

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
jcampbell@aegislawfirm.com
DANIEL E. ISHU, State Bar No. 332865
dishu@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiff, Shane Thomas Bunting, individually,
and on behalf of all others similarly situated.

[Additional counsel listed on following page]

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

SHANE THOMAS BUNTING, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

MODESTO AND EMPIRE TRACTION
COMPANY; BEARD LAND AND
INVESTMENT CO.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. CV-22-001595

*Assigned for all purposes to:
Hon. Sonny S. Sandhu
Dept. 24*

JOINT STIPULATION OF SETTLEMENT

1 Chandra Andrade

Holly L. Sutton

2 Kevin L. Jones

FARELLA BRAUN + MARTEL

3 235 Montgomery Street 17th Fl

4 San Francisco, CA 94104

Telephone: 415.954.4905

5 Candrade@fbm.com

HSutton@fbm.com

6 KJones@fbm.com

7 Attorneys for Defendant Modesto and Empire Traction Company;

8 Beard Land and Investment Co.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Shane Thomas Bunting (“Named
7 Plaintiff”) and the Class Members, on the one hand, and Defendants Modesto and Empire Traction
8 Company and Beard Land and Investment Co. (“Defendants”), on the other hand. Named Plaintiff
9 and Defendants collectively are referred to in this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendants to pay the settlement amount of Four Hundred Twenty-Five
12 Thousand Dollars (\$425,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”)
13 pursuant to the terms and conditions of this Agreement and for the consideration set forth herein,
14 including but not limited to, a release of all claims by Named Plaintiff and the Class Members as set
15 forth herein.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Bunting v. Modesto and Empire*
21 *Traction Company and Beard Land and Investment Co.*; and DOES 1 through 20, inclusive,”
22 Stanislaus County Superior Court Case No. CV-22-001595, commenced on April 12, 2022.

23 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
24 Exhibit(s).

25 c. “Class” means the individuals identified as stipulated solely for the purposes of
26 resolution of this claim to be all current and former non-exempt employees who are or were
27 employed by Defendants in California at any time during the Class Period.

28 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

AEGIS LAW FIRM, PC
Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Daniel E. Ishu
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

e. “Class List” means a list based on Defendants’ business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means October 16, 2017 through March 17, 2023.

h. “Court” means the California Superior Court for the County of Stanislaus, where the Action is currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendants” means Defendant Modesto and Empire Traction Company and Beard Land and Investment Co.

k. “Defense Counsel” means counsel for Defendants:

Holly L. Sutton
Chandra Andrade
Kevin L. Jones
FARELLA BRAUN + MARTEL
235 Montgomery Street 17th Fl
San Francisco, CA 94104
Telephone: 415.954.4905

1 l. “Disposition” means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. “Gross Settlement Amount” means Four Hundred Twenty-Five Thousand Dollars
8 (\$425,000.00) to be paid by Defendant 60 days after the Final Order, as provided by this Agreement
9 to settle this Action. All payments to the Class, administration costs, attorney’s fees and costs, and
10 Incentive Awards, pursuant to Section 3.06(a)-(f) below, shall be paid out of the Gross Settlement
11 Amount. The employer’s share of payroll taxes arising from the payments made under this settlement
12 shall be paid by Defendants separate from and in addition to the Gross Settlement Amount. The
13 Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part
14 of the Gross Settlement Amount shall revert to Defendants.

15 o. “Incentive Awards” means a monetary amount of up to Ten Thousand Dollars
16 (\$10,000.00) for Named Plaintiff, subject to Court approval, in recognition of his effort and work in
17 prosecuting the Action on behalf of Class Members, and for his general release of claims.

18 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
19 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
20 by the calculations provided in this Agreement.

21 q. “LWDA” means The State of California Labor and Workforce Development Agency.

22 r. “LWDA Payment” means 75% of the \$20,000 allocated to the settlement of PAGA
23 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
24 this Agreement, as provided for below.

25 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
26 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
27 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
28 to enter a Final Order in this Action.

1 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to grant preliminary approval of the
3 Settlement as required by Rule 3.769 of the California Rules of Court.

4 u. "Named Plaintiff" means Shane Thomas Bunting.

5 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
6 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, and LWDA
7 Payment, pursuant to Section 3.07(a)-(f) below.

8 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
9 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
10 to Section 3.04(b) below.

11 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
12 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

13 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
14 codified in California Labor Code §§ 2698 *et seq.*

15 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
16 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
17 agreed that the PAGA Settlement Amount is Twenty Thousand Dollars (\$20,000), subject to Court
18 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
19 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
20 Members.

21 aa. "PAGA Group Members" means all Class Members employed by Defendants at any
22 time between April 12, 2021 through March 17, 2023 ("PAGA Period").

23 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
24 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
25 Settlement Amount automatically without the need to return a claim form. Each Participating Class
26 Member will be paid his/her Individual Settlement Payment.

27 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
28 Settlement embodied in this Agreement.

dd. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members.

ee. “Qualifying Workweeks” means the number of weeks that Class Members worked for Defendants as non-exempt employees during the Class Period.

ff. “Released Parties” means Defendants and each and all of its past and present parent, subsidiary, and affiliated corporations, entities, divisions, general and limited partners, joint ventures and affiliated corporations, entities, divisions, general and limited partners, joint venturers and affiliates, and each of their respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives.

gg. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the sixth (60th) calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

hh. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiff for their Incentive Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

CONTINGENT NATURE OF THE AGREEMENT

7 Because the Parties have stipulated to the certification of the Class with respect to all causes
8 of action alleged in the Action for settlement purposes of this claim only, this Agreement requires
9 preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a
0 conditional basis. This Agreement is contingent upon the approval and certification by the Court. If
1 the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes
2 of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue
3 of certification of the Class with respect to all causes of action alleged in the Action or any future
4 action. Defendants do not consent to certification of the Class for any purpose other than to effectuate
5 settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not
6 effectuated, any certification of the Class as to Defendants will be vacated and Named Plaintiffs,
7 Defendants, and the Class will be returned to their positions with respect to the Action as if the
8 Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any
9 Court orders preliminarily or finally approving certification of any class contemplated by this
0 Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or
1 entity, or for any subsequent or future claim; and (b) the fact of the settlement reflected in this
2 Agreement, the fact that Defendants did not oppose the certification of a Class under this Agreement,
3 or that the Court preliminarily approved the certification of the Class in this specific action, shall not
4 be used or cited thereafter by any person or entity, including in any manner whatsoever, including
5 without limitation any contested proceeding relating to the certification of any class or for any claim
6 of the same or similar nature. If the Date of Finality does not occur, this Agreement shall be deemed
7 null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any

1 purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class
2 certification in the Action for any purpose, if the Date of Finality does not occur.

3 The Parties and their respective counsel shall take all steps that may be requested by the Court
4 relating to the approval and implementation of this Agreement and shall otherwise use their
5 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
6 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
7 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
8 resolution, the Parties agree to seek the assistance of mediator Jill Sperber to resolve the dispute.

9 **Section 2.02: Defendant's Opt Out Election**

10 Defendants maintain the right, in their sole discretion, to revoke the settlement and its
11 stipulation to class certification in the event that six (6) or more of the Settlement Class Members opt
12 out of the Settlement. If Defendants make this election, they must communicate their decision to
13 Plaintiff's counsel in writing within 14 days of receiving the final number of opt outs from the
14 settlement administrator, and they will be solely responsible for settlement administration costs
15 incurred to date.

16 **ARTICLE III**

17 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

18 The procedure for obtaining Court approval of and implementing this Agreement shall be as
19 follows:

20 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

21 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
22 Class to include all claims pled in the Action based on the preliminary approval of this Agreement
23 as outlined above. The date that the Court grants preliminary approval of this Agreement will be the
24 "Preliminary Approval Date."

25 **Section 3.02: The Settlement Administrator**

26 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
27 Settlement Administrator, including but not limited to distributing and responding to inquiries about
28 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement

1 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks
2 and distributing them to Participating Class Members, establishing and maintaining the QSF, and
3 issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award checks to
4 Named Plaintiffs, and the employer payroll taxes to the appropriate taxing authorities. The Settlement
5 Administrator shall expressly agree to all of the terms and conditions of this Agreement.

6 All costs of administering the Settlement, including but not limited to all costs and fees
7 associated with preparing, issuing and mailing any and all notices to Class Members and/or
8 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
9 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
10 returns and any other filings required by any governmental taxing authority or agency, all costs and
11 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
12 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
13 incurred and/or charged by the Settlement Administrator in connection with the execution of its
14 duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Settlement
15 Administrator from the Gross Settlement Amount.

16 **Section 3.03: Notice to Class Members**

17 No later than five (5) business days after the Preliminary Approval Date, Defendants will
18 provide the Settlement Administrator with a "Class List" in electronic format based on its business
19 records, identifying the names of the Class Members, their last known home addresses, Social
20 Security numbers or, as applicable, other taxpayer identification number, their dates of employment,
21 and weeks worked during the Class Period.

22 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
23 Administrator will send Class Members, by first-class mail, at their last known address, the Court
24 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
25 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
26 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
27 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
28 Settlement Administrator will check all Class Member addresses against the National Change of

1 Address database and shall update any addresses before mailing. The Settlement Administrator will
2 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
3 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
4 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
5 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
6 Members shall not be required to submit claim forms in order to receive a proportional share of the
7 Net Settlement Amount.

8 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
9 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
10 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
11 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
12 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
13 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
14 that reasonable means be used to locate Class Members and that the Settlement Administrator be
15 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
16 Individual Settlement Payments to all Participating Class Members.

17 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
18 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
19 status report provided to the Parties.

20 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
21 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
22 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
23 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
24 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
25 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
26 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
27 procedures set forth in Section 3.07(g) below.

1 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
2 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
3 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
4 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
5 exclusion and objections that the Settlement Administrator received.

6 **Section 3.04: Responses to Notice**

7 **a. Class Member Disputes**

8 If any Class Member disagrees with Defendant's records as to his or her Qualifying
9 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
10 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
11 and submit such writing via mail or fax to the Settlement Administrator by the Response Deadline,
12 along with any supporting documentation. The Notice will also provide a method for the Class
13 Member to challenge the employment data on which his or her Individual Settlement Payment is
14 based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties
15 will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement
16 Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during
17 the Class Period based on the information provided to it.

18 **b. Requests for Exclusion from Class**

19 In order for any Class Member to validly exclude himself or herself from the Class and this
20 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
21 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
22 postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement
23 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
24 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
25 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
26 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
27 conclusively determined according to the records of the Settlement Administrator. Any Class
28 Member who timely and validly requests exclusion from the Class and this Settlement will not be

entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

e. Pro Rata Increase

Defendant has estimated the number of Class Members as 65 and the total estimated workweeks at 8197. If the number of Class Members exceeds 65 or the amount of workweeks

exceeds 8197 by more than 5%, the Gross Settlement Amount will increase pro rata per additional class member or additional workweek, whichever is greater.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payments.

Within sixty (60) calendar days after the Court signs the Final Order, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment, and the Settlement Administration Costs.

Within ten (10) court days after receiving Defendants' final payment, funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement

Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Hundred Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$141,666.66). Class Counsel shall submit an application for an award of costs not to exceed Twenty Thousand Dollars (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendants with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Five Thousand Three Hundred and Fifty Dollars and Zero Cents (\$5,350.00)

d. Payment of Incentive Award to Named Plaintiffs

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Ten Thousand Dollars (\$10,000.00), the request for which Defendants will not object to or oppose. The Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court

1 approves less than the amount of incentive award that Class Counsel request, the difference between
2 the requested and awarded amounts will be reallocated to the Net Settlement Amount.

3 Because it is the intent of the Parties that the Incentive Award represents payment to Named
4 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
5 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
6 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
7 authorities as required by law.

8 **e. Payment to the Labor and Workforce Development Agency**

9 In consideration of claims made under PAGA, Class Counsel will request that the Court
10 approve allocation of Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount to these
11 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
12 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
13 to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose
14 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
15 The Court's adjustment, if any, of the amount allocated to Named Plaintiffs' PAGA claim in the
16 Action, will not invalidate this Agreement.

17 **f. Payment of Individual Settlement Payments to Participating Class Members**

18 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
19 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
20 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
21 each Class Member. To calculate the minimum amount each Class Member will receive based on
22 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
23 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
24 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
25 Member's approximate Individual Settlement Payment amount will be included in his or her Notice
26 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
27 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
28

individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages and 80% allocated to penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis or a comparable database based on set criteria and, if another address is identified, the Settlement Administrator shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will tender the funds from the undeliverable checks to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

1 **g. Default on Payment.**

2 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
3 the date that the Court grants final approval of the Settlement shall be considered a default. In the
4 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
5 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
6 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
7 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
8 forth herein, Named Plaintiff may elect to enter judgment against Defendants, on an ex parte basis,
9 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled
10 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
11 attorneys' fees and costs.

12 **h. No Credit Toward Benefit Plans.**

13 The Individual Settlement Payments made to Participating Class Members under this
14 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
15 calculate any additional benefits under any benefit plans to which any Class Members may be
16 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
17 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
18 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
19 Members may be entitled under any benefit plans.

20 **ARTICLE IV**

21 **LIMITATIONS ON USE OF THIS SETTLEMENT**

22 **Section 4.01: No Admission**

23 Defendants dispute the allegations in the Action and dispute that, but for this Settlement, a
24 Class should not have been certified in the Action. This Agreement is entered into solely for the
25 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
26 construed as an admission of liability or wrongdoing by Defendants in this Action or in any future
27 actions or claims in anyway whatsoever.
28

1 **Section 4.02: Non-Evidentiary Use**

2 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
3 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
4 deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties,
5 including but not limited to, evidence of a presumption, concession, indication, or admission by any
6 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
7 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
8 proceeding in the Action or future actions or claims, except for the purposes of effectuating the
9 Settlement pursuant to this Agreement or for Defendants to establish that a Class Member has
10 resolved any of his or her claims released through this Agreement.

11 **Section 4.03: Nullification**

12 The Parties have agreed to the certification of the Class encompassing all claims alleged in
13 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
14 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
15 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
16 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
17 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
18 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
19 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
20 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
21 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
22 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
23 should be certified by the Court in a non-settlement context in this Action or any other action, and in
24 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

25 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
26 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

1 **Section 4.04: Confidentiality**

2 Plaintiff and Class Counsel agree not to disclose or publicize the settlement among the parties
3 contemplated herein, including the MOU, the fact of the settlement, its terms or contents, and the
4 negotiations underlying the settlement, in any manner or form, directly or indirectly, to any person
5 or entity, except potential class members and shall be contractually required to effectuate the terms
6 of the settlement as set forth herein. For the avoidance of doubt, this section means Plaintiff and Class
7 Counsel will not issue any press release, communicate with, or respond to any media or publication
8 entities, publish information in manner or form, whether printed or electronic, or any medium or
9 otherwise communicate, whether by print, video, recording or any other medium, with any person or
10 entity concerning the settlement, including the fact of the settlement, its terms or contents and the
11 negotiations underlying the settlement, except as shall be contractually required to effectuate the
12 terms of the settlement as set forth herein. Notwithstanding the above, Plaintiff's counsel may refer
13 publicly-available information about the settlement in their declarations establishing their
14 qualifications as counsel in other cases.

15
16 **ARTICLE V**

17 **RELEASES**

18 **Section 5.01: Released Claims by Class Members**

19 Upon the date Defendants transfer the Gross Settlement Amount, Named Plaintiff and
20 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
21 any and all claims alleged or could have been alleged based on the facts alleged in Named Plaintiff's
22 Operative Complaint, which arose during the Class Period, including but not limited to (1) failure to
23 pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4)
24 failure to authorize or permit rest periods; (5) failure to reimburse business expenses; (6) failure to
25 provide accurate itemized wage statements (7) failure to pay wages timely during employment; (8)
26 failure to pay all wages due upon separation of employment; (9) Enforcement of Labor Code § 2698
27 et seq. ("PAGA"); and (10) violation of California Business and Professions Code §§17200, *et seq.*,
28 based on the preceding claims ("Released Claims").

1 **Section 5.02: Released Claims by PAGA Group Members**

2 Upon the date of funding the GSA, the State of California and PAGA Group Members release
3 the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged
4 in the operative Complaint, which arose during the PAGA Period, regardless of whether PAGA
5 Group Members opt out of the Class Settlement.

6 **Section 5.03: Named Plaintiffs' Release of Unknown Claims**

7 Upon the date of funding the GSA, Named Plaintiff, waive, release, acquit, and forever
8 discharge the Released Parties from any and all claims, actions, charges, complaints, grievances, and
9 causes of action, of any nature arising from Named Plaintiff's employment with Defendants, whether
10 known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

11 Section 1542 of the California Civil Code provides as follows:

12 *"A general release does not extend to claims which the creditor does not*
13 *know or suspect to exist in his or her favor at the time of executing the*
14 *release, which if known by him or her must have materially affected his*
15 *or her settlement with the debtor. "*

16 Plaintiff's general release provided herein is made with an express waiver and relinquishment
17 of any claim, right, or benefit under California Civil Code § 1542.

18 **ARTICLE VI**

19 **MISCELLANEOUS PROVISIONS**

20 **Section 6.01: Amendments or Modification**

21 The terms and provisions of this Agreement may be amended or modified only by an express
22 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

23 **Section 6.02: Assignment**

24 None of the rights, commitments, or obligations recognized under this Agreement may be
25 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
26 consent of each other Party and their respective counsel. The representations, warranties, covenants,
27 and agreements contained in this Agreement are for the sole benefit of the Parties under this
28 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

1 **Section 6.03: Governing Law**

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
3 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
4 of laws.

5 **Section 6.04: Entire Agreement**

6 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
7 contains the entire understanding of the Parties with respect to the subject matter contained herein.
8 In case of any conflict between text contained in Articles I through VI of this Agreement and text
9 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
10 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
11 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
12 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
13 supersedes all prior agreements and understandings among the Parties with respect to the settlement
14 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
15 prior agreements or proposals.

16 **Section 6.05: Waiver of Compliance**

17 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
18 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
19 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
20 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
21 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
22 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

23 **Section 6.06: Counterparts and Fax/PDF Signatures**

24 This Agreement, and any amendments hereto, may be executed in any number of counterparts
25 and any Party and/or their respective counsel may execute any such counterpart, each of which when
26 executed and delivered shall be deemed to be an original. All counterparts taken together shall
27 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
28 signature.

1 **Section 6.07: Meet and Confer Regarding Disputes**

2 Should any dispute arise among the Parties or their respective counsel regarding the
3 implementation or interpretation of this Agreement, a representative of Class Counsel and a
4 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
5 to submitting such disputes to the Court.

6 **Section 6.08: Agreement Binding on Successors**

7 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
8 of each of the Parties.

9 **Section 6.09: Cooperation in Drafting**

10 The Parties have cooperated in the negotiation and preparation of this Agreement. This
11 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
12 was the drafter or participated in the drafting of this Agreement.

13 **Section 6.10: Fair and Reasonable Settlement**

14 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
15 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
16 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
17 further believe that the Settlement is and is consistent with public policy, and fully complies with
18 applicable law.

19 **Section 6.11: Headings**

20 The descriptive heading of any section or paragraph of this Agreement is inserted for
21 convenience of reference only and does not constitute a part of this Agreement and shall not be
22 considered in interpreting this Agreement.

23 **Section 6.12: Notice**

24 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
25 communications under this Agreement must be in writing and addressed as follows:

26 *To Named Plaintiffs and the Class:*

27 Kashif Haque
28 Samuel A. Wong

Jessica L. Campbell
Daniel E. Ishu
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendants:

Holly L. Sutton
Chandra Andrade
Kevin L. Jones
FARELLA BRAUN + MARTEL
235 Montgomery Street 17th Fl
San Francisco, CA 94104
Telephone: 415.954.4905

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its

terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants represent and warrant that the individual executing this Agreement on their behalf has the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

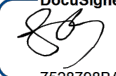
The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 5/17/2023 | 6:28 PM PDT Thomas Shane Bunting

By: _____
Named Plaintiff

DocuSigned by:

7528798BA8034B3

1 Dated:

Modesto and Empire Traction Company;
Beard Land and Investment Co.

3 By:

(Signature)

5 (Printed Name)

7 (Title)

9 **APPROVED AS TO FORM ONLY:**

12 Dated:

May 18, 2023

AEGIS LAW FIRM, PC

14 By:

Kashif Haque

Jessica L. Campbell

Daniel E. Ishu

Attorneys for Named Plaintiff Shane Thomas
Bunting

19 Dated:

FARELLA BRAUN + MARTEL LLP

22 By:

HOLLY SUTTON

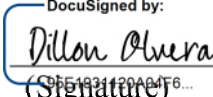
CHANDRA S. ANDRADE

KEVIN JONES

Attorneys for Defendant Modesto and Empire
Traction Company; Beard Land and Investment
Co.

1 Dated:
2 5/18/2023
3 _____
4

Modesto and Empire Traction Company;
Beard Land and Investment Co.

By: 
(Signature)
Dillon Olvera
(Printed Name)
President and CEO
(Title)

9 **APPROVED AS TO FORM ONLY:**

10
11
12 Dated: _____
13

AEGIS LAW FIRM, PC

By: _____
Kashif Haque
Jessica L. Campbell
Daniel E. Ishu

Attorneys for Named Plaintiff Shane Thomas
Bunting

14
15
16
17
18
19 Dated:
20
21 5/17/23
22 _____
23

FARELLA BRAUN + MARTEL LLP

By: 
HOLLY SUTTON
CHANDRA S. ANDRADE
KEVIN JONES

24
25
26 Attorneys for Defendant Modesto and Empire
27 Traction Company; Beard Land and Investment
28 Co.

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Shane Thomas Bunting v. Modesto & Empire Traction Company et al.
Stanislaus County Superior Court, Case No. CV-22-001595

If you worked for Modesto and Empire Traction Company as a non-exempt employee, in California at any time from October 16, 2017 through March 17, 2023, the settlement of this class action lawsuit may affect your rights.

This is a court-authorized notice. It is not a solicitation from a lawyer.

- A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Shane Thomas Bunting v. Modesto & Empire Traction Company et al.*, Case No. CV-22-001595 (Stanislaus County Superior Court) (the “Lawsuit”). The purpose of this Notice of Class Action Settlement (“Notice”) is to briefly describe the Lawsuit, and to inform you of your rights and options in connection with the Lawsuit and the Settlement.
- The Court has preliminarily approved a class action settlement with Defendants Modesto & Empire Traction Company and Beard Land and Investment Co., (collectively “Defendant”), which will affect all non-exempt employees who worked for Defendant in California at any time from October 16, 2017 through March 17, 2023.
- If the Court grants final approval of the Settlement, there may be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	By doing nothing, you become part of the Class and will be entitled to a settlement award as detailed below. But, you will not be able to bring your own lawsuit against Defendant for alleged violations that relate to the claims brought in this Lawsuit.
OBJECT TO THE SETTLEMENT	If you object to the settlement, you will remain a member of the Class. If the Court approves the settlement, you will be entitled to collect a settlement award and be bound by the terms of the settlement in the same way as Class Members who do not object.
ASK TO BE EXCLUDED	If you ask to be excluded from the Settlement, you will not receive any payment from the settlement award. But, you keep your right to sue Defendant separately for the legal claims raised in this Lawsuit.

- **Regardless of the option you choose, you will not be retaliated against.**
- Your options are explained in this notice. To object to the settlement or to ask to be excluded, you must act before .
- **Any questions?** Read on or contact Class Counsel or the Settlement Administrator listed below.

BASIC INFORMATION

1. Why did I get this notice?

Defendant's records show that you worked for Defendant as a non-exempt employee in California at some point between October 16, 2017 through March 17, 2023.

The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement may be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this Settlement. Judge Sonny S. Sandhu of the Superior Court of the State of California, County of Stanislaus, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiff Shane Thomas Bunting ("Plaintiff") claims that Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to reimburse necessary business expenses, (6) failed to provide accurate itemized wage statements, (7) failed to pay wages timely during employment, (8) failed to pay all wages due upon separation of employment, (9) violated California Business and Professions Code Section 17200 *et seq.*, and (10) violated Labor Code Section 2698 *et seq.*, ("PAGA").

Throughout the litigation, Defendant has denied—and continues to deny—the factual and legal allegations in the Lawsuit. Defendant denies any wrongdoing and asserts that its conduct at all times complied with the law. However, Defendant has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the "Class Representative" sues on behalf of other people who may have similar claims. The people together are referred to as a "Class" or "Class Members." The person who is the Class Representative is also called the plaintiff. The company being sued is called the defendant. In class action litigation, a Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

This class action also includes a "Private Attorneys General Act" ("PAGA") claim, where the Plaintiff is attempting to recover civil penalties on behalf of the State of California. In a PAGA action, the State receives 75% of any recovered civil penalties, and the employees receive 25%. This Settlement will resolve all claims by the State for civil penalties arising from the claims made by Plaintiff in the Lawsuit during the period of April 12, 2021 through March 17, 2023. ("PAGA Period").

4. Why is this Lawsuit a class action?

For settlement purposes only, Plaintiff and Defendant agreed that this case can proceed as a class action and have agreed to ask the Court to approve the class action Settlement. The Court has not ruled on the merits of the claims in the Lawsuit.

5. What are the terms of the proposed Settlement?

The major terms of the settlement are as follows:

1. Defendant has agreed to pay \$425,000.00 to settle the claims in this Lawsuit. This amount is also known as the “Gross Settlement Amount.”
2. Plaintiff has agreed to release all of his claims in this this Lawsuit against Defendant.
3. Plaintiff seeks the following deductions from the \$425,000.00 Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (which is currently equal to \$141,666.66) for Class Counsel’s attorneys’ fees.
 - b. Up to \$20,000.00 for reimbursement of Class Counsel’s litigation costs.
 - c. An Incentive Award of up to \$10,000.00 to the Plaintiff for filing the Lawsuit, performing work in connection with the Lawsuit, and the risks associated with filing the Lawsuit.
 - d. Up to \$5,350.00 to cover the costs of the Settlement Administrator.
 - e. A PAGA Settlement Amount of up to \$20,000.00 for the release of PAGA claims. The PAGA Settlement Amount shall be allocated 75% (\$15,000.00) to the California Labor and Workforce Development Agency and 25% (\$5,000.00) to the non-exempt employees that worked for Defendant in California at any time during the PAGA Period (“PAGA Group Members”).

After making the above requested deductions from the Gross Settlement Amount, the remaining funds will be referred to as the “Net Settlement Amount.” The Net Settlement Amount will be distributed to Class Members who do not opt-out according to the number of weeks they worked for Defendant in California during the Class Period.

PAGA Settlement Payments. 25% of the PAGA Settlement Amount (\$5,000.00) (“PAGA Group Payment”) will be paid to PAGA Group Members based on the number of pay periods they work for Defendant in California during the PAGA Period. If you are a PAGA Group Member, you will receive a pro rata share of the PAGA Group Payment regardless of whether you opt-out of the class settlement.

Check Cashing Period. If a settlement check remains uncashed after 180 days from the date it is issued, the check will become void and the amount of the uncashed check will be sent to the California State Controller’s Unclaimed Property Fund, to be held in your name.

WHO IS IN THE CLASS?

6. Am I part of this Class?

For settlement purposes only, the “Class” includes: All non-exempt employees who are or were employed by Defendant in California at any time from October 16, 2017 through March 17, 2023 (the “Class Period”).

7. I’m still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting ILYM Group, Inc., the “Settlement Administrator”, at the designated phone number for this matter at [REDACTED] or by calling or writing the lawyers representing the Class in this case (“Class Counsel”), at the phone number or address listed in Section 19.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, the total number of weeks you worked in California for Defendant as a non-exempt employee during the Class Period is [REDACTED]. The total number of pay periods you worked in California for Defendant as a non-exempt employee during the PAGA Period is [REDACTED].

Based on information provided above, anticipated court-approved deductions, and preliminary calculations of Qualified Workweeks, it is estimated your share of the settlement will be \$ [REDACTED], less applicable taxes and withholdings. This amount includes your share of the PAGA Group Payment, which is estimated to be \$ [REDACTED],

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 16, below, of any changes to your mailing address for timely payment.

Disputing Your Payment Amount

If you believe your total weeks worked during the Class Period and/or PAGA Period shown above is not correct, you may contact the Settlement Administrator indicating what you believe is correct no later than [REDACTED]. You should send any documents or other information that supports your belief that the number of weeks set forth above is incorrect. The Settlement Administrator will attempt to resolve any dispute based upon Defendant’s records and any information you provide. Any dispute not resolved by the Settlement Administrator will be resolved by the Court. The Court may review any decisions made by the Settlement Administrator.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement and you do not exclude yourself from the Settlement, you will be deemed to have released Defendants and each and all of its past and present parent, subsidiary, and affiliated corporations, entities, divisions, general and limited partners, joint ventures and affiliated corporations, entities, divisions, general and limited partners, joint venturers and affiliates, and each of their respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives (collectively, “Released Parties”)

from any and all claims alleged in Named Plaintiff's Operative Complaint, during the Class Period, including but not limited to (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon separation of employment; (9) Enforcement of Labor Code § 2698 *et seq.* ("PAGA"); and (10) violation of California Business and Professions Code §§17200, *et seq.*, based on the preceding claims (collectively, "Released Claims").

Additionally, if you are a PAGA Group Member, you will have released the right to bring a claim for civil penalties under PAGA that arose during the PAGA Period, on behalf of the State based on the facts alleged in the operative Complaint in this Lawsuit, the PAGA letter(s) submitted to the LWDA by Plaintiff, and any further amended PAGA letters submitted to the LWDA by Plaintiff (collectively, "Released PAGA Claims"). You will release these Released PAGA Claims even if you opt-out of the class action settlement.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, you must not opt-out). To object, you may mail or fax a written objection to the Settlement Administrator at the address in Section 16 below. Your written objection must set forth the grounds for your objection and be signed and dated, along with any supporting documents. Any written objection must be mailed to the Settlement Administrator no later than [REDACTED]. You can also appear at the final approval hearing. The information for the hearing is included in Section 17 of this notice.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Class (and the class settlement). If you exclude yourself from the Class—sometimes called "opting-out" of the Class – you will not receive any money or benefits from the class settlement. However, if you opt out, you may then be able to sue or continue to sue Defendants for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's ruling in this Lawsuit except for the release by PAGA Group Members. Whether or not you submit a Request for Exclusion, if you are a PAGA Group Member, you will still be entitled to your portion of the PAGA Group Payment.

12. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Class ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 16 below. The statement must contain your name, address, telephone number, and your signature or the signature of your legally authorized representative and must be postmarked on or before [REDACTED]. The date of the fax or postmark on the mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any class member who fails to submit a valid and timely request for exclusion will be bound by all terms of the settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Class Counsel:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Daniel E. Ishu
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
dishu@aegislawfirm.com

The Court has preliminarily decided that Aegis Law Firm, PC is qualified to represent you and all Class Members. The law firm's attorneys are experienced in handling similar cases against other employers. More information about this law firm, their practice, and their lawyers' experience is available at www.aegislawfirm.com.

14. How will the lawyers be paid?

As part of the Settlement, Class Counsel has requested one-third of the Gross Settlement Amount (currently equal to \$141,666.66) in attorneys' fees, plus costs not to exceed \$20,000.00, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

15. How will the Plaintiff be paid?

As part of the Settlement, Class Counsel has requested an incentive award of up to \$10,000 to be paid to the Plaintiff for his efforts in this matter, while serving as Class Representative and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

16. Who is handling the Settlement Administration process?

ILYM Group, Inc.

[address]

[address]

[Telephone]

17. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [REDACTED], at [REDACTED] in Department 24 of the Superior Court of California, County of Stanislaus, located at 801 10th street, Modesto, California 95354. You do not need to attend the hearing to be a part of the Settlement.

However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class.

18. When will I get money after the hearing?

The Court will hold a hearing on [REDACTED], at [REDACTED], to decide whether to approve the settlement. If the Court approves the settlement, then there may be appeals if anyone objects. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. If the Court approves the settlement and if you do not opt out, your individual payment set forth in Section 8 above is expected to be distributed after Defendant makes payment to the Settlement Administrator. To check on the progress of the settlement, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Section 19.

GETTING MORE INFORMATION

19. Are more details available?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California, for Stanislaus, at the Stanislaus County Superior Court, located at 801 10th street, Modesto, California 95354. You may also obtain case information online at <https://stanportal.stanct.org/>. Click on “Search”, then click on “Case Information”, enter the case number, then click on “Search.”

Any questions regarding this Class Notice or the Lawsuit may be directed to the Settlement Administrator at the address and/or telephone number listed in section 16 of this Notice. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address, telephone number or email address set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANTS’ MANAGERS, SUPERVISORS, OR DEFENDANTS’ ATTORNEYS WITH QUESTIONS ABOUT THIS NOTICE.