Request for Exclusion is timely. By submitting such a Request for Exclusion, a Class
16 Member shall be deemed to have exercised his or her option to opt out of the Settlement and not
17 be bound by this Agreement. Provided, however, that no Class Member may opt out of or be
18 excluded from participating in the settlement of the Released PAGA Claims. At no time shall any
19 of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a
20 Request for Exclusion. Class Counsel shall not represent any Class Members with respect to any
21 such request.

22 20. No PAGA Opt-Out. No Class Member may opt out of or be excluded from
23 participating in the settlement of the Released PAGA Claims. All Class Members shall be bound
24 by the judgment entered herein and will have released the Released PAGA Claims upon the final
25 approval of this Settlement and the payment of the Maximum Settlement Payment.

26 21. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
27 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
28 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,

including those pertaining to the Released Class Claims and Released PAGA Claims, as well as any Judgment that may be entered by the Court.

22. Objection Procedures. Any Class Member who does not opt-out of this Settlement shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must return by mail a written statement of objection to the Settlement Administrator at the specified address by the Response Deadline. The Notice of Objection must include: (1) the objector's full name, signature, address, and telephone number; (2) a written statement of the basis for the objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. Class Members may present objections at the final approval hearing, regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. Any Class Member who submits a valid Request for Exclusion shall not be allowed to object to this Settlement. No later than five (5) days after the Response Deadline, the Settlement Administrator shall provide Defense Counsel with a complete list of all Class Members who have timely and properly requested exclusion from the Class.

23. Defendant's Right to Rescind. If more than ten percent (10%) of Class Members submit a timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke and void this Agreement at its discretion. Defendant must exercise the option to rescind within five (5) business days of Defense Counsel receiving notification from the Settlement Administrator that more than ten percent (10%) of Class Members have submitted timely and valid Requests for Exclusion from the Settlement. If Defendant exercises this right to void the Agreement, then the Parties will have no further obligations under the Agreement, including, without limitation, any obligation by Defendant to pay the Maximum Settlement Fund, or any amounts that otherwise would have been owed under this Agreement, except that Defendant shall pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed. The Parties agree that they will

not encourage any Class Member to object to the Settlement or to opt out.

24. Settlement Administrator's Reports of Information. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further, the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties' counsel so that they can determine whether the Request for Exclusion is valid and timely.

25. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

26. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

27. Tax Allocation of Individual Settlement Shares and Individual PAGA Penalty Payments. All Individual Settlement Class Payments shall be allocated as ten percent (10%) to wages and ninety percent (90%) to penalties. Individual PAGA Penalty Payments shall be allocated as 100% to penalties. The amount of payment shall be reported on IRS Forms W-2 and 1099, as appropriate, by the Settlement Administrator.

28. Administration of Taxes by the Settlement Administrator. The Settlement Administrator shall be responsible for issuing to Plaintiffs, Settlement Class Members, PAGA Employees, and Class Counsel, W-2 and 1099 Forms or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

29. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and Class Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs, Settlement Class Members and PAGA Employees are not relying on

any statement, representation, or calculation by Defendant, Defense Counsel, Class Counsel, or by the Settlement Administrator in this regard. Plaintiffs, Settlement Class Members and PAGA Employees understand and agree that they will be solely responsible for the payment of any and all taxes and penalties assessed on their respective payments described herein and will defend, indemnify, and hold Defendant, Defense Counsel, Class Counsel, and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable penalties/damages.

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

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 31. No Prior Assignments. The Parties and their counsel represent, covenant, and
5 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
6 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
7 action, cause of action, or right herein released and discharged.

8 32. Release of Claims by the Class Representatives. As a condition to obtaining the
9 Enhancement Payments provided for herein, the Class Representatives (on behalf of themselves,
10 their respective former and present spouses, representatives, agents, attorneys, successors, heirs,
11 executors, administrators, trustees, and/or permitted assigns) also agree to a general release of any
12 and all claims against the Released Parties—which shall include without limitation any and all
13 claims which in any way relate to their employment with Defendant, under State or Federal law,
14 in tort, common law, statute, contract, or equity, whether pled in the Complaint or not, including
15 but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA, California
16 Government Code, California Business & Profession Code, California Labor Code, or any
17 Industrial Welfare Commission Wage Order—now existing or arising in the future, based on any
18 act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of
19 execution hereof, except for those claims that may be prohibited by law, such as claims for
20 workers' compensation benefits. Plaintiffs further expressly waive and relinquish, to the fullest
21 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil
22 Code, which provides: "**A general release does not extend to claims that the creditor or
23 releasing party does not know or suspect to exist in his or her favor at the time of executing
24 the release and that, if known by him or her, would have materially affected his or her
25 settlement with the debtor or released party.**"

26 33. Release of Claims by Settlement Class Members. Upon the payment of the full
27 payment of the Maximum Settlement Fund, Plaintiffs and all Settlement Class Members, on behalf
28 of themselves and their respective former and present representatives, agents, attorneys,

1 successors, and assigns, heirs, executors, administrators, trustees, and/or permitted assigns, hereby
2 do and shall be deemed to have fully, finally and forever released, settled, compromised,
3 relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of
4 and from any and all Released Class Claims.

5 34. Release of Claims by PAGA Employees. Upon the payment of the full payment of
6 the Maximum Settlement Fund, Plaintiffs and all PAGA Employees, on behalf of themselves and
7 their respective former and present representatives, agents, attorneys, successors, and
8 assigns, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be
9 deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
10 discharged, to the fullest extent possible, any and all of the Released Parties of and from any and
11 all Released PAGA Claims.

12 35. Nullification of Settlement. In the event that the Settlement does not become final
13 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
14 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
15 likewise be treated as void from the beginning.

16 36. Disputes Regarding Individual Settlement Class Payments. In the event that Class
17 Members have a dispute as to the data provided by the Defendant, Class Members will have the
18 opportunity to provide documentation and/or an explanation. Any Class Member, may submit a
19 written dispute to the Settlement Administrator regarding the data, including: (i) the number of
20 workweeks he or she worked during the Class Period; and (ii) the number of pay periods he or she
21 worked during the PAGA Period. The dispute must be postmarked by the Response Deadline. If
22 there is a dispute, the Settlement Administrator will consult with the Parties to determine whether
23 an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and
24 the amounts of, any Individual Settlement Class Payments or Individual PAGA Penalty Payments
25 under the terms of this Agreement, and that determination shall be binding.

26 37. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
27 Settlement Administrator concerning the administration of the Settlement will be resolved by the
28 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel

for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

38. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to request the Preliminary Approval of the Settlement, conditional certification of the Class, and the entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs shall submit this Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as Exhibit A.

39. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the Settlement along with the amounts properly payable for (i) Individual Settlement Class Payments; (ii) the Gross PAGA Payment; (ii) the Class Counsel Award; (iii) the Enhancement Payments; and (iv) Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval Hearing.

40. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

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

1 42. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
2 agree that they will not issue any press releases, initiate any contact with the press, respond to any
3 press inquiry, post information on any social media or website, or have any communication with
4 the press about the fact, amount, or terms of the Settlement.

5 43. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
6 of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations
7 or agreements may be deemed binding on the Parties.

8 44. Disputes Regarding Language of Final Settlement Agreement. If the Parties have a
9 dispute with regard to the language of the Agreement, the Parties agree to attempt to informally
10 resolve the dispute by engaging Michael D. Young to mediate such dispute.

11 45. Amendment or Modification. This Agreement may be amended or modified only
12 by a written instrument signed by the Parties or their successors-in-interest and with Court
13 approval.

14 46. Authorization to Enter into Agreement. Counsel for all Parties warrant and
15 represent they are expressly authorized by the Parties whom they represent to negotiate this
16 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
17 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
18 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
19 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
20 the Parties are unable to reach agreement on the form or content of any document needed to
21 implement the Settlement, or on any supplemental provisions that may become necessary to
22 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
23 such disagreement.

24 47. Binding on Successors and Assigns. This Agreement shall be binding upon, and
25 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

26 48. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
27 governed by and interpreted according to the laws of the State of California.

28 49. Execution and Counterparts. This Agreement is subject only to the execution of all

Parties. However, the Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, shall be deemed to be one and the same instrument provided that counsel for the Parties shall exchange among themselves original signed counterparts.

50. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

51. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

52. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that Plaintiffs or Class Counsel may appeal any reduction in the Class Counsel Award below the amount Class Counsel requests, and either Party may appeal any order that materially alters the Agreement's terms.

53. Class Action Certification. The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiffs or any Class Member can establish any of the requisite elements for class treatment of any of the claims in this Action. If, for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties will be restored to their respective positions in the lawsuit as if they had not entered into this

1 Agreement. The Parties further agree that this Agreement or any documents or orders issued
2 related to this Settlement will not be admissible, other than according to the Settlement's terms, in
3 this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii)
4 Defendant is liable to Plaintiffs or any Class Member.

5 54. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
6 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
7 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
8 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
9 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
10 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
11 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor
12 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as
13 an admission or concession by Defendant of any such violations or failures to comply with any
14 applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce
15 the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or
16 received as evidence in any action or proceeding to establish any liability or admission of any
17 nature on the part of Defendant, or to establish the existence of any condition constituting a
18 violation of, or a non-compliance with, federal, state, local, or other applicable law.

19 55. Captions. The captions and section numbers in this Agreement are inserted for the
20 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
21 provisions of this Agreement.

22 56. Waiver. No waiver of any condition or covenant contained in this Agreement or
23 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
24 constitute a further waiver by such party of the same or any other condition, covenant, right, or
25 remedy.

26 57. Enforcement Actions. In the event that one or more of the Parties institutes any
27 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
28 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or

Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

59. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement.

60. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement.

61. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding on all Parties, and agree that it shall be admissible and subject to disclosure in any proceeding to enforce its terms.

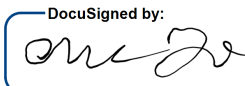
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and Representative Action Settlement Between Plaintiffs and Defendant as of the date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

DATED: 6/28/24

PLAINTIFF MICHAEL FORD

DocuSigned by:


Plaintiff Michael Ford

1 DATED: 6/26/2024

PLAINTIFF ANTHONY WILLIAMS

DocuSigned by:


Plaintiff Anthony Williams

6 DATED:

DEFENDANT AVARTARA LLC


Patricia Jackson (Jul 2, 2024 14:49 EDT)

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

13 DATED: 7/1/2024

DIVERSITY LAW GROUP, P.C.



Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiffs and the Class

19 DATED: 6/26/2024

OTKUPMAN LAW FIRM, A LAW CORPORATION

DocuSigned by:


Roman Otkupman
Nidah Farishta
Attorneys for Plaintiffs and the Class

25 DATED: 6/26/2024

KLINEDINST, PC



Thomas Daugherty
Attorneys for Defendant Avartara LLC

EXHIBIT A

Michael Ford v. Avartara LLC
Superior Court of California, County of Los Angeles
(Case No. 22STCV10348)

NOTICE OF CLASS-ACTION SETTLEMENT (“NOTICE”)

IF YOU WERE EMPLOYED BY AVARTARA LLC IN THE STATE OF CALIFORNIA DURING THE PERIOD FROM AUGUST 25, 2018, AND ENDING ON APRIL 25, 2024, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The Los Angeles County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY
Individual PAGA Penalty Payment: \$ ****
Individual Settlement Class Payment: \$ ****

THROUGH THIS CLASS ACTION SETTLEMENT

- Michael Ford and Anthony Williams (“Named Plaintiffs”), have sued Avartara LLC (“Defendant” or “Avartara”) on behalf of themselves and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT	If you ask to be excluded from the class settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(Deadline: RESPONSE DEADLINE)	However, you may not request exclusion from the settlement of the PAGA claim. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: RESPONSE DEADLINE)	If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline. However, you may not object to the settlement of the PAGA claim. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What Is This Lawsuit About?

In the lawsuit, the Named Plaintiffs claimed that Defendant: (1) denied meal and rest periods, or compensation in lieu thereof, in violation of Labor Code sections 226.7, 512 and 558; (2) failed to pay minimum and/or overtime wages for all hours worked, in violation of Labor Code sections 218, 222, 510, 1194 and 1194.2; (3) failed to provide accurate itemized wage statements and maintain accurate records, in violation of Labor Code sections 226(a) and 1174(d); (4) failed to pay all earned wages upon separation of employment, in violation of Labor Code sections 201, 202 and 203; (5) failed to pay vested, but unused, vacation and/or PTO at the final rate of pay to separating employees, in violation of Labor Code section 227.3; (6) failed to reimburse employees for all reasonable and necessary business expenditures, in violation of Labor Code section 2802; (7) failed to provide a safe and healthful environment for employees, in violation of Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6407; (8) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code and the applicable IWC Wage Orders; and (9) violated PAGA, Labor Code section 2698 *et. seq.*

Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements, but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why Is This A Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Michael Ford and Anthony Williams), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Los Angeles County Superior Court is in charge of the case. The lawsuit is known

4. Why Is There A Settlement?

The Court did not decide in favor of Named Plaintiffs or Defendant. Named Plaintiffs think they could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representatives and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part Of The Settlement?

The Court has decided that any **current** or former non-exempt employee who is or previously was employed by Avartara LLC in the State of California any time between August 25, 2018, through April 25, 2024 (the “Class Period”), is a class member.

6. What Does The Settlement Provide?

The proposed settlement provides for a payment by Defendant of \$200,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Maximum Settlement Fund”). The total amount to be distributed to Class Members who can be located, and who do not exclude themselves from the class settlement, will be the value of the Maximum Settlement Fund after deducting the following (the “Net Class Settlement Amount”): (a) settlement-administration costs not to exceed \$11,000.00; (b) an Enhancement Payment to each Named Plaintiff in the amount of \$10,000.00 (collectively, \$20,000.00) for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$70,000.00; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$25,000.00; and (f) Gross PAGA Payment of \$20,000.00 representing PAGA civil penalties allocated for settlement of claims under California Labor Code § 2698, *et seq.* **Class Counsel’s attorneys’ fees and costs, and Named Plaintiffs’ Enhancement Payments, remain subject to Court approval.**

By statute, 75% of the Gross PAGA Payment, *i.e.*, the sum of \$15,000.00, will be paid as civil penalties to the California Labor Workforce Development Agency. The remaining 25%, *i.e.*, the sum of \$5,000.00, will be distributed to PAGA Employees. “PAGA Employees” means **all** current and former non-exempt employees who are or previously were employed by Avartara LLC in the State of California during the period from March 24, 2021 through April 25, 2024 (“PAGA Period”).

No portion of the Maximum Settlement Fund will be returned to Defendant under any circumstances.

7. How Much Will My Individual Settlement Class Payment Be?

Your estimated share of the Class settlement proceeds will be approximately \$***. This amount is subject to change, based on the terms of the Court’s final approval order.

Your estimated share of the Class settlement proceeds is based on the number of workweeks you worked during the Class Period (August 25, 2018 through April 25, 2024), as compared to the total number of workweeks worked by all Class Members in that same period. Based upon Defendant’s records, you were determined to have worked ***workweeks during the Class Period.

If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of pay periods allocated to you, see below (Question 10).

8. How Much Will My Individual PAGA Penalty Payment Be?

If you are a Class Member who worked during the period of March 24, 2021 through April 25, 2024, you are an PAGA Employee and are entitled to receive a portion of the Gross PAGA Payment. Your estimated share of the Gross PAGA Payment will be approximately \$***. This amount is subject to change, based on the terms of the Court's final approval order.

Your estimated share of the Gross PAGA Payment is based on the number of pay periods you worked during the PAGA Period (March 24, 2021 through April 25, 2024), as compared to the total number of pay periods worked by all PAGA Employees in that same period. Based upon Defendant's records, you were determined to have worked *** pay periods during the PAGA Period. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of pay periods allocated to you, see below (Question 10).

9. How Do I Get A Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately ninety days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

10. What If I Believe The Information Is Inaccurate?

If you believe the number of pay periods attributed to you is inaccurate, you may dispute it by sending a letter to [ADMINISTRATOR'S ADDRESS] no later than [RESPONSE DEADLINE]. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

11. What Am I Giving Up To Get A Settlement Payment?

Unless you request to be excluded from the class settlement, you remain a part of the Settlement Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims that are based on the facts alleged by Named Plaintiffs in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or "releasing" Defendant from the claims described below:

All claims that were pled or could have been pled against Defendant based on the factual allegations set forth in the Second Amended Consolidated Class and Representative PAGA Action Complaint, and that accrued during the Class Period, including without limitation all claims arising out of any violation of Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and Business and Professions Code section 17200. 

Additionally, if you are a Class Member who worked during the period of March 24, 2021 through April 25,

2024, you are an PAGA Employee and that means you will be giving up or “releasing” Defendant from the claims described below:

all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 204, 226(a), 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 2802, 227.3, 218, 222, 6400, 6401, 6403, 6404, and 6407, that accrued during the PAGA Period and were or could have been alleged in the Second Amended Consolidated Class and Representative PAGA Action Complaint, the Ford PAGA Notice and the Williams PAGA Notice, based on the factual allegations set forth therein.

12. How Do I Exclude Myself From The Class Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Michael Ford v. Avartara LLC*, settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than [RESPONSE DEADLINE], to the Settlement Administrator at [ADMINISTRATOR’S ADDRESS].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the Class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the class claims made in this lawsuit, at your own expense.

If you are a Class Member who worked during the PAGA Period, you may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive an Individual PAGA Penalty Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Penalty Payment is shown above.

13. If I Don’t Exclude Myself, Can I Sue Defendant Or Get Money From The Settlement?

If you do not exclude yourself from the class settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is [RESPONSE DEADLINE].

If you exclude yourself from the class settlement, you will not receive any money from the settlement of the class action claims in this matter.

14. How Do I Tell The Court That I Don’t Believe That The Settlement Is Fair?

If you do not exclude yourself from the class settlement, you can object to the class settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the class settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you may do so in writing. All objections must be signed by you and must include: (1) your full name, signature, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than **[RESPONSE DEADLINE]**, to the Settlement Administrator at **[ADMINISTRATOR'S ADDRESS]**.

You may also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense. *You may present objections at the final approval hearing, regardless of whether you submitted a written objection.*

There is no right to object to the settlement of the PAGA claim. Thus, even if you submit a timely objection to the class settlement, you will still receive an Individual PAGA Penalty Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Penalty Payment is shown above.

15. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court. **Do not submit both an Objection and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

16. Do I Have A Lawyer In This Case?

The Court decided that the law firms of Diversity Law Group and Otkupman Law Firm, both of which represent the Named Plaintiffs, are also qualified to represent you and all class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will The Attorneys For The Class And The Class Representative Be Paid?

The attorneys for the Named Plaintiffs and the class will be paid from the Maximum Settlement Fund. Class Counsel will ask for up to \$70,000.00 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$25,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 18 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiffs of an amount up to \$10,000.00 each (collectively, \$20,000.00) will be paid from the Maximum Settlement Fund for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

18. Notice Of Hearing On Final Approval And Objections To Class-Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable ***** on ***, 2024, at ***

a.m., in Department *** of the Superior Court of California for the County of Los Angeles, located at ***, Los Angeles, California ***, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all Class Members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

19. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

You may also find additional information regarding the settlement posted on [ADMIN'S WEBSITE], including the date and time of the Final Approval Hearing, the Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the Final Approval Order and the Judgment.

20. What Is The Contact Information For The Court and Class Counsel?

The addresses for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court Los Angeles County Superior Court *****	DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew 515 South Figueroa Street Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554 lwlee@diversitylaw.com kagnew@diversitylaw.com Roman Otkupman Nidah Farishta OTKUPMAN LAW FIRM, A LAW CORPORATION 5743 Corsa Ave, Suite 123 Westlake Village, CA 91362 Telephone: (818) 293-5623 Facsimile (888) 850-1310 roman@OLFLA.com nidah@OLFLA.com

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Michael Ford v. Avartara LLC
c/o Phoenix Settlement Administrator

Address

Toll-Free Phone Number:***

Email: ***

PLEASE DO NOT TELEPHONE DEFENSE COUNSEL, THE COURT, OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

EXHIBIT D