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Attorneys for Plaintiff ERIK FOSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

ERIK FOSS, individually and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ANDERSON HOSPITALITY, INC., a
California corporation and DOES 1 through
50, Inclusive,

Defendants.

Case No. 195317

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 18, 2022

Time: 8:30 a.m.

Judge: Stephen H. Baker

Dept.: 3

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiff ERIK FOSS, (hereafter "Plaintiff") in this wage and hour class action filed against
6 ANDERSON HOSPITALITY, INC. (hereinafter collectively "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's Motion for Final Approval of
8 Class Action Settlement.

9 3. Attached hereto as **Exhibit "A"** are true and correct copies of the fully executed
10 Stipulation of Settlement of Class Action Claims and Release of Claims (hereinafter collectively
11 "Settlement Agreement").

12 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the conformed March 14,
13 2022, Preliminary Approval Order.

14 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the January 21, 2022, proof
15 of filing the proposed Settlement with the LWDA.

16 6. Attached hereto as **Exhibit "D"** is true and correct copy of the June 22, 2022, proof of
17 filing this motion seeking final approval of this Settlement.

18 **I. INTRODUCTION**

19 7. An objective evaluation of the proposed settlement of \$100,000.00 ("Total Settlement
20 Amount") confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and
21 valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
22 experienced counsel, guided by the wisdom and experience of respected jurist and mediator, Honorable
23 Judge William C. Pate (Ret.). After deducting any Court-approved attorneys' fees and costs, class
24 representative incentive payments, administration costs, and payments to the Labor & Workforce
25 Development Agency ("LWDA"), the Net Settlement Amount shall be distributed to the Settlement
26 Class Members based on the number of Workweeks they worked while employed by Defendant during
27 the Class Period. *The Class greeted news of the Settlement with unanimous approval as, at the time*

1 *of the filing of this motion, all 116 Class Members choose to participate in the Settlement.*¹ There are
2 zero opt-outs and zero objections to the Settlement. The unanimous approval by the Settlement Class
3 evidences the clear fairness and reasonableness of the Settlement

4 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
5 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount
6 of approximately **\$35,666.66**. This will result in an average Individual Settlement Payment of **\$318.25**
7 and a high payment of **\$2,495.83**.

8 9. The relief offered by the Settlement is immediate and is particularly impressive when
9 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
10 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
12 litigation.

13 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
14 approval under California law and falls well within the range of reasonableness. Accordingly, Class
15 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
16 and, entry of the proposed Final Approval Order and Judgment.

17 **II. OVERVIEW OF THE LITIGATION**

18 11. Defendant operates a Best Western hotel in Anderson, California. Plaintiff was employed
19 by Defendant as an hourly, non-exempt front desk clerk during 2020. At all times during his
20 employment, Plaintiff earned an hourly wage, and was subject to all laws regarding meal and/or rest
21 periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment,
22 Plaintiff was subject to Defendant's written policies and procedures contained in, among other
23 documents, Defendant's Employee Handbook.

24 12. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to
25 provide compliant meal and rest periods, failed to provide accurate itemized wage statements, and failed
26 to pay all wages due at the time of his separation from employment, including, failed to provide

27 ¹ Fifteen (15) Notice Packets were deemed undeliverable as no updated address was found via skip tracing efforts.

1 compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay
2 all wages upon separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further,
3 Defendant asserts that it fully complied with all applicable employment laws and raised several other
4 significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest
5 period policies, appropriate on-duty meal break agreements, compliant wage statements, timely paid all
6 wages due upon separation of employment, and arbitration with class action waivers.

7 13. On April 24, 2020, Plaintiff served Defendant and the Labor and Workforce Development
8 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice sets forth
9 the facts and theories supporting Defendant's alleged violations of various provisions of the California
10 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
11 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
12 2698 et seq ("PAGA").

13 14. On July 2, 2020, Plaintiff filed a class action complaint in the Shasta County Superior
14 Court, Case Number 195317 ("Class Action"). The Class Action alleged eight causes of action against
15 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
16 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
17 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4)
18 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure
19 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide
20 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages
21 When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203); and (8) Violation of the Private
22 Attorney General Act ("PAGA").

23 15. Plaintiff commenced written discovery in December 2020, including interrogatories,
24 requests for production, and requests for admissions. The Parties also engaged in the Belaire-West
25 notice procedure and Defendant produced the Class Members contact information to Plaintiff's
26 Counsel. Plaintiff's Counsel subsequently conducted interviews with many of the Class Members.
27 Thereafter, the Parties agreed to mediate this action. In anticipation for mediation, the Parties stipulated
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1 to stay further formal discovery until after mediation. To prepare for mediation, the Class Counsel
2 Requested several documents and data points to further evaluate Plaintiff's claims and Defendant's
3 liability exposure to the Settlement Class Members. In response to Class Counsel's request, Defendant
4 produced a sample of the Class Members' time and payroll data. As discussed *infra*, Plaintiff's counsel
5 retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and
6 payroll data.

7 16. On June 1, 2021, the Parties participated in mediation presided over by respected jurist
8 and mediator, Honorable Judge William Pate (Ret.). After arms-length negotiations and bargaining,
9 the mediation concluded without a settlement. However, the Parties were able to reach an agreement to
10 settle the Action with Judge Pate's assistance. After reaching an agreement in principle, the Parties
11 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

12 17. The Court preliminarily approved an initial Total Settlement Amount of \$100,000 based
13 on a total of approximately 3,800 Workweeks worked by the 116 Class Members during the Class
14 Period. The Total Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2)
15 to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy
16 the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

17 18. Defendant will fund the Settlement by transferring the Total Settlement Amount in two
18 installments. Assuming there are no objectors, Defendant will pay the first installment of \$55,000.00
19 within ten (10) calendar days of the Court entering an order granting final approval of this Settlement.
20 Defendant's will transfer the second installment in the amount of \$45,000.00 within six (6) months of
21 the Effective Date. Agreement, ¶ III(A)(3). The Settlement Administrator shall disburse the Individual
22 Settlement Payments to the Settlement Class Members no later than fifteen (15) days after Defendant
23 deposits the first installment of the Total Settlement Amount into the Qualified Settlement Fund.

24 19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
25 the class and should be granted final approval. This is evidenced by the unanimous approval of the
26 Settlement by the Settlement Class and absence of any objections to the Settlement.

20. Further supporting final approval, the average Individual Settlement Payment of **\$318.25** is comparable to settlement payments in similar wage and hour class actions. This result is particularly favorable considering that liability and certification were far from certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval.

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. Adequate Investigation

21. Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including portions of his earning statements and payroll records. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry.

22. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff's hiring documents, payroll and time records, and Defendant's employee and health and safety handbooks. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked, provide compliant meal and rest periods, and reimburse its employees for required business expenses.

23. Additionally, Defendant provided Class Counsel with the names and contact information for various Class Members. During the litigation, Class Counsel interviewed dozens of Class Members to further investigate the allegations asserted in the Actions. As a result of these interviews, Class Counsel obtained dozens of declarations from putative class members in preparation for Plaintiff's motion for class certification. Ultimately, Class Counsel used these declarations to great affect at the time of mediation.

1 24. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
2 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
3 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
4 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
5 produced the time records for the Class Members, aggregate workweek and pay period data for the
6 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
7 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
8 policies. In total, Defendant produced approximately 900 pages of pertinent policy documents and time
9 and payroll data for Class Counsel to analyze.

10 25. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
11 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
12 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
13 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
14 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

15 26. BCG analyzed Defendant's time and payroll data to assist in the development of various
16 damage models. Among other things, BCG determined the approximate number of work shifts,
17 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
18 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
19 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the
20 amount of off-the-clock work performed by the Class Members during the Class Period.

21 27. In advance of mediation, Class Counsel created several damage models predicated on the
22 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
23 accounting for the uncertainties of continued litigation. These damage models informed and guided
24 Class Counsel during the mediated settlement discussions.

25 28. In addition to formal and informal discovery, witness interviews, document review, data
26 analysis and legal research, Class Counsel also researched similar wage and hour actions. Here, Class
27 Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District Court,
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1 Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class action
2 against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700 class
3 members (a number similar to class members covered by this Settlement) for the period between
4 October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are
5 identical, this research provided Class Counsel with a marker to inform settlement discussions and,
6 ultimately, to measure this settlement against.

7 29. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
8 determining Plaintiff's suitability as a putative class representative through interviews, background
9 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
10 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
11 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
12 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
13 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
14 estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with dozens
15 of putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This
16 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
17 as well as the impediments to recovery, such as to make an independent assessment of the
18 reasonableness of the terms to which the Parties have agreed.

19 30. Class Counsel only agreed to enter the Settlement following his thorough investigation
20 and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and
21 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
22 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
23 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
24 reasonable, and adequate, the Court should preliminarily approve the Settlement

25 **B. The Parties Settled after Mediation**

26 31. The Settlement is the product of a mediation session with a respected mediator and
27 subsequent negotiations over the terms of the Settlement. Although the mediation concluded without a
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1 settlement, the Parties, represented by their respective counsel, were able to reach an agreement shortly
2 after the mediation. The negotiations were adversarial, conducted at arm's length and tempered by the
3 efforts of both sides to serve the interests of their clients. The amount of the service award was not
4 negotiated until after the parties agreed to the Total Settlement Amount and many other terms.

5 **C. Class Counsel is Experienced in Similar Litigation**

6 32. Plaintiff is represented by competent and experienced counsel to pursue his claims. I
7 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
8 aggrieved employees and consumers throughout California in wage and hour class actions and complex
9 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
10 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Tesla Stone (Paralegal), Leilani Edmunds
11 (Legal Secretary), Sydney Castillo-Johnson (Law Clerk), Peyton Turner (Law Clerk), Amanda
12 Rasmussen (Law Clerk), Sara Christensen (Legal Assistant).

13 33. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved
14 Employees. I have extensive experience with wage and hour class and representative actions litigation
15 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
16 litigation experience and complex construction product liability experience. I can, will and have
17 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved
18 Employees throughout this action.

19 34. I have represented consumers and employees in California class actions, and complex
20 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a
21 plaintiffs' civil litigation attorney since April 2007.

22 35. I have significant class counsel and collective action counsel experience. I served as class
23 and/or collective (PAGA) counsel in the following matters:

- 24 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
25 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar
26 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The
27

1 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA
2 counsel for the State of California.

3 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914
4 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA
5 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC
6 acted as class counsel for the settlement class and as representative PAGA counsel the
7 State of California and the Aggrieved Employees.)

8 c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-
9 CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million
10 dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums
11 and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

12 d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-
13 20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and
14 appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action
15 settlement.)

16 e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.
17 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and
18 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed
19 the JCL Law Firm, APC as Class Counsel)

20 f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case
21 No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson
22 approved \$550 billing rate in a representative California Labor Code Private Attorney
23 General Act settlement).

24 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
25 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
26 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
27

1 class counsel for the settlement class and as representative PAGA counsel the State of
2 California and the Aggrieved Employees.)

3 h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
4 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
5 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
6 employees by the JCL Law Firm, APC.)

7 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
8 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the
9 JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for,
10 *inter alia*, missed meal and rest periods.)

11 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case
12 No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
13 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
14 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

15 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
16 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
17 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
18 *inter alia*, off-the-clock work.)

19 l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
20 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
21 Counsel and granted final approval of wage and hour class action for off-the-clock work.)

22 m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No.
23 SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class
24 counsel and granted final approval of wage and hour class action for meal period
25 violations.)

26 n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
27 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
28

1 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
2 acted as lead counsel.)

3 o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
4 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
5 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
6 counsel.)

7 p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
8 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
9 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
10 Class Counsel.)

11 q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
12 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
13 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
14 action settlement arising out of Civil Code Section 1940.1.)

15 r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
16 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
17 class counsel and granted final approval of wage and hour class action for unpaid
18 overtime.)

19 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
20 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm,
21 APC, as Class Counsel and granted preliminary approval for the wage and hour class
22 action settlement involving nearly 900 current and former employees. Final approval
23 scheduled for October 4, 2019)

24 t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
25 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
26 as Class Counsel and granted final approval for a wage and hour class action settlement
27 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
28

- 1 u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
2 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
3 APC, as Class Counsel and granted final approval for a wage and hour wage class action
4 settlement involving misclassified house cleaners.)
- 5 v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-
6 2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an
7 unlawful housing class action arising under Civil Code Section 1940.2)
- 8 w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court
9 Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock
10 appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage
11 and hour class action settlement for meal and rest period violations);
- 12 x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case
13 No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm,
14 APC, as Class Counsel and granted final approval for a wage and hour class action
15 settlement involving claims for on duty meal and rest periods.);
- 16 y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court
17 Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- 18 z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
19 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
20 rest periods)
- 21 aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-
22 00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
23 misclassification);
- 24 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.
25 BC617160 (2017 - Certified and settled wage and hour class action.);
- 26 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case
27 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

1 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-
2 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices
3 arising out of Civil Code Section 1940.1);
4

5 36. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
6 favorable verdict for the firm's clients.

7 37. Finally, I have published appellate experience in *William Blanchette et al., v. The*
8 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

9 38. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,
10 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,
11 Rising Star list recognizes the top 2.5% of eligible attorneys. (see
12 https://www.superlawyers.com/about/selection_process.html.)

13 **D. Risks of Continued Litigation**

14 39. With respect to the most immediate challenge, i.e., class certification, the risks attendant
15 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
16 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
17 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
18 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
19 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
20 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
21 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
22 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
23 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
24 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
25 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
26 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
27 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
28

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement.

6 40. Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
7 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
8 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
9 drastically affect the value of Plaintiff's claims and, in fact, already has. Recently, the California Court
10 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
11 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*
12 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (review granted). The *Naranjo* decision gutted Plaintiffs'
13 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
14 predicated on rest period violations².

15 41. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
16 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.
17 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little
18 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to
19 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
20 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
21 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
22 outweigh an uncertain result three or more years in the future.

23
24
25 ² Very recently, the California Supreme Court issued a decision concluding that meal premiums are
26 "wages," thus entitled Plaintiff and Class Members to derivative waiting time and wage statement
27 penalties for Defendant's meal and rest period violations. *Naranjo v. Spectrum Security Services,*
28 *Inc.*, (May 23, 2022, S258966) Cal.5th [p. 9] <http://courts.ca.gov/opinions>.) However, at the time the
Parties reached an agreement to settle the Action, Plaintiff's damages and penalties arising from
derivative wage statement and waiting time claims was far from certain.

42. Class Representative and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable and adequate, and should be granted final approval. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (See also *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Collectively, the examples cited above

1 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
2 through a contested motion is a significant risk factor favoring settlement.

3 **E. The Total Settlement Amount is Fair and Reasonable**

4 43. The Total Settlement Amount of \$100,000.00 in this case is fair and well within the range
5 of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement
6 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
7 various potential impediments to recovery. Class Counsel developed varied economic damages models
8 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
9 The various models were informed by Class Counsel's investigation, including the analysis of a
10 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
11 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
12 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 32%
13 of Defendant's liability exposure for damages, and 17.8% of Defendant's liability exposure for damages
14 and penalties, as estimated by Class Counsel and BCG at the time of mediation. JCL Dec., ¶ 45.

15 44. Clearly the goal of this litigation to obtain redress for the class has been met by this
16 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
17 between experienced counsel, the settlement is fair and reasonable, particularly in light of Defendant's
18 myriad defenses and counter-arguments to Plaintiff's claims and theories³. JCL Dec., ¶ 46.

19 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

20 45. Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of
21 \$5,000.00 which is 5% of the Total Settlement Amount. This amount falls well within the range of
22 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$3,750.00) will

23 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
24 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
25 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811,
26 at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see
27 also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 ("Courts have not identified a
28 precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures
roughly six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating
the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.").

1 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
2 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
3 courts and should be approved.

4 46. Further, on January 21, 2022, Class Counsel gave the LWDA notice of this Settlement
5 and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval
6 with the LWDA. On June 22, 2022, Plaintiff gave the LWDA notice of this motion seeking final
7 approval of this settlement. By not registering an objection with either Class Counsel or the Court, the
8 LWDA has accepted and approved of the proposed PAGA Settlement.

9 I declare under the penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 22nd day of June 2022, at San Diego, California.

11
12 **JCL LAW FIRM, APC**

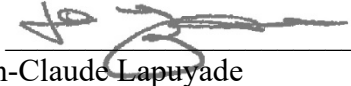
13 By: 
14 Jean-Claude Lapuyade
15 Attorneys for Plaintiff
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EXHIBIT A

ZAKAY LAW GROUP, APLC
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SHASTA

ERIK FOSS, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

PLAINTIFF,

vs.

ANDERSON HOSPITALITY, INC., a
California Corporation; and DOES 1 through
50, Inclusive;
DEFENDANTS.

Case No. 195317

[Action Filed 07/02/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA CLAIMS,
AND RELEASE OF CLAIMS**

Judge: Honorable Stephen H. Baker
Dept.: 3

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between plaintiff ERIK FOSS (hereinafter “Plaintiff”), individually and on behalf of the putative class and the State of California as a private attorney general, and Defendant ANDERSON HOSPITALITY, INC., a California Corporation (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action and representative lawsuit under the California Labor Code's Private Attorneys' General Act of 2004 ("PAGA") designated *Foss v. Anderson Hospitality, Inc.*, Shasta County Superior Court, Case No. 195317, filed July 2, 2020 (hereinafter “the Action”)
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys’ fees not to exceed one-third of the Total Settlement Amount currently estimated to be \$33,333.33, plus costs and expenses in the amount of \$12,500. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).

1 F. "Class Data" means information regarding Class Members that Defendant will in
2 good faith compile from its records and provide to the Settlement Administrator. It
3 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
4 Member's full name; last known address; Social Security Number; start dates and end
5 dates of employment.

7 G. "Class Members" or the "Class" means all non-exempt employees who are or
8 previously were employed by Defendant in California during the Class Period.

10 H. "Class Period" means the period between July 2, 2016 to October 31, 2021.

12 I. "Class Representative Service Award" means the amount that the Court authorizes to
13 be paid to the Class Representative, in addition to his Individual Settlement Payment
14 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
15 in assisting with the prosecution of the Action and in exchange for executing a
16 General Release of Defendant.

18 J. "Class Representative" shall mean plaintiff ERIK FOSS.

20 K. "Court" means the Superior Court for the State of California, County of Shasta
21 currently presiding over the Action.

23 L. "Defendant" shall mean Anderson Hospitality Inc., a California Corporation.

24 M. "Effective Date" means the earliest date, following entry by the Court of an order
25 and judgment finally approving this Settlement, upon which one of the following have
26 occurred: (i) if no objection is filed to the settlement and no objector appears at the
27 hearing on final approval, the date of the Court's entry of the order granting final
28

1 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
2 hearing on final approval, then the earlier of the following: (a) the expiration of all
3 potential appeal periods without a filing of a notice of appeal of the final approval
4 order or judgment; (b) final affirmance of the final approval order and judgment by
5 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
6 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
7 the final approval order and judgment is no longer subject to further judicial review.
8 The Effective Date cannot occur, and Defendant shall not be obligated to fund this
9 Settlement, until and unless final approval occurs with no objections to the settlement
10 or, if there are any objections, then after there is no possibility of an appeal or further
11 appeal that could potentially prevent this Settlement Agreement from becoming final
12 and binding.
13
14

15 N. "Funding Date #1" shall mean ten (10) calendar days after the Effective Date and is
16 the date Defendant transfers \$55,000 of the Total Settlement Amount into the QSF in
17 accord with the terms of this Agreement.
18

19 O. "Funding Date #2" shall mean six (6) months after the Effective Date and is the date
20 Defendant transfers the remaining \$45,000 of the Total Settlement Amount into the
21 QSF in accord with the terms of this Agreement.
22

23 P. "Individual Settlement Payment" means the amount payable from the Net Settlement
24 Amount to each Settlement Class Member and excludes any amounts distributed to
25 Aggrieved Employees pursuant to PAGA.
26
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- 1 Q. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and
3 Settlement Administration Costs.
4
- 5 R. "Notice Packet" means the Class Notice to be provided to the Class Members by the
6 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
7 than formatting changes to facilitate printing by the Settlement Administrator).
8
- 9 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
10 Labor Code § 2698 *et seq.*
- 11 T. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
12 for each Aggrieved Employee divided by the sum total of the pay periods for all
13 Aggrieved Employees during the PAGA Period.
14
- 15 U. "PAGA Period" means the period between April 24, 2019 until October 31, 2021 (the
16 "PAGA Period").
17
- 18 V. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000) to be allocated from
19 the Total Settlement Amount.
20
- 21 W. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
22 Plaintiff or Defendant, individually.
23
- 24 X. "Class Payment Ratio" means the respective Workweeks for each Class Member
25 divided by the sum total Workweeks for all Class Members.
26
- 27 Y. "Plaintiff" shall mean ERIK FOSS.
28

1 Z. “QSF” means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Total Settlement Amount.

3
4 AA. “Released Class Claims” means a full and final release and discharge by each Class
5 Member in favor of the Released Parties of and from any and all potential or actual
6 claims, rights, debts, wages, liabilities, demands, obligations, penalties, guarantees,
7 costs, expenses, attorneys' fees, costs, interest, restitution, equitable relief, damages,
8 liquidated damages, actions, claims or causes of action arising out of, or based upon,
9 the facts alleged or which reasonably could have been alleged in the operative
10 complaint based on the facts alleged, under any state, federal, or local law, rule, or
11 regulation, including, without limitation, the California Labor Code, and federal Fair
12 Labor Standards Act of 1938, as amended ("FLSA"). This release expressly includes
13 any and all claims alleged in the operative complaint, including (a) alleged violations
14 related to unpaid overtime, (b) failure to pay the proper regular rate of pay for
15 overtime worked, (c) failure to pay for all time worked, including alleged off-the-
16 clock work, (d) unpaid minimum wage violations, (e) timecard alteration, (f) failure
17 to keep accurate time records, (g) alleged failure to provide proper meal breaks, (h)
18 alleged failure to provide proper rest breaks, (i) alleged failure to pay meal or rest
19 break premiums at the proper rate of pay, and (j) alleged failure to furnish full,
20 accurate wage statements. The "Released Class Claims" also expressly include those
21 claims, theories, and causes of action asserted under Labor Code sections 201, 202,
22 203, 206.5, 226, 226.7, 510 *et seq.*, 512, 515, 558, 1194, 1197, 1197.1, 1198, and all
23 such claims under the applicable Industrial Wage Order(s), as well as all
24 corresponding provisions of the FLSA. The "Released Class Claims" expressly
25
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1 exclude all other claims, including claims for vested benefits, wrongful termination,
2 unemployment insurance, disability, social security, workers' compensation, and any
3 claims outside of the Class Period. The Released Class Claims also exclude any and
4 all claims for violations of PAGA and for PAGA penalties, which are separately being
5 released hereinbelow.
6

7 BB. "Released PAGA Claims" means a full and final release and discharge by the State
8 of California, the California Labor Workforce Development Agency ("LWDA"), and
9 each Aggrieved Employee in favor of the Released Parties as to any claims, rights, or
10 causes of action for civil penalties, attorneys' fees, interest, costs, or any relief under
11 PAGA, which is predicated upon the alleged Labor Code violations supporting the
12 PAGA claims alleged in the operative complaint and those alleged in Plaintiff's
13 PAGA notice to the LWDA, including civil penalties arising from (a) alleged
14 violations related to unpaid overtime, (b) failure to pay the proper regular rate of pay
15 for overtime worked, (c) failure to pay for all time worked, including alleged off-the-
16 clock work, (d) unpaid minimum wage violations, (e) timecard alteration, (f) failure
17 to keep accurate time records, (g) alleged failure to provide proper meal breaks, (h)
18 alleged failure to provide proper rest breaks, (i) alleged failure to pay meal or rest
19 break premiums at the proper rate of pay, and (j) alleged failure to furnish full,
20 accurate wage statements. The "Released PAGA Claims" expressly include claims
21 for civil penalties under PAGA arising from alleged violations of Labor Code sections
22 201, 201.3, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510 *et seq.*,
23 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199 and all such
24 claims under the applicable Industrial Wage Order(s). The "Released PAGA Claims"
25
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28

1 expressly exclude all other claims, including claims for vested benefits, unpaid wages,
2 wrongful termination, unemployment insurance, disability, social security, workers'
3 compensation, and any PAGA claims or claims for civil penalties outside the PAGA
4 Period.
5

6 CC. "Released Parties" shall mean Defendant Anderson Hospitality, Inc., along with any
7 past, present, and future affiliated company, any predecessors, related or affiliated
8 companies, subsidiaries, parents, alleged joint employer(s), divisions, officers,
9 directors, agents, employees, attorneys, insurers, successors, assigns, stockholders,
10 principals, owners, trustees, partners, representatives, and members.
11

12 DD. "Response Deadline" means the date forty-five (45) days after the Settlement
13 Administrator mails Notice Packets to Class Members and the last date on which
14 Class Members may submit requests for exclusion or objections to the Settlement.
15

16 EE. "Settlement" means the disposition of the Action pursuant to this Agreement.
17

18 FF. "Settlement Administrator" means ILYM Group, Inc.. The Settlement Administrator
19 establishes, designates and maintains, as a QSF under Internal Revenue Code section
20 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total
21 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
22 Class Members and Aggrieved Employees. The Settlement Administrator shall
23 maintain the funds until distribution in an account(s) segregated from the assets of
24 Defendant and any person related to Defendant. Any accrued interest shall be paid
25 and distributed to the Settlement Class Members as part of their respective Individual
26 Settlement Payment.
27
28

1 GG. "Settlement Class Members" or "Settlement Class" means all Class Members who
2 have not submitted a timely and valid request for exclusion as provided in this
3 Agreement.

4
5 HH. "Total Settlement Amount" means One Hundred Thousand Dollars (\$100,000.00)
6 that Defendant must pay into the QSF in connection with this Settlement in
7 consideration of a judgment of dismissal of the Action in its entirety with prejudice,
8 as well as the various releases. The Total Settlement Amount shall be the maximum
9 amount Defendant shall be obligated to pay under the terms of this Settlement
10 Agreement, except for the employer's share of payroll tax, if any, triggered by any
11 payment under this Settlement.
12

13 II. "Workweeks", for purposes of calculating the distribution of the Net Settlement
14 Amount, means the number of weeks of employment during the Class Period that
15 each Class Member was employed by Defendant in California, excluding weeks
16 during which the Class Member did not perform any work for Defendant. For purpose
17 of determining the Individual Settlement Payments and the Settlement Allocation,
18 each Class Member who is a former employee no longer working for Defendant will
19 be assigned four (4) additional Workweeks.
20
21

22 JJ. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved
23 Employee Payment, as defined herein, means the number of pay periods of
24 employment during the PAGA Period that each Aggrieved Employee worked in
25 California.
26
27
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1 **II. RECITALS**

2 A. On or about April 24, 2020, Plaintiff filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendant.

4
5 B. On July 2, 2020, Plaintiff filed the Class Action lawsuit for:

6
7 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*,
8 predicated on various alleged violations of the California Labor Code and the
9 applicable Industrial Wage Order(s);

10
11 2. Failure to pay minimum wages in violation of California Labor Code sections
12 1194, 1197 and 1197.1;

13
14 3. Failure to pay overtime wages in violation of California Labor Code sections
15 510 *et seq*;

16
17 4. Failure to provide required meal periods in violation of California Labor Code
18 sections 226.7 and 512 and the applicable IWC wage order;

19
20 5. Failure to provide required rest periods in violation of California Labor Code
21 sections 226.7 and 512 and the applicable IWC wage order;

22
23 6. Failure to provide accurate itemized wage statements in violation of California
24 Labor Code section 226;

25
26 7. Failure to provide wages when due in violation of California Labor Code
27 sections 201, 202 and 203;

1 8. Violation of the Private Attorneys General Act [Labor Code section 2698],
2 which cause of action was predicated upon various alleged violations of the California
3 Labor Code and the applicable Industrial Wage Order(s).

4
5 C. The Class Representative believes he has meritorious claims based on alleged
6 violations of the California Labor Code, and the Industrial Wage Commission Wage
7 Orders, and that class certification is appropriate because the prerequisites for class
8 certification can be satisfied in the Action, and this Action is manageable as a PAGA
9 representative action.

10
11 D. Defendant denies same, and denies any liability or wrongdoing of any kind
12 whatsoever, disputes any wages, damages and penalties claimed by the Class
13 Representative and Class are owed, and further contends that, for any purpose other
14 than settlement, the Action is not appropriate for class or representative action
15 treatment. Defendant contends, among other things, that at all times they complied
16 with the California Labor Code and the Industrial Wage Commission Orders, and all
17 other applicable laws.

18
19
20 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
21 an investigation into the facts relevant to the Action, including conducting an
22 independent investigation as to the allegations, reviewing documents and information
23 exchanged through informal discovery, and reviewing documents and information
24 provided by Defendant pursuant to informal requests for information to prepare for
25 mediation. Defendant produced for the purpose of settlement negotiations certain
26 employment data concerning the Aggrieved Employees and Settlement Class, which
27

1 Class Counsel reviewed and analyzed. Based on their own independent investigation
2 and evaluation, Class Counsel are of the opinion that the Settlement with Defendant
3 is fair, reasonable and adequate, and is in the best interest of the Aggrieved Employees
4 and the Settlement Class in light of all known facts and circumstances, including the
5 risks of significant delay, defenses asserted by Defendant, uncertainties regarding
6 class certification, and numerous potential appellate issues. Although it denies any
7 liability, Defendant is agreeing to this Settlement solely to avoid the inconveniences
8 and cost of further litigation. The Parties and their counsel have agreed to settle the
9 claims on the terms set forth in this Agreement.
10

11
12 F. On June 1, 2021, the Parties participated in mediation presided over by Hon. William
13 C. Pate (Ret.), a respected jurist and an experienced mediator of wage and hour class
14 and representative actions. The mediation concluded without a settlement. However,
15 following the mediation, each side, represented by its respective counsel, were able
16 to reach an agreement to settle this Action for the Total Settlement Amount of
17 \$100,000 following further discovery and discussions. The Parties later entered into
18 this Joint Stipulation of Settlement of Class and PAGA Action and Release of Claims.
19

20 G. This Agreement replaces and supersedes any other agreements, understandings, or
21 representations between the Parties. This Agreement represents a compromise and
22 settlement of highly disputed claims. Nothing in this Agreement is intended or will
23 be construed as an admission by Defendant that the claims in the Action have merit
24 or that Defendant bears any liability to Plaintiff or the Class or Aggrieved Employees,
25 or as an admission by Plaintiff that Defendant's defenses in the Action has merit.
26
27
28

1 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
2 Settlement was arrived at through arm's-length negotiations, taking into account all
3 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
4 attendant to continuing the Action through class certification, trial and any appeal.
5 Accordingly, the Parties desire to fully, finally, and forever settle, compromise and
6 discharge all disputes and claims arising from or relating to the Action.
7

8 I. The Parties agree to conditional certification of the Class strictly for purposes of
9 effectuating this Settlement only. If for any reason the settlement is not preliminarily
10 or finally approved by the Court or does not otherwise become effective, Defendant
11 will and hereby reserves the right to contest certification of any class for any reason
12 and reserves all available defenses to the claims in the Action.
13

14
15 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration and Settlement Payments by Defendant.

- 18
19 1. Settlement Consideration. In full and complete settlement of the Action, and
20 in exchange for the releases set forth herein and below, Defendant and the
21 Released Parties will pay the Total Settlement Amount of One Hundred
22 Thousand Dollars (\$100,000.00). The Parties agree that this is a non-
23 reversionary Settlement and that no portion of the Total Settlement Amount
24 shall revert to Defendant. Other than the Defendant's share of employer
25 payroll taxes, Defendant shall not be required to pay more than the Total
26 Settlement Amount, except as provided for hereinbelow.
27
28

1 2. Class Size. At the time of mediation (June 1, 2021), Defendant estimated that
2 the Settlement Class was approximately 104 individuals who collectively
3 worked approximately 3,800 Workweeks during the Class Period (“Projected
4 Workweeks”). In regard hereto, Defendant will provide a declaration under
5 penalty of perjury confirming the number of Class Members and Workweeks
6 they worked during the Class Period prior to the filing of the motion for
7 preliminary approval. If the workweek numbers is greater than 105% of the
8 workweek estimate provided herein, the end date of the Release Period and
9 Class Period will be adjusted so that the number of workweeks in the Release
10 Period and Class Period does not exceed 105% of the estimate.

11
12
13 3. Settlement Payment. Defendant and the Released Parties, and each of them,
14 are jointly and severally liable for payment of the Total Settlement Amount.
15 Defendant shall pay, via wire transfer, the Total Settlement Amount in two
16 installments as follows: \$55,000 on Funding Date #1 and \$45,000 due on
17 Funding Date #2.

18
19 4. Defendant’s Share of Payroll Taxes. Defendant’s share of employer side
20 payroll taxes is in addition to the Total Settlement Amount and shall be paid
21 together with the Total Settlement Amount.

22
23 B. Release by Settlement Class Members. As of the Funding Date #2, in exchange for
24 the consideration set forth in this Agreement, Plaintiff and the Settlement Class
25 Members release the Released Parties from the Released Class Claims for the Class
26 Period. Participating Class Members agree not to sue or otherwise make any claim
27
28

1 against any of the Released Parties that seeks recovery for any of the Released Class
2 Claims. It is the intent of the Parties that the final approval order and judgment entered
3 by the Court shall have full claim and issue preclusive effect, and be final and binding
4 on Participating Class Members, regarding the Released Class Claims.

5
6 C. Release by the Aggrieved Employees. As of the Funding Date #2, in exchange for the
7 consideration set forth in this Agreement, and as more specifically set forth above in
8 Sections I(AA), I(BB), and III(B), the Plaintiff, the LWDA and the State of California
9 release the Released Parties from the PAGA Released Claims for the PAGA Period.
10 As a result of this release, Aggrieved Employees shall be precluded from making any
11 claim against any of the Released Parties that seeks recovery for any of the Released
12 PAGA Claims. It is the intent of the Parties that the final approval order and judgment
13 entered by the Court shall have full claim and issue preclusive effect, and be final and
14 binding on the State of California, the LWDA and the Aggrieved Employees,
15 regarding the Released PAGA Claims.

16
17 D. General Release by Plaintiff. As of the Funding Date #2, for the consideration set
18 forth in this Agreement, Plaintiff waives, releases, acquits and fully, finally, and
19 forever discharges the Released Parties of and from any and all claims, whether now
20 known or unknown, which exist or may exist on his behalf as of the date of this
21 Agreement, including but not limited to any and all claims, debts, wages, liabilities,
22 demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, costs,
23 interest, damages, actions, claims or causes of action arising out of the Parties'
24 relationship or Plaintiff's employment with Defendant, including, without limitation,
25 any tort claims, contract claims, wage claims, wrongful termination claims, disability
26 claims, benefit claims, public policy claims, retaliation claims, statutory claims,
27
28

1 personal injury claims, emotional distress claims, invasion of privacy claims,
2 defamation claims, fraud claims, quantum meruit claims, and any and all claims
3 arising under any federal, state or other governmental statute, law, regulation or
4 ordinance, including, but not limited to claims for violation of the Fair Labor
5 Standards Act, the California Labor Code, the Wage Orders of California's Industrial
6 Welfare Commission, other state wage and hour laws, the Americans with
7 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
8 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
9 California Fair Employment and Housing Act, the California Family Rights Act, the
10 Family Medical Leave Act, California's Whistleblower Protection Act, California
11 Business & Professions Code Section 17200 et seq., and any and all claims arising
12 under any federal, state or other governmental statute, law, regulation or ordinance.
13 Plaintiff also waives and relinquishes any and all claims, rights or benefits that he
14 may have under California Civil Code § 1542, which provides as follows:
15

16
17 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
18 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
19 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
20 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
21 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
22 ***DEBTOR OR RELEASED PARTY.***
23

24
25 Thus, notwithstanding the provisions of section 1542, and to implement a full and
26 complete release and discharge of the Released Parties, Plaintiff expressly
27 acknowledges this Settlement Agreement is intended to include in its effect, without
28

1 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
2 the time of signing this Settlement Agreement, and that this Settlement Agreement
3 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
4 has read this Settlement Agreement, including this waiver of California Civil Code
5 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
6 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
7 about the waiver of section 1542, and that Plaintiff understands this Settlement
8 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
9 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
10 discover facts different from or in addition to those Plaintiff now knows or believes to
11 be true regarding the matters released or described in this Settlement Agreement, and
12 even so Plaintiff agrees that the releases and agreements contained in this Settlement
13 Agreement shall remain effective in all respects notwithstanding any later discovery of
14 any different or additional facts. Plaintiff expressly assumes any and all risk of any
15 mistake in connection with the true facts involved in the matters, disputes, or
16 controversies released or described in this Settlement Agreement or with regard to any
17 facts now unknown to Plaintiff relating thereto.
18
19
20

21 E. Conditions Precedent: This Settlement will become final and effective only upon the
22 occurrence of all of the following events:
23

- 24 1. The Court enters an order granting preliminary approval of the Settlement;
- 25 2. The Court enters an order granting final approval of the Settlement and a Final
26 Judgment consistent with this Agreement;
27

1 3. If an objector appears at the final approval hearing, the time for appeal of the
2 Final Judgment and Order Granting Final Approval of Class Action
3 Settlement shall have expired; or, if an appeal is timely filed, there is a final
4 resolution of any appeal from the Judgment and Order Granting Final
5 Approval of Class Action Settlement; and

6
7 4. Defendant fully funds the Total Settlement Amount.
8

9 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
10 not preliminarily or finally approved by the Court, fails to become effective, or is
11 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
12 Defendant from obtaining a complete resolution of the Released Claims, or if
13 Defendant fails to fully fund the Total Settlement Amount:
14

15 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
16 and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or
18 procedural;
19

20 2. The conditional class certification (obtained for any purpose) shall be void *ab*
21 *initio* and of no force or effect, and shall not be admissible in any judicial,
22 administrative or arbitral proceeding for any purpose or with respect to any
23 issue, substantive or procedural; and
24

1 3. None of the Parties to this Settlement will be deemed to have waived any
2 claims, objections, defenses or arguments in the Actions, including with
3 respect to the issue of class certification.

4
5 4. If Defendant fails to fully fund the Total Settlement Amount, Defendant shall
6 bear the sole responsibility for any cost to issue or reissue any curative notice
7 to the Settlement Class Members and all Settlement Administration Costs
8 incurred to the date of nullification.

9
10 G. Certification of the Settlement Class. The Parties stipulate to conditional class
11 certification of the Class for the Class Period for purposes of settlement only. In the
12 event that this Settlement is not approved by the Court, fails to become effective, or is
13 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
14 Defendant from obtaining a complete resolution of the Released Claims, the
15 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
16 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or procedural.

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19
20 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
21 effect of the payments called for, and Class Members and/or Aggrieved Employees are
22 not relying on any statement or representation by the Parties in this regard. Class
23 Members and/or Aggrieved Employees understand and agree that they will be
24 responsible for the payment of any taxes and penalties assessed on the Individual
25 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
26 Settlement described and shall be solely responsible for any penalties or other
27

obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

I. 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, her 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 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Plaintiff will provide Defendant with

1 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
2 Defendant an opportunity to propose changes or additions to the Motion.

3
4 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
5 establishing and administering the QSF; calculating, processing and mailing payments
6 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
7 mailing the Notice Packets to the Class Members as directed by the Court; receiving
8 and reporting the objections and requests for exclusion; calculating, deducting and
9 remitting all legally required taxes from Individual Settlement Payments and
10 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
11 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
12 Settlement; processing and mailing tax payments to the appropriate state and federal
13 taxing authorities; providing declaration(s) as necessary in support of preliminary
14 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
15 or the Court orders the Settlement Administrator to perform. The Settlement
16 Administrator shall keep the Parties timely apprised of the performance of all
17 Settlement Administrator responsibilities by among other things, sending a weekly
18 status report to the Parties' counsel stating the date of the mailing, the of number of
19 Elections Not to Participate in Settlement it receives (including the numbers of valid
20 and deficient), and number of objections received.

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24 L. Notice Procedure.

25 1. Class Data. No later than ten (10) business days after the Court enters an order
26 preliminarily approving the Settlement, Defendant shall provide the
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1 Settlement Administrator with the Class Data for purposes of preparing and
2 mailing Notice Packets to the Class Members.

3
4 2. Notice Packets.

- 5
6 a) The Notice Packet shall contain the Notice of Class Action Settlement
7 in a form substantially similar to the form attached as Exhibit A. The
8 Notice of Class Action Settlement shall inform Class Members and
9 Aggrieved Employees that they need not do anything in order to
10 receive an Individual Settlement Payment and/or Aggrieved
11 Employees' individual shares of the PAGA Settlement and to keep the
12 Settlement Administrator apprised of their current mailing address, to
13 which the Individual Settlement Payments and/or Aggrieved
14 Employees' individual shares of the PAGA Settlement will be mailed
15 following the Funding Date. The Notice of Class Action Settlement
16 shall set forth the release to be given by all members of the Class who
17 do not request to be excluded from the Settlement Class and/or
18 Aggrieved Employees' in exchange for an Individual Settlement
19 Payment and/or Aggrieved Employees' individual shares of the PAGA
20 Settlement, the number of Workweeks and Pay Periods worked by
21 each Class Member during the Class Period and PAGA Period, if any,
22 and the estimated amount of their Individual Settlement Payment if
23 they do not request to be excluded from the Settlement, and each
24 Aggrieved Employee's share of the PAGA Settlement, if any. The
25 Settlement Administrator shall use the Class Data to determine Class
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Members' Workweeks and PAGA Workweeks. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the PAGA Settlement regardless of whether they request to be excluded from the Settlement, and that they have no ability to request exclusion from the PAGA Settlement.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail . The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform one re-mailing, if another mailing address is identified by
8 the Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendant, are
10 returned to the Settlement Administrator as non-delivered and no forwarding
11 address is provided, the Settlement Administrator shall notify Defendant.
12 Defendant will request that the currently employed Class Member provide a
13 corrected address, and transmit to the Administrator any corrected address
14 provided by the Class Member. Class Members who received a re-mailed
15 Notice Packet shall have their Response Deadline extended fifteen (15) days
16 from the original Response Deadline.

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20 5. Disputes Regarding Individual Settlement Payments. Class Members will
21 have the opportunity during the notice period, should they disagree with
22 Defendant's records regarding the start and end dates of employment to
23 provide documentation and/or an explanation to show contrary dates. If there
24 is a dispute, the Settlement Administrator will consult with the Parties to
25 determine whether an adjustment is warranted. The Settlement Administrator
26 shall determine the eligibility for, and the amounts of, any Individual
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1 Settlement Payments under the terms of this Agreement. The Settlement
2 Administrator's determination of the eligibility for and amount of any
3 Individual Settlement Payment shall be binding upon the Class Member and
4 the Parties.
5

6 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
7 by the Settlement Administrator concerning the administration of the
8 Settlement will be resolved by the Court under the laws of the State of
9 California. Before any such involvement of the Court, counsel for the Parties
10 will confer in good faith to resolve the disputes without the necessity of
11 involving the Court.
12

13 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
14 Packet shall state that Class Members who wish to exclude themselves from
15 the Settlement must submit a written request for exclusion by the Response
16 Deadline. The written request for exclusion must state that the Class Member
17 wishes to exclude himself or herself from the Settlement and (1) must contain
18 the name, address, and the last four digits of the Social Security number of the
19 person requesting exclusion; (2) must be signed by the Class Member; (3)
20 must be postmarked or fax stamped by the Response Deadline and returned to
21 the Settlement Administrator at the specified address or fax telephone number;
22 and (4) contain a typewritten or handwritten notice stating in substance: "I
23 wish to opt out of the settlement of the class action lawsuit entitled *Foss v.*
24 *Anderson Hospitality, Inc.*, currently pending in the Superior Court for the
25 County of Shasta, Case No. 195317. I understand that by requesting to be
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1 excluded from the settlement, I will receive no money from the Settlement
2 described in this Notice.” The request for exclusion shall not be valid if it is
3 not timely submitted, if it is not signed by the Class Member, or if it does not
4 contain the name and address and last four digits of the Social Security number
5 of the Class Member. The date of the postmark on the mailing envelope or
6 fax stamp on the request for exclusion shall be the exclusive means used to
7 determine whether the request for exclusion was timely submitted. Any Class
8 Member who requests to be excluded from the Settlement Class will not be
9 entitled to an Individual Settlement Payment and will not be otherwise bound
10 by the terms of the Settlement or have any right to object, appeal or comment
11 thereon. However, any Class Member that submits a timely request for
12 exclusion that is also a member of the Aggrieved Employees will still receive
13 his/her pro rata share of the PAGA Settlement, as specified below, and in
14 consideration, will nevertheless be bound by the Released PAGA Claims of
15 the Aggrieved Employees as set forth herein. Settlement Class Members who
16 fail to submit a valid and timely written request for exclusion on or before the
17 Response Deadline shall be bound by all terms of the Settlement and any final
18 judgment entered in this Action if the Settlement is approved by the Court.
19 No later than fourteen (14) calendar days after the Response Deadline, the
20 Settlement Administrator shall provide counsel for the Parties with a final list
21 of the Class Members who have timely submitted written requests for
22 exclusion. At no time shall any of the Parties or their counsel seek to solicit
23 or otherwise encourage members of the Class to submit requests for exclusion
24 from the Settlement.
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1 8. Option to Terminate. If, before the Final Approval Hearing, more than seven
2 and one-half percent (7.5%) of Class Members have submitted timely and
3 valid Requests for Exclusion, Defendant shall have, in its sole discretion, the
4 option to terminate this Settlement.

5
6 9. Objections. The Notice of Class Action Settlement contained in the Notice
7 Packet shall state that Class Members who wish to object to the Settlement
8 may submit to the Settlement Administrator a written statement of objection
9 ("Notice of Objection") by the Response Deadline. The postmark date of
10 mailing shall be deemed the exclusive means for determining that a Notice of
11 Objection was served timely. The Notice of Objection must be signed by the
12 Settlement Class Member and state: (1) the case name and number; (2) the
13 name of the Settlement Class Member; (3) the address of the Settlement Class
14 Member; (4) the last four digits of the Settlement Class Member's Social
15 Security number; (4) the basis for the objection; and (5) if the Settlement Class
16 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
17 Class Members who fail to make objections in writing in the manner specified
18 above may still make their objections orally at the Final Approval/Settlement
19 Fairness Hearing with the Court's permission. Settlement Class Members will
20 have a right to appear at the Final Approval/Settlement Fairness Hearing to
21 have their objections heard by the Court. At no time shall any of the Parties
22 or their counsel seek to solicit or otherwise encourage Class Members to file
23 or serve written objections to the Settlement or appeal from the Order and
24 Final Judgment. Class Members who submit a written request for exclusion
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1 may not object to the Settlement. Class Members may not object to the PAGA
2 Settlement.

3
4 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
5 the Total Settlement Amount on or before the Funding Dates as provided for herein,
6 plus any employer's share of payroll taxes as mandated by law within the time
7 specified herein.

8
9 1. Individual Settlement Payments. Individual Settlement Payments shall be
10 paid from the Net Settlement Amount and shall be paid pursuant to the
11 formula set forth herein. Using the Class Data, the Settlement Administrator
12 shall add up the total number of Workweeks for all Class Members. The
13 respective Workweeks for each Class Member will be divided by the total
14 Workweeks for all Class Members, resulting in the Payment Ratio for each
15 Class Member. Each Class Member's Payment Ratio will then be multiplied
16 by the Net Settlement Amount to calculate each Class Member's estimated
17 Individual Settlement Payments. Each Individual Settlement Payment will be
18 reduced by any legally mandated employee tax withholdings (e.g., employee
19 payroll taxes, etc.), which shall come exclusively from the Total Settlement
20 Amount. Individual Settlement Payments for Class Members who submit
21 valid and timely requests for exclusion will be redistributed to Settlement
22 Class Members who do not submit valid and timely requests for exclusion on
23 a pro rata basis based on their respective Payment Ratios.
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1 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
2 Class Data, the Settlement Administrator shall add up the total number of Pay
3 Periods for all Aggrieved Employees during the PAGA Period. The
4 respective Pay Periods for each Aggrieved Employee will be divided by the
5 total Pay Periods for all Aggrieved Employees, resulting in the “PAGA
6 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s
7 PAGA Payment Ratio will then be multiplied by the PAGA Settlement to
8 calculate each Aggrieved Employee’s estimated share of the PAGA
9 Settlement.
10

11
12 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
13 Settlement Payments shall be allocated and treated as follows: 25% as wages
14 (“Wage Portion”); 75% as penalties and interest (“Non-Wage Portion”). The
15 Wage Portion is subject to wage withholdings and shall be reported on IRS
16 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
17 and shall be reported on IRS Form 1099.
18

19 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
20 Employee Settlement Payments shall be allocated and treated as 100%
21 penalties and shall be reported on IRS Form 1099.
22

23 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
24 individual shares of the PAGA Settlement made to Settlement Class Members
25 and/or Aggrieved Employees under this Settlement Agreement, as well as any
26 other payments made pursuant to this Settlement Agreement, will not be
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utilized to calculate any additional benefits under any benefit plans to which any Class Members 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 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and individual shares of the PAGA Settlement provided for in this Settlement agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the PAGA Settlement.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees last known mailing address no later than fifteen (15) calendar days after the Funding Date.

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be distributed consistent with California Code of Civil
13 Procedure Section 384 as follows: to The Children's Advocacy Institute
14 (CAI), founded at the nonprofit University of San Diego School of Law in
15 1989. Class Counsel, Defendant's counsel, nor any of the Parties, have any
16 interest, pecuniary or otherwise, in CAI.

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20 9. Class Representative Service Award. In addition to the Individual Settlement
21 Payment and his individual share of the PAGA Settlement to be paid to
22 Plaintiff, Plaintiff will apply to the Court for an award of not more than
23 \$7,500, as the Class Representative Service Award. Defendant does not
24 presently intend to oppose a Class Representative Service Award of not more
25 than \$7,500 for Plaintiff. The Settlement Administrator shall pay the Class
26 Representative Service Award, either in the amount stated herein if approved
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1 by the Court or some other amount as approved by the Court, to Plaintiff from
2 the Total Settlement Amount no later than ten (10) calendar days after the
3 Funding Date. Any portion of the requested Class Representative Service
4 Award that is not awarded to the Class Representative shall be part of the Net
5 Settlement Amount and shall be distributed to Settlement Class Members as
6 provided in this Agreement. The Settlement Administrator shall issue an IRS
7 Form 1099 — MISC to Plaintiff for his Class Representative Service Award.
8 Plaintiff shall be solely and legally responsible to pay any and all applicable
9 taxes on his Class Representative Service Award and shall hold harmless the
10 Released Parties from any claim or liability for taxes, penalties, or interest
11 arising as a result of the Class Representative Service Award. The Class
12 Representative Service Award shall be in addition to Plaintiff's Individual
13 Settlement Payment as a Settlement Class Member. Approval of this
14 Settlement shall not be conditioned on Court approval of the requested amount
15 of the Class Representative Service Award. In the event that the Court reduces
16 or does not approve the requested Class Representative Service Award,
17 Plaintiff shall not have the right to revoke the Settlement, and it will remain
18 binding.
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- 22 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
23 attorneys' fees not to exceed one-third of the Total Settlement Amount
24 currently estimated to be \$33,334, plus costs and expenses supported by
25 declaration not to exceed Twelve Thousand Five Hundred Dollars (\$12,500),
26 from the Total Settlement Amount will be filed. Any portion of the requested
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1 Class Counsel Award that is not awarded to Class Counsel shall be part of the
2 Net Settlement Amount and shall be distributed to Settlement Class Members
3 as provided in this Agreement. The Settlement Administrator shall allocate
4 and pay the Class Counsel Award to Class Counsel from the Total Settlement
5 Amount no later than five (5) calendar days after the Funding Date. Class
6 Counsel shall be solely and legally responsible to pay all applicable taxes on
7 the payment made pursuant to this paragraph. The Settlement Administrator
8 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
9 made pursuant to this paragraph. In the event that the Court reduces or does
10 not approve the requested Class Counsel Award, neither Plaintiff nor Class
11 Counsel shall have the right to revoke the Settlement, or to appeal such order,
12 and the Settlement shall remain binding.
13
14

- 15 11. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
16 the Total Settlement Amount for settlement of claims for civil penalties under
17 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
18 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
19 Settlement (\$3,750) to the California Labor and Workforce Development
20 Agency no later than twenty-five (25) calendar days after the Funding Date
21 (hereinafter “LWDA Payment”). Twenty-five percent (25%) of the PAGA
22 Settlement (\$1,250) will be distributed to the Aggrieved Employees as
23 described in this Agreement (hereinafter “Aggrieved Employee Payment”).
24 For purposes of distributing the PAGA Settlement to the Aggrieved
25 Employees, each Aggrieved Employee shall receive their pro-rata share of the
26
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1 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
2 above.

- 3
4 12. Settlement Administration Costs. The Settlement Administrator shall be paid
5 for the costs of administration of the Settlement from the Total Settlement
6 Amount. The estimate of the Settlement Administration Costs is \$6,000.00
7 The Settlement Administrator shall be paid the Settlement Administration
8 Costs no later than twenty-five (25) calendar days after the Funding Date.
9

- 10 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
11 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
12 twenty-eight (28) days following the expiration of the Response Deadline, which
13 motion shall request final approval of the Settlement and a determination of the
14 amounts payable for the Class Representative Service Award, the Class Counsel
15 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
16 provide Defendant with a draft of the Motion at least 3 business days prior to the filing
17 of the Motion to give Defendant an opportunity to propose changes or additions to
18 the Motion
19
20

- 21 1. Declaration by Settlement Administrator. No later than fourteen (14) days
22 after the Response Deadline, the Settlement Administrator shall submit a
23 declaration in support of Plaintiff's motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Class Members, the number of undeliverable Notice Packets, the number of
26 timely requests for exclusion, the number of objections received, the amount
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1 of the average Individual Settlement Payment and highest Individual
2 Settlement Payment, the Settlement Administration Costs, and any other
3 information as the Parties mutually agree or the Court orders the Settlement
4 Administrator to provide.
5

6 2. Final Approval Order and Judgment. Class Counsel shall present an Order
7 Granting Final Approval of Class Action Settlement to the Court for its
8 approval, and Judgment thereon, at the time Class Counsel files the Motion
9 for Final Approval.
10

11 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
12 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
13 Final Approval, including the Order Granting Final Approval of Class Action
14 Settlement, and Judgment before filing with the Court. The Parties and their counsel
15 will cooperate with each other and use their best efforts to affect the Court's approval
16 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
17 Judgment.
18

19
20 O. Cooperation. The Parties and their counsel will cooperate with each other and use
21 their best efforts to implement the Settlement.
22

23 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
24 except such proceedings necessary to implement and complete the Settlement, pending
25 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
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- 1 Q. Amendment or Modification. This Agreement may be amended or modified only by
2 a written instrument signed by counsel for all Parties or their successors-in-interest.
3
- 4 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
5 Agreement among these Parties, and no oral or written representations, warranties or
6 inducements have been made to any Party concerning this Agreement or its Exhibit
7 other than the representations, warranties and covenants contained and memorialized
8 in this Agreement and its Exhibit.
9
- 10 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
11 represent they are expressly authorized by the Parties whom they represent to negotiate
12 this Agreement and to take all appropriate Action required or permitted to be taken by
13 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
14 documents required to effectuate the terms of this Agreement. The persons signing
15 this Agreement on behalf of Defendant represents and warrants that he/she is
16 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
17 warrants that he is authorized to sign this Agreement and that he has not assigned any
18 claim, or part of a claim, covered by this Settlement to a third-party.
19
20
- 21 T. No Public Comment: The Parties and their counsel agree that they will not issue any
22 press releases, initiate any contact with the press, respond to any press inquiry, or have
23 any communication with the press about the fact, amount or terms of the Settlement
24 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
25 of its terms for any marketing or promotional purposes. Nothing herein will restrict
26 Class Counsel from including publicly available information regarding this settlement
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1 in future judicial submissions regarding Class Counsel's qualifications and experience.
2 Further, Class Counsel will not include, reference or use the Settlement Agreement for
3 any marketing or promotional purposes, either before or after the Motion for
4 Preliminary Approval is filed.
5

6 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
7 to the benefit of, the successors or assigns of the Parties, as previously defined.
8

9 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
10 shall be governed by and interpreted according to the laws of the State of California.
11

12 W. Counterparts. This Agreement may be executed in one or more counterparts. All
13 executed counterparts and each of them shall be deemed to be one and the same
14 instrument provided that counsel for the Parties to this Agreement shall exchange
15 among themselves copies or originals of the signed counterparts.
16

17 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
18 is a fair, adequate and reasonable settlement of this Action and have arrived at this
19 Settlement after extensive arms-length negotiations, taking into account all relevant
20 factors, present and potential.
21

22 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
23 respect to the interpretation, implementation and enforcement of the terms of this
24 Agreement and all orders and judgments entered in connection therewith, and the
25 Parties and their counsel submit to the jurisdiction of the Court for purposes of
26
27
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1 interpreting, implementing and enforcing the settlement and all orders and judgments
2 entered in connection with this Agreement.

3
4 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
5 the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this
7 Agreement valid and enforceable. Should the Court or any tribunal of valid
8 jurisdiction declare invalid or unenforceable any provision or term of this Agreement,
9 that term or provision shall be severed from the Agreement, and the remaining terms
10 and provisions shall remain in full force and effect.

11
12 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not have any
13 pending lawsuits, administrative complaints or charges against any Released Party,
14 and they do not currently intend to pursue any claims against the Released Parties,
15 including, but not limited to, any and all claims relating to or arising from Plaintiff's
16 employment with Defendant, regardless of whether Class Counsel is currently aware
17 of any facts or legal theories upon which any claims or causes of action could be
18 brought against Released Parties, including those facts or legal theories alleged in the
19 operative complaint in this Action. The Parties further acknowledge, understand and
20 agree that this representation is essential to the Agreement and that this Agreement
21 would not have been entered into were it not for this representation.

22
23
24 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
25 certification for purposes of this settlement only.
26
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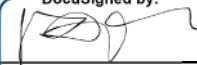
1 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
2 Released Claims have merit and give rise to liability on the part of Defendant.
3 Defendant claims that the Released Claims have no merit and do not give rise to
4 liability. This Agreement is a compromise of disputed claims. Nothing contained in
5 this Agreement and no documents referred to and no action taken to carry out this
6 Agreement may be construed or used as an admission by or against the Defendant or
7 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
8 than as may be specifically set forth herein, each Party shall be responsible for and
9 shall bear its/his own attorney's fees and costs.
10

11
12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

13
14 DATED: 1/15/2022

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ERIK FOSS

DocuSigned by:

DA4E64D0DE804E4...

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 01/04/2022

ANDERSON HOSPITALITY INC.

Anil Patel

Printed Name

Vice President

Title

///
///
///
///

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: 1/15/2022

JCL LAW FIRM, A.P.C.

4 By:

DocuSigned by:
Jean-Claude Lapuyade
0EBC25D5B9CD469...

5 Attorneys for Plaintiff and the Settlement Class
6 Members
7
8

9 DATED: 1/15/2022

ZAKAY LAW GROUP, APLC

10 By:

DocuSigned by:
[Signature]
4ECDE73A91D4420...

11 Attorneys for Plaintiff and the Settlement Class
12 Members
13
14

15 DATED: 1/18/2022

JASON ROSS
WOOD, SMITH, HENNING & BERMAN LLP

16 By:

[Signature]

17 Attorneys for Defendant
18
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EXHIBIT B

FILED

MAR 14 2022

SHASTA COUNTY SUPERIOR COURT
BY: M. PARTRIDGE, DEPUTY CLERK

ZAKAY LAW GROUP, APLC

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egarcia@jcl-lawfirm.com

Attorneys for Plaintiff ERIK FOSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

ERIK FOSS, an individual, and on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ANDERSON HOSPITALITY, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendant.

Case No. 195317

Complaint Filed: July 2, 2020

SHB
~~PROPOSED~~ **ORDER GRANTING
PLAINTIFF'S MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 7, 2022

Time: 8:30 a.m.

Judge: Hon. Stephen H. Baker

Dept.: 3

1 This matter having come before the Superior Court of the State of California, in and for the
2 County of Shasta, at 8:30 am. On March 7, 2022, with Jean-Claude Lapuyade, Esq., of the JCL Law
3 Firm, APC, and Shani O. Zakay, Esq. of the Zakay Law Group, APLC, as counsel for Plaintiff ERIK
4 FOSS("Plaintiff") and the attorneys from Wood Smith Henning & Berman LLP, appearing for
5 defendant ANDERSON HOSPITALITY, INC. ("Defendant"). The Court, having carefully considered
6 the briefs, argument of counsel and all the matters presented to the Court, and good cause appearing,
7 hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
10 and Release of Claims ("Settlement Agreement" or "Agreement") a true and correct copy of which is
11 attached hereto as **Exhibit "1"**. This is based on the Court's determination that the Settlement
12 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
13 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

14 2. This Order incorporates by reference the definitions in the Agreement, and all terms
15 defined therein shall have the same meaning in this Order as set forth in the Agreement.

16 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
17 Defendant shall pay is One Hundred Thousand Dollars (\$100,000) in accordance with the Settlement
18 Agreement. It appears to the Court on a preliminary basis that the settlement amount and terms are
19 fair, adequate, and reasonable as to the entire Settlement Class when balanced against the probable
20 outcome of further litigation relating to certification, liability, and damages issues. It further appears
21 that investigation and research have been conducted such that counsel for the Parties are able to
22 reasonably evaluate their respective positions. It further appears to the Court that settlement at this time
23 will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be
24 presented by the further prosecution of the litigation. It further appears that the Settlement has been
25 reached as the result of intensive, serious, and non-collusive arms-length negotiations.

26 4. The Court preliminarily finds that the Settlement is within the range of reasonableness of
27 a settlement that could ultimately be given final approval by this Court. The Court has reviewed the

1 monetary recovery that is being granted as part of the Settlement and preliminarily finds that the
2 monetary settlement awards made available to the Settlement Class are fair, adequate, and reasonable
3 when balanced against the probable outcome of further litigation relating to certification, liability, and
4 damages issues.

5 5. The Agreement specifies for an award of Attorneys' Fee and Costs in the amount of up-
6 to one-third of the Total Settlement Amount for attorneys' fees, currently estimated at Thirty-Three
7 Thousand Three Hundred and Thirty Three Dollars and Thirty Three Cents (\$33,333.33) *and* an award
8 of litigation expenses incurred not to exceed Twelve Thousand Five Hundred Dollars (\$12,500.00),
9 and proposed Class Representative Service Award to the Class Representative, Erik Foss, in an amount
10 not to exceed Ten Thousand Dollars (\$7,500.00). While these awards appear to be within the range of
11 reasonableness, the Court will not approve the Class Counsel Award or Class Representative Service
12 Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Settlement Class:

17 "all non-exempt employees who are or previously were employed by
18 Defendant in California during the Class Period."

19 The Class Period is the period between July 2, 2016 to October 31, 2021.

20 7. The Court concludes that, for settlement purposes only, the Settlement Class meets the
21 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
22 the Settlement Class is ascertainable and so numerous that joinder of all members of the Settlement
23 Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined
24 community of interest amongst the Settlement Class with respect to the subject matter of the litigation;
25 (c) the claims of the Class Representative are typical of the claims of the Settlement Class; (d) the Class
26 Representative will fairly and adequately protect the interests of the Settlement Class; (e) a class action
27 is superior to other available methods for the efficient adjudication of this controversy; and (f) Class

1 Counsel are qualified to act as counsel for the Class Representative in their individual capacity and as
2 the representative of the Settlement Class Members.

3 8. The Court provisionally appoints plaintiff ERIK FOSS as the representative of the
4 Settlement Class.

5 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
6 A.P.C. and Shani Zakay of the Zakay Law Group, APLC, as Class Counsel for the Settlement Class.

7 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
8 Class and Representative Action Settlement ("Class Notice") attached to the Agreement as **Exhibit**
9 **"A"**. The Court finds that both notices appear to fully and accurately inform the Settlement Class and
10 Aggrieved Employees of all material elements of the proposed Settlement, including right of any
11 Settlement Class member to be excluded from the Settlement Class by submitting a written request for
12 exclusion, and of each Settlement Class member's right and opportunity to object to the Settlement.
13 The Court further finds that the distribution of the notices substantially in the manner and form set forth
14 in the Agreement and this Order meets the requirements of due process, is the most reasonable notice
15 under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
16 The Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the
17 Agreement.

18 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within ten
19 (10) calendar days of this order, Defendant shall provide, to the Settlement Administrator the Class
20 List, including information regarding Settlement Class Members that Defendant will in good faith
21 compile from their records, including each Settlement Class Member's full name; last known address;
22 Social Security Number; dates of employment, and number of Workweeks accrued by each Settlement
23 Class member during the Class Period and the PAGA Period. Within fourteen (14) calendar days after
24 receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice to
25 all identified, potential members of the Settlement Class via first class U.S. Mail using the most current
26 mailing address information available.

27 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
28

1 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
2 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
3 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
4 postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date
5 the Class Notice is mailed to the Settlement Class Members or, in the case of a re-mailed Notice, not
6 more than fifteen (15) calendar days after the original Response Deadline. Any such person who
7 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual
8 Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to
9 object, appeal or comment thereon. Settlement Class members who have not requested exclusion shall
10 be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may
11 only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass
12 of individuals is not permitted and will be deemed invalid.

13 13. Any Settlement Class member who has not opted out may appear at the final approval
14 hearing and may object or express the Member's views regarding the Settlement and may present
15 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and
16 determined by the Court as provided in the Notice. Settlement Class Members will have forty-five (45)
17 days from the date the Settlement Administrator mails the Class Notice to postmark their written
18 objections to the Settlement Administrator.

19 14. A final approval hearing shall be held before this Court on July 18 at 8:30am in
20 Department 3 of the Shasta County Superior Court to determine all necessary matters concerning the
21 Settlement, including: whether the proposed settlement of the Action on the terms and conditions
22 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the
23 Court; whether an Order Granting Final Approval should be entered herein; whether the plan of
24 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
25 Settlement Class; and to finally approve the Class Counsel Award, Class Representative Service
26 Award, and the Settlement Administration Costs. All papers in support of the motion for final approval
27 and the motion for Attorneys' Fee and Costs and Class Representative Enhancement Award shall be

1 filed with the Court and served on all counsel no later than sixteen (16) court days before the hearing.

2 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
3 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
4 evidence of, or used against Defendant as, an admission or indication in any way, including with respect
5 to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth
6 of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
7 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
8 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
9 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
10 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
11 liability, fault, wrongdoing, omission, concession or damage.

12 16. In the event the Settlement does not become effective in accordance with the terms of the
13 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
14 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
15 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
16 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
17 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
18 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

19 17. Pending final determination of whether the Settlement should be approved, Class
20 Representative and all members of the Settlement Class are barred and enjoined from filing,
21 commencing, prosecuting, intervening in, instigating or in any way participating in the commencement
22 or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in
23 any forum, asserting any claims that are, or relate in any way to, the Class Representative's Released
24 Claims or the Settlement Class' Released Claims, unless and until they submit a timely request for
25 exclusion pursuant to the Agreement.

26 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
27 and all dates provided for in the Agreement without further notice to Settlement Class and retains

jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: MAR 14 2022

STEPHEN H. BAKER

JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Tesla Stone

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, January 21, 2022 11:01 AM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

01/21/2022 11:00:12 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D