

MATERN LAW GROUP, PC
Matthew J. Matern (CA SBN 159798)
mmatern@maternlawgroup.com
Joshua D. Boxer (CA SBN 226712)
jboxer@maternlawgroup.com
Beatriz E. Alfaro (CA SBN 312828)
balfaro@maternlawgroup.com
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
Telephone: (310) 531-1900
Facsimile: (310) 531-1901

MATERN LAW GROUP, PC
Sara B. Tosdal (CA SBN 280322)
stosdal@maternlawgroup.com
1330 Broadway, Suite 436
Oakland, California 94612
Telephone: (310) 531-1900
Facsimile: (310) 531-1901

Attorneys for Plaintiff RUBIAN SAFLOR

Rebecca M. Aragon, Bar No. 134496
raragon@littler.com
Nathaniel H. Jenkins, Bar No. 312067
njenkins@littler.com

LITTLER MENDELSON, P.C.
633 West 5th Street, 63rd Floor
Los Angeles, California 90071
Telephone: 213.443.4300
Fax No.: 213.443.4299

Attorneys for Defendant
ESA MANAGEMENT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUBIAN SAFLOR, individually, and on behalf
of others similarly situated,

Plaintiff,

v.

ESA MANAGEMENT, LLC, a Delaware
limited liability company, and DOES 1 through
50, inclusive,

Defendant.

Case No. 3:22-CV-05800-AGT

**JOINT STIPULATION FOR CLASS
AND PAGA ACTION SETTLEMENT
AND RELEASE**

Complaint Filed: August 12, 2022
Magistrate Judge: Alex G. Tse

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Rubian Saflor (“Plaintiff” or “Class Representative”), as an individual and on behalf of all Settlement Class Members and Aggrieved Employees, and Defendant ESA Management, LLC (“Defendant” or “ESA”) (together with Plaintiff, the “Parties”).

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against ESA initiated by Rubian Saflor on August 12, 2022 in the Superior Court of the State of California in and for the County of San Mateo, Case No. 22-CIV-03312, which was subsequently, timely removed to the U.S. District Court for the Northern District of California, where it remains pending as Case No. 3:22-CV-05800-AGT.

1.2. “Administrator” means Phoenix Class Action Administrative Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Sum to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means all non-exempt employees employed by ESA in California during the PAGA Period.

1.5. “Class” means all non-exempt employees employed by ESA in California during the Class Period.

1.6. “Class Counsel” means Matern Law Group, P.C.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in ESA’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

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

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form attached as **Exhibit A** and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from December 16, 2019 through (a) the date of preliminary settlement approval, or (b) 90 days after the date of the execution of this Agreement, whichever is later.

1.13. “Class Representative” means Rubian Saflor in the operative complaint in the Action seeking Court approval to serve as Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the United States District Court for the Northern District of California.

1.16. “ESA” means named Defendant ESA Management, LLC.

1.17. “Defense Counsel” means Rebecca Aragon and Nathaniel Jenkins of Littler Mendelson, P.C.

1.18. “Effective Date” means: (a) the date of entry of the Final Approval Order, if no objections; (b) if there are any objections, the last date to appeal final approval and judgment by the Court and no appeal is filed; or (c) if an appeal is filed, review or writ is sought from the Judgment,

1 the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the
2 Judgment is no longer subject to further judicial review.

3 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

4 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
5 of the Settlement.

6 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
7 Approval of the Settlement.

8 1.22. "Gross Settlement Sum" means \$1,780,000.00, which is the total amount ESA agrees
9 to pay under the Settlement. The Gross Settlement Sum will be used to pay Individual Class Payments,
10 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
11 Expenses, Class Representative Service Payments, and the Administrator's Expenses. Employer-side
12 payroll taxes are not included in the Gross Settlement Sum.

13 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of
14 the Net Settlement Sum calculated according to the number of Workweeks worked during the Class
15 Period.

16 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25%
17 of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the
18 PAGA Period.

19 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

20 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
21 agency entitled, under Labor Code section 2699, subd. (i).

22 1.27. "LDWA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
23 under Labor Code section 2699, subd. (i).

24 1.28. "Net Settlement Sum" means the Gross Settlement Sum, less the following payments
25 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class
26 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses
27 Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class
28 Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "Operative Complaint" means the operative complaint on file in the Action, initiated in San Mateo County Superior Court (Case No. 22-CIV-03312) on August 12, 2022, and subsequently removed to the Northern District of California (Case No. 3:22-cv-05800-AGT), where the Action remains pending.

1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for ESA for at least one day during the PAGA Period.

1.32. "PAGA Period" means the period from June 8, 2021 through (a) the date of preliminary settlement approval, or (b) 90 days after the date of the execution of this Agreement, whichever is later.

1.33. "PAGA" means the Private Attorneys General Act (Labor Code sections 2698. et seq.)

1.34. "PAGA Notice" means Plaintiff's June 8, 2022 letter to ESA and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Sum, allocated 25% to the Aggrieved Employees (\$25,000) and the 75% to the LWDA (\$75,000) in settlement of PAGA claims.

1.36. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.37. "Plaintiff" means Rubian Saflor, the named plaintiff in the Action.

1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of the PAGA Settlement.

1.40. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.42. "Released Parties" means: Defendant ESA Management, LLC, and any of its/their former and present parents, subsidiaries, and affiliates, including, but not limited to, ESA Management, Inc., Eagle Manager, LLC, Eagle Sub Holdco, LLC, ESA P Portfolio, LLC, ESA P Portfolio Operating Lessee, LLC, and ESH Hospitality, Inc., as well as their insurers, insurance policies, and benefit plans; each of the former and present officers, directors, employees, equity holders (partners, shareholders, holders of membership interests, etc.), agents, representatives, administrators, fiduciaries, and attorneys of the entities and plans described in this sentence; and any other predecessors, successors, transferees, and assigns of each of the persons and entities described in this sentence ("Released Parties") through the Release Period.

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

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

1.45. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.46. "Workweek" means any week during which a Class Member worked for ESA for at least one day, during the Class Period.

2. RECITALS.

2.1. On May 3, 2022, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to ESA and the LWDA by sending the PAGA Notice.

2.2. Plaintiff filed her class action on August 12, 2022 in San Mateo County Superior Court, asserting the following claims arising of her employment (and behalf of a class of all non-exempt employees in California) for: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum; (5) Failure

1 to Pay All Wages Due to Discharged and Quitting Employees; (6) Failure to Maintain Required
2 Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8) Failure to Indemnify
3 Employees for Necessary Expenditures Incurred in Discharge of Duties; (9) Unfair and Unlawful
4 Business Practices; and (10) PAGA Penalties for the Labor Code violations alleged herein.

5 2.3. On October 19, 2023, the Parties participated in an all-day mediation presided over by
6 well-known class action mediator Lisa Klerman, Esq., which led to this Agreement to settle the Action.

7 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery,
8 voluminous company records and documents from ESA, including payroll data for Plaintiff and key
9 data points. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in
10 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
11 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

12 2.5. The Court has not granted class certification because the Parties engaged in mediation
13 before any class certification briefing.

14 2.6. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of
15 any other pending matter or action asserting claims that will be extinguished or affected by the
16 Settlement.

17 **3. MONETARY TERMS.**

18 3.1. Gross Settlement Sum. ESA promises to pay \$1,780,000.00 and no more as the Gross
19 Settlement Sum and to separately pay any and all employer payroll taxes owed on the Wage Portions
20 of the Individual Class Payments. ESA has no obligation to pay the Gross Settlement Sum (or any
21 payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
22 disburse the entire Gross Settlement Sum without asking or requiring Participating Class Members or
23 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement
24 Sum will revert to ESA.

25 3.2. Payments from the Gross Settlement Sum. The Administrator will make and deduct the
26 following payments from the Gross Settlement Sum, in the amounts specified by the Court in the Final
27 Approval:
28

1 3.2.1. To Plaintiff: Subject to court approval, a Class Representative Service Payment
2 to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and
3 any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
4 Member). ESA will not oppose Plaintiff's request for a Class Representative Service Payment that
5 does not exceed this amount. If the Court approves Class Representative Service Payments less than
6 the amount requested, the Administrator will retain the remainder in the Net Settlement Sum. The
7 Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff
8 assumes full responsibility and liability for employee taxes owed on the Class Representative Service
9 Payment. In the event that the Court reduces or does not approve the requested Class Representative
10 Service Payment, Plaintiff shall not have the right to revoke the Agreement, and it will remain binding.

11 3.2.2. To Class Counsel: Subject to Court approval, a Class Counsel Fees Payment of
12 not more than 1/3 of the Gross Settlement Sum, which is currently estimated to be \$593,333.33 and a
13 Class Counsel Litigation Expenses Payment of not more than \$20,000. ESA will not oppose requests
14 for these payments provided that they do not exceed these amounts. If the Court approves a Class
15 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
16 requested, the Administrator will allocate the remainder to the Net Settlement Sum. Released Parties
17 shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any
18 portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
19 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using
20 one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed
21 on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
22 ESA harmless, and indemnifies ESA, from any dispute or controversy regarding any division or
23 sharing of any of these Payments. In the event that the Court reduces or does not approve the requested
24 Class Counsel Fees Payment, Plaintiff and Class Counsel shall not have the right to revoke the
25 Agreement, and it will remain binding.

26 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
27 \$25,000 except for a showing of good cause and as approved by the Court. To the extent the
28

Administration Expenses are less or the Court approves payment less than \$25,000. Administrator will retain the remainder in the Net Settlement Sum.

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

3.2.4.1. Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000 to be paid from the Gross Settlement Sum, with 75% (\$75,000) allocated to the LWDA PAGA Payment and 25% (\$25,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$25,000 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records as of October 19, 2023, ESA estimates there are 3,893 Class Members who collectively worked a total of 183,945 Workweeks, and 55,600 PAGA Pay Periods. If the number of workweeks is more than 15% greater than the figures outlined herein, ESA, at its sole option, shall have the option to (1) shorten the Class Period to reduce the number of workweeks to 211,537 workweeks and avoid application of this escalator clause; or (2) increase the Gross Settlement Sum on a proportional basis that reflects the percentage over 15%.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, ESA will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, ESA will provide the Class Data to the Administrator only, via a secure File Transfer Protocol (FTP), and the Administrator must maintain the Class Data in confidence, and must not provide any of the Class Data to Class Counsel at any time, and use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ESA has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ESA must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Sum. ESA shall fully fund the Gross Settlement Sum, and also fund the amounts necessary to fully pay ESA's share of payroll taxes by transmitting the funds to the Administrator no later than 14 court days after the Effective Date.

1 4.4. Payments from the Gross Settlement Sum. Within 14 days after ESA funds the Gross
2 Settlement Sum, the Administrator will mail checks for all Individual Class Payments, all Individual
3 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
4 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative
5 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
6 Expenses Payment and the Class Representative Service Payment shall not precede disbursement of
7 Individual Class Payments and Individual PAGA Payments.

8 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
9 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
10 prepaid. The face of each check shall prominently state the date (not less than 180 days after the date
11 of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
12 void date. The Administrator will send checks for Individual Settlement Payments to all Participating
13 Class Members (including those for whom Class Notice was returned undelivered). The Administrator
14 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-
15 Participating Class Members who qualify as Aggrieved Employees (including those for whom Class
16 Notice was returned undelivered). The Administrator may send Participating Class Members a single
17 check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing
18 any checks, the Settlement Administrator must update the recipients' mailing addresses using the
19 National Change of Address Database.

20 4.4.2. The Administrator must conduct a Class Member Address Search for all other
21 Class Members whose checks are returned undelivered without USPS forwarding address. Within 7
22 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding
23 address provided or to an address ascertained through the Class Member Address Search. The
24 Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks
25 are returned as undelivered. The Administrator shall promptly send a replacement check to any Class
26 Member whose original check was lost or misplaced, requested by the Class Member prior to the void
27 date.
28

1 4.4.3. For any Class Member whose Individual Class Payment check or Individual
2 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit
3 the funds represented by such checks to the California Controller's Unclaimed Property Fund in the
4 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
5 California Code of Civil Procedure Section 384, subd. (b).

6 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
7 shall not obligate ESA to confer any additional benefits or make any additional payments to Class
8 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

9 **5. RELEASES OF CLAIMS.** Effective on the date when ESA fully funds the entire Gross Settlement
10 Sum and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
11 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

12 5.1 Plaintiff's General Release. Plaintiff and her respective former and present spouses,
13 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and
14 discharge Released Parties from all claims, demands, damages, liquidated damages, monies, penalties,
15 restitution, injunctive relief, attorneys' fees, costs, liabilities and/or causes of action of whatever kind
16 or character, whether known or unknown, which Plaintiff ever had, now has, has asserted or may
17 hereafter assert or claim to have against the Released Parties arising out of or relating in any way to
18 any acts, circumstances, facts, transactions, or omissions based on facts occurring up to and including
19 the date Plaintiff signs this Agreement. This release includes but is not limited to any and all claims
20 arising under the (a) Americans with Disabilities Act, as amended; (b) Title VII of the Civil Rights
21 Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the
22 Fair Labor Standards Act, as amended and the Portal to Portal Act; (f) the Equal Pay Act; (g) the
23 Employee Retirement Income Security Act, as amended; (h) the Consolidated Omnibus Budget
24 Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the Family and Medical Leave Act; (k) the
25 Civil Rights Act of 1966; (l) the California Fair Employment and Housing Act; (m) the California
26 Constitution; (n) the California Labor Code; (o) the California Government Code; (p) the California
27 Civil Code; and (q) any and all other federal, state and local statutes, ordinances, regulations, rules
28 and other laws, and any and all claims based on equity, constitutional, statutory, common law or

1 regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge,
2 breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional
3 and/or negligent infliction of emotional distress, or damages under any other federal, state or local
4 statutes, ordinances, regulations, rules or laws, except for such claims that cannot be released by law.
5 (“Plaintiff’s General Release.”) Plaintiff’s General Release does not extend to any claims or actions
6 to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
7 benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on
8 occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law
9 different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but
10 agrees, nonetheless, that Plaintiff’s General Release shall be and remain effective in all respects,
11 notwithstanding such different or additional facts or Plaintiff’s discovery of them.

12 Nothing in this Agreement, including in the Plaintiff’s General Release, shall be construed to
13 (1) prevent the disclosure of factual information related to any acts of sexual assault, sexual
14 harassment, workplace harassment or discrimination, failure to prevent an act of workplace
15 harassment or discrimination, or act of retaliation against a person for reporting harassment or
16 discrimination related to the Action; (2) prevent Plaintiff from discussing or disclosing information
17 about unlawful acts in the workplace, such as harassment or discrimination or any other conduct they
18 have reason to believe is unlawful; or (3) waive Plaintiff’s right to testify in an administrative,
19 legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment
20 on the part of ESA, or on the part of the agents or employees of ESA, when Plaintiff has been required
21 or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from
22 an administrative agency or the legislature, prevents Plaintiff from communicating with, filing a
23 charge or complaint with, or from participating in an investigation or proceeding conducted by the
24 Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and
25 Exchange Commission, or any other any federal, state or local agency charged with the enforcement
26 of any laws, including providing documents or any other information, or limits Plaintiff from
27 exercising rights under Section 7 of the NLRA to engage in protected, concerted activity with other
28 employees, although by signing this Agreement Plaintiffs are waiving rights to individual relief

(including backpay, frontpay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's behalf by any third party, except for any right Plaintiff may have to receive a payment or an award from a government agency (and not ESA) for information provided to the government agency or where otherwise prohibited.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's General Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Participating Class Members: All Participating Class Members (including Plaintiff), on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims for wages, statutory and civil penalties, damages, liquidated damages, premiums, interest, restitution, injunctive and declaratory relief, fees and costs, that were alleged in the Action, the Operative Complaint, any Amended Complaints in the Action, and/or any letters submitted by Plaintiff to the LWDA against ESA in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Class Period including, but not limited to all claims asserted in the Action for alleged: (1) failure to pay minimum wages in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the applicable IWC Wage Order; (2) unfair competition in violation of Business and Professions Code section 17200, et seq.; (3) failure to pay overtime compensation in violation of California Labor Code sections 510, 1194, and 1198 et. seq. and the applicable IWC Wage Order; (3) failure to provide required meal periods in violation of California Labor Code sections 226.7, 512, and 1198, and the applicable IWC Wage Order; (4) failure to provide required rest periods in violation of California Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order; (5) failure to provide accurate itemized wage statements in

violation of California Labor Code sections 221-224, 226, 1174(d), and 1198; (6) failure to reimburse employees for required expenses in violation of California Labor Code section 2802; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202, 203, 204 and 210; (8) failure to pay wages in violation of California Labor Code section 204; (9) all other statutory and regulatory violations alleged in the Operative Complaint, the Action, and any Amended Complaints in the Action, and with respect to the statutory and civil penalties claimed in the Action, including penalties under PAGA (Labor Code section 2699 *et seq.*), any source of obligation as a basis for claiming such penalties during the Class Period, including any and all obligations imposed by the applicable Wage Orders. The release shall be given full res judicata and collateral estoppel effect upon entry of judgment. Except as set forth in Section 5.3 of this Agreement, Participating Class Members (except Plaintiff) do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 PAGA Release by Aggrieved Employees and Labor Workforce Development Agency:

The Labor Workforce Development Agency, State of California, in addition to all Aggrieved Employees, and Plaintiff as a proxy for the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Labor Code pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the Action, and the PAGA Notice, and ascertained in the course of the Action, including, but not limited to all PAGA claims asserted in the Action for alleged: (1) failure to pay minimum wages in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the applicable IWC Wage Order; (2) unfair competition in violation of Business and Professions Code section 17200, *et seq.*; (3) failure to pay overtime compensation in violation of California Labor Code sections 510, 1194, and 1198 *et seq.* and the applicable IWC Wage Order; (3) failure to provide required meal periods in violation of California Labor Code sections 226.7, 512, and 1198, and the applicable IWC Wage Order; (4) failure to provide required rest periods in violation of California

1 Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order; (5) failure to provide
 2 accurate itemized wage statements in violation of California Labor Code sections 221-224, 226,
 3 1174(d), and 1198; (6) failure to reimburse employees for required expenses in violation of California
 4 Labor Code section 2802; (7) failure to provide wages when due in violation of California Labor Code
 5 sections 201, 202, 203, 204, and 210; (8) failure to pay wages in violation of California Labor Code
 6 section 204; (9) failure to maintain required records in violation of Labor Code sections 226, 1174,
 7 and the applicable IWC wage order; and (10) unlawful terms and conditions of employment in
 8 violation of Labor Code sections 432.5 and 432.6. The PAGA release shall be given full res judicata
 9 and collateral estoppel effect upon entry of the judgment in this Action so as to bar the LWDA and
 10 any other individual or entity from filing or pursuing the Released PAGA Claims against the Released
 11 Parties in any forum.

12 **6. MOTION FOR PRELIMINARY APPROVAL.** The Plaintiff agrees to prepare and file a motion
 13 for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current
 14 checklist for Preliminary Approvals.

15 6.1 Plaintiff’s Responsibilities. Plaintiff shall promptly submit to the Court a Motion for
 16 Preliminary Approval of class action settlement, in any event, no later than June 20, 2024. Plaintiff’s
 17 counsel will provide a draft of the Motion for Preliminary Approval to Defense Counsel to review
 18 prior to filing. This motion shall seek an order to preliminarily approve the proposed Settlement
 19 according to the terms in this Agreement and provide for the Notice of Class Action Settlement and
 20 the Request for Exclusion, to be sent to Class Members as specified in this Agreement. This motion
 21 shall include the bases for the Gross Settlement Amount and why the amount is reasonable in light of
 22 the facts and controlling authorities pertaining to the claims alleged in the Complaint. The motion
 23 shall also be accompanied by signed declarations by Class Counsel, discussing the risks of continued
 24 litigation and the decision that the best interests of Plaintiffs and the Class Members are served by the
 25 terms of this Agreement.

26 6.2 Effect of Failure to Obtain Preliminary Approval. If this Settlement or Agreement or a
 27 substantially similar settlement mutually agreed to by the Parties is not preliminarily approved, the
 28 Action shall proceed as if no settlement had been attempted and revert back to its prior procedural

1 posture. The Parties may, however, jointly agree to seek reconsideration of the ruling on the
2 Settlement or Court approval of a renegotiated settlement.

3 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
4 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
5 Counsel will expeditiously work together on behalf of the Parties in good faith to resolve the
6 disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval
7 on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously and
8 in good faith work together on behalf of the Parties to modify the Agreement and otherwise satisfy the
9 Court's concerns.

10 7. SETTLEMENT ADMINISTRATION.

11 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action
12 Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a condition
13 of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all
14 duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties
15 and their Counsel represent that they have no interest or relationship, financial or otherwise, with the
16 Administrator other than a professional relationship arising out of prior experiences administering
17 settlements.

18 7.2 Employer Identification Number. The Administrator shall have and use its own
19 Employer Identification Number for purposes of calculating payroll tax withholdings and providing
20 reports state and federal tax authorities.

21 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
22 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
23 468B-1.

24 7.4 Notice to Class Members.

25 7.4.1 No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the number of Class
27 Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
28

1 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14
2 business days after receiving the Class Data, the Administrator will send to all Class Members
3 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
4 Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class
5 Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or
6 Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA
7 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the
8 Administrator shall update Class Member addresses using the National Change of Address database.

9 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
10 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
11 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
12 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
13 most current address obtained. The Administrator has no obligation to make further attempts to locate
14 or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

15 7.4.4 The deadlines for Class Members’ written objections, challenges to Workweeks
16 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45
17 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
18 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

19 7.4.5 If the Administrator, ESA or Class Counsel is contacted by or otherwise
20 discovers any persons who believe they should have been included in the Class Data and should have
21 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and
22 in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree,
23 such persons will be Class Members entitled to the same rights as other Class Members, and the
24 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
25 options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates
26 in the Class Notice, which ever are later.

1 7.5 Requests for Exclusion (Opt-Outs).

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

10 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it
11 fails to contain all the information specified in the Class Notice. The Administrator shall accept any
12 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person
13 as a Class Member and the Class Member's desire to be excluded. The Administrator's determination
14 shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason
15 to question the authenticity of a Request for Exclusion, the Administrator may demand additional
16 proof of the Class Member's identity. The Administrator's determination of authenticity shall be final
17 and not appealable or otherwise susceptible to challenge.

18 7.5.3 Every Class Member who does not submit a timely and valid Request for
19 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits
20 and bound by all terms and conditions of the Settlement, including the Participating Class Members'
21 Releases under Paragraphs 5.2 of this Agreement, regardless of whether the Participating Class
22 Member actually receives the Class Notice or objects to the Settlement.

23 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is
24 a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right
25 to object to the class action components of the Settlement. Because future PAGA claims are subject
26 to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
27 Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are
28 eligible for an Individual PAGA Payment.

1 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
2 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
3 Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any)
4 allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation
5 by communicating with the Administrator via fax, email or mail. The Administrator must encourage
6 the challenging Class Member to submit supporting documentation. In the absence of any contrary
7 documentation, the Administrator is entitled to presume that the Workweeks contained in the Class
8 Notice are correct so long as they are consistent with the Class Data. The Administrator will also
9 consult with Class Counsel and Defense Counsel in an attempt to resolve any such challenges although
10 the Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
11 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
12 promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense
13 Counsel and Class Counsel and the Administrator's determination the challenges.

14 7.7 Objections to Settlement.

15 7.7.1 Only Participating Class Members may object to the class action
16 components of the Settlement and/or this Agreement, including contesting the fairness of the
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
18 Expenses Payment and/or Class Representative Service Payments.

19 7.7.2 Participating Class Members may send written objections to the
20 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in
21 Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the Administrator
23 must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an
24 additional 14 days for Class Members whose Class Notice was re-mailed).

25 7.7.3 Non-Participating Class Members have no right to object to any of the
26 class action components of the Settlement.

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

1 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will
2 establish and maintain and use an internet website to post information of interest to Class Members
3 including the date, time and location for the Final Approval Hearing and copies of the Settlement
4 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion
5 for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
6 Payment and Class Representative Service Payments, the Final Approval and the Judgment. The
7 Administrator will also maintain and monitor an email address and a toll-free telephone number to
8 receive Class Member calls, faxes and emails.

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

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

24 7.8.4 Workweek and/or Pay Period Challenges. The Administrator will consult with
25 Class Counsel and Defense Counsel in an attempt to resolve any such challenges although it has the
26 authority to address and make final decisions consistent with the terms of this Agreement on all Class
27 Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s
28 decision shall be final and not appealable or otherwise susceptible to challenge.

1 7.8.5 Administrator's Declaration. The Administrator will provide to Class Counsel
2 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
3 compliance with all of its obligations under this Agreement, including, but not limited to, its mailing
4 of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts
5 to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both
6 valid or invalid), the number of written objections and attach the Exclusion List. The Administrator
7 will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel
8 is responsible for filing the Administrator's declaration(s) in Court.

9 7.8.6 Final Report by Settlement Administrator. Within 10 days after the
10 Administrator disburses all funds in the Gross Settlement Sum, the Administrator will provide Class
11 Counsel and Defense Counsel with a final report detailing its disbursements by employee
12 identification number only of all payments made under this Agreement. At least 15 days before any
13 deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
14 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments
15 required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration
16 in Court.

17 **8. CLASS SIZE ESTIMATES** Based on its records, ESA estimates that, as of October 19, 2023, (1)
18 there are 3,893 Class Members and 183,945 Total Workweeks during the Class period and (2) there
19 were 2,798 Aggrieved Employees who worked 55,600 Pay Periods during the PAGA Period.

20 **9. ESA's RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the
21 Exclusion List exceeds 5% or more of the total Class Members, ESA may, but is not obligated, elect
22 to withdraw from the Settlement. The Parties agree that, if ESA withdraws, the Settlement shall be
23 void ab initio, have no force or effect whatsoever, and that neither Party will have any further
24 obligation to perform under this Agreement; provided, however, ESA will remain responsible for
25 paying all Settlement Administration Expenses incurred to that point. ESA must notify Class Counsel
26 and the Court of its election to withdraw not later than seven days after the Administrator sends the
27 final Exclusion List to Defense Counsel; late elections will have no effect.
28

1 **10. MOTION FOR FINAL APPROVAL.** Plaintiff will file in Court a motion for final approval of
2 the Settlement that includes a request for approval of the PAGA settlement under Labor Code section
3 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
4 Final Approval”). Plaintiff will provide drafts of these documents to Defense Counsel for review prior
5 to filing the Motion for Final Approval.

6 10.1 Response to Objections. Each Party retains the right to respond to any objection raised
7 by a Participating Class Member, including the right to file responsive documents in Court no later
8 than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the
9 Court.

10 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
11 Approval on any material change to the Settlement (including, but not limited to, the scope of release
12 to be granted by Class Members), the Parties will expeditiously work together in good faith to address
13 the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s
14 decision to award less than the amounts requested for the Class Representative Service Payment, Class
15 Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses
16 Payment shall not constitute a material modification to the Agreement within the meaning of this
17 paragraph.

18 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
19 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
20 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
21 addressing such post-Judgment matters as are permitted by law.

22 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
23 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
24 Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel,
25 and all Participating Class Members who did not object to the Settlement as provided in this
26 Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and
27 appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
28 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such

1 motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform
2 under this Agreement will be suspended until such time as the appeal is finally resolved and the
3 Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Sum.

4 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
5 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
6 modification of this Agreement (including, but not limited to, the scope of release to be granted by
7 Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously
8 work together in good faith to address the appellate court's concerns and to obtain Final Approval and
9 entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably
10 incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the
11 Class Representative Service Payments or any payments to Class Counsel shall not constitute a
12 material modification of the Judgment within the meaning of this paragraph, as long as the Gross
13 Settlement Sum remains unchanged.

14 **11. AMENDED JUDGMENT.** If any amended judgment is required, the Parties will work together
15 in good faith to jointly submit and a proposed amended judgment.

16 **12.ADDITIONAL PROVISIONS.**

17 12.1 No Admission of Liability, Class Certification or Representative Manageability for
18 Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
19 Nothing in this Agreement is intended or should be construed as an admission by ESA that any of the
20 allegations in the Action or Operative Complaint have merit or that ESA has any liability for any
21 claims asserted; nor should it be intended or construed as an admission by Plaintiff that ESA's defenses
22 in the Action have merit. The Parties agree that class certification and representative treatment is for
23 purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final
24 Approval or enter Judgment, ESA reserves the right to contest certification of any class for any
25 reasons, and ESA reserves all available defenses to the claims in the Action, and Plaintiff reserves the
26 right to move for class certification on any grounds available and to contest ESA's defenses. The
27 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and
28

1 will not be admissible in connection with, any litigation (except for proceedings to enforce or
2 effectuate the Settlement and this Agreement).

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

22 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
23 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from
24 the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
25 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
26 Class Members.

27 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
28 together with its attached exhibits shall constitute the entire agreement between the Parties relating to

1 the Settlement, superseding any and all oral representations, warranties, covenants, or inducements
2 made to or by any Party.

3 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
4 represent that they are authorized by Plaintiff and ESA, respectively, to take all appropriate action
5 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
6 and to execute any other documents reasonably required to effectuate the terms of this Agreement
7 including any amendments to this Agreement.

8 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
9 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
10 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
11 as requested by the Court. In the event the Parties are unable to agree upon the form or content of any
12 document necessary to implement the Settlement, or on any modification of the Agreement that may
13 become necessary to implement the Settlement, the Parties will seek the assistance of their mediator
14 (Lisa Klerman, Esq.) and/or the Court for resolution.

15 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
17 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right
18 released and discharged by the Party in this Settlement.

19 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, ESA nor Defense Counsel are
20 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon
21 as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
22 amended) or otherwise.

23 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
24 modified, changed, or waived only by an express written instrument signed by all Parties or their
25 representatives, and approved by the Court.

26 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to
27 the benefit of, the successors of each of the Parties.
28

1 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
2 governed by and interpreted according to the internal laws of the state of California, without regard to
3 conflict of law principles.

4 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
5 of this Agreement. This Agreement will not be construed against any Party on the basis that the Party
6 was the drafter or participated in the drafting.

7 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
8 entered during Action and in this Agreement relating to the confidentiality of information shall survive
9 the execution of this Agreement.

10 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to FRE
11 408, and all copies and summaries of the Class Data provided to Class Counsel by ESA in connection
12 with the mediation, other settlement negotiations, or in connection with the Settlement, may be used
13 only with respect to this Settlement, and no other purpose, and may not be used in any way that violates
14 any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when
15 the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay
16 out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data
17 received from ESA unless, prior to the Court's discharge of the Administrator's obligation, ESA
18 makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

19 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is
20 inserted for convenience of reference only and does not constitute a part of this Agreement.

21 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
22 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
23 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

24 12.17 Notice. All notices, demands or other communications between the Parties in
25 connection with this Agreement will be in writing and deemed to have been duly given as of the third
26 business day after mailing by United States mail, or the day sent by email or personal service.

27 12.18 Execution in Counterparts. This Agreement may be executed in one or more
28 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this

Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Signed this 26 day of May, 2024.

Plaintiff Rubian Saflor

Matern Law Group, PC


Rubian Saflor (May 26, 2024 13:29 PDT)

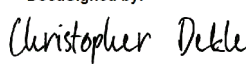
Rubian Saflor


Matthew Matern
Joshua Boxer
Sara Tosdal
Counsel for Plaintiff Rubian Saflor

For ESA Management, LLC

Approved as to Form:

Littler Mendelson, P.C.

DocuSigned by:

8381731464E2447...

Christopher Dekle, Chief Legal Officer


Rebecca Aragon
Nathaniel Jenkins
Counsel for Defendant ESA Management, LLC

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

Rubian Saflor, et al.. v. ESA Management, LLC

United States District Court for the Northern District of California,
Case No. 3:22-CV-05800-AGT

***The United States District Court for the Northern District of California authorized this Notice.
Read it carefully!***

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from the settlement of an employee class action lawsuit (“Action”) against ESA Management, LLC (“ESA”) for alleged wage and hour violations. The Action was filed by former ESA employee Rubian Saflor (“Plaintiff”) and seeks payment of unpaid wages, Labor Code penalties, and penalties under the California Private Attorneys General Act (“PAGA”). The Action includes everyone employed by ESA in California as a non-exempt or hourly (referred to as “Class Members” and or “Aggrieved Employees”) and who worked for ESA at least one day between December 16, 2019 and [DATE], which is called the “Class Period,” or between June 8, 2021 and [DATE], which is called the “PAGA Period.”

The proposed Settlement has two main parts: (1) a Class Settlement in which ESA will fund Individual Class Payments, and (2) a PAGA Settlement in which ESA will fund Individual PAGA Payments and separately will pay an amount to the California Labor and Workforce Development Agency (“LWDA”).

Based on ESA’s records, and the Parties’ current calculations, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive may be different and will depend on a number of factors.

The above estimates are based on ESA’s records showing that **you worked _____ workweeks** during the Class Period and **you worked ____ pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires ESA to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against ESA.

If you worked for ESA during the Class Period and/or the PAGA Period, you have two options under the Settlement:

Rubian Saflor v. ESA Management, LLC – Notice of Class Action Settlement

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ESA.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against ESA.

ESA will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against ESA that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will not be a Class Member, and will no longer be eligible for an Individual Class Payment, and cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt out of the PAGA portion of the proposed Settlement. ESA must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice. In the event that you object and your objection is overruled, you will be treated as a Participating Class Member.

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You Can Participate in the __ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to ESA’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff formerly worked for ESA as Guest Service Representative (“GSR”). The Action alleges that ESA violated California labor laws by failing to pay minimum wage, overtime, failing to provide meal periods, rest breaks, reimbursement for business expenses, pay wages timely, pay all wages due at termination, accurate wage statements, and of unfair competition in violation of Business and Professions Code section 17200, et seq. Based on the same Labor Code claims, Plaintiff Saflor has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff Saflor is represented by Matern Law Group, P.C. (“Class Counsel”).

ESA denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether ESA or Plaintiff is correct on the merits. In the meantime, Plaintiff and ESA hired a neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (i.e., a settlement of the case) rather than continuing the expensive and time-consuming litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ESA have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ESA does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ESA agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) settlement is

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in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate; authorized this Notice; and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. ESA Will Pay \$1,780,000 as the Gross Settlement Amount (Gross Settlement). ESA has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). If the Court grants Final Approval as the Parties request ESA will fund the Gross Settlement not more than 14 court days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the time for an appeal of the Court's entry of Judgment expires, or if the Judgment is timely appealed the date of final resolution of any appeal of the Judgment.
2. Court-Approved Deductions from Gross Settlement. At the Final Approval hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to \$593,333.33 (33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$10,000 to the named Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel, and representing the Class. The Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$_____ to the Administrator for services administering the Settlement.
 - d. Up to \$100,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in the amounts approved by the Court, the Administrator will distribute the rest of the Gross

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Settlement (the “Net Settlement”) by making individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiffs and ESA are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties, interest, and other damages (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and ESA have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the funds will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against ESA.

You cannot opt out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against ESA based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal.

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Plaintiff and ESA have agreed that, in either case, the Settlement will be void: ESA will not pay any money and the Class Members will not release any claims against ESA.

8. Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks in consultation with Class Counsel and counsel for ESA, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and ESA has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ESA and the Released Parties (defined below) for wages statutory and civil penalties, damages and liquidated damages, premiums, interest, restitution, injunctive relief, fees and costs, based on the Class Period facts and PAGA penalties based on the PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims for wages, statutory and civil penalties, damages, liquidated damages, premiums, interest, restitution, injunctive and declaratory relief, fees and costs, that were alleged in the Action, the Operative Complaint, any Amended Complaints in the Action, and/or any letters submitted by Plaintiff Saflor to the LWDA against ESA in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Class Period including, but not limited to all claims asserted in the Action for alleged: (1) failure to pay minimum wages in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the applicable IWC Wage Order; (2) unfair competition in violation of Business and Professions Code section 17200, et seq.; (3) failure to pay overtime compensation in violation of California Labor Code sections 510, 1194, and 1198 et. seq. and the applicable IWC Wage Order; (3) failure to provide required meal periods in violation of California Labor Code sections 226.7, 512, and 1198, and the applicable IWC Wage Order; (4) failure to provide required rest periods in violation of California Labor Code sections 226.7, 512, and 1198 and the

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applicable IWC Wage Order; (5) failure to provide accurate itemized wage statements in violation of California Labor Code sections 221-224, 226, 1174(d), and 1198; (6) failure to reimburse employees for required expenses in violation of California Labor Code section 2802; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202, 203, and 204; (8) failure to pay wages in violation of California Labor Code section 204; (9) all other statutory and regulatory violations alleged in the Operative Complaint, the Action, and any Amended Complaints in the Action, and with respect to the statutory and civil penalties claimed in the Action, any source of obligation as a basis for claiming such penalties during the Class Period, including any and all obligations imposed by the applicable Wage Orders. The release shall be given full res judicata and collateral estoppel effect upon entry of judgment. Except as set forth in Section 5.3 of this Agreement, Participating Class Members (except Plaintiffs) do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's Judgment is final, and ESA has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against ESA and the Released Parties, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against ESA and the Released Parties based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

The Labor Workforce Development Agency, State of California, in addition to all Aggrieved Employees, and Plaintiff Brown as a proxy for the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Labor Code pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, the Action, and the PAGA Notice, and ascertained in the course of the Action. The PAGA release shall be given full res judicata and collateral estoppel effect upon entry of the judgment in this Action so as to bar the LWDA and any other individual or entity from filing or pursuing the Released PAGA Claims against the Released Parties in any forum.

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11. Released Parties. The Released Parties are Defendant ESA Management, LLC, and any of its/their former and present parents, subsidiaries, affiliates, insurers, insurance policies, and benefit plans; each of the former and present officers, directors, employees, equity holders (partners, shareholders, holders of membership interests, etc.), agents, representatives, administrators, fiduciaries, and attorneys of the entities and plans described in this sentence; and any other predecessors, successors, transferees, and assigns of each of the persons and entities described in this sentence through the Release Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$25,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ESA's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email, or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenges by sending copies of pay stubs or other records. The Administrator will accept ESA's calculation of Workweeks and/or Pay Periods based on ESA's records as accurate unless you send copies of the records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ESA's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)

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including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a clear statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Rubian Saflor, et al. v. ESA Management, LLC*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ESA are asking the Court to approve. At least 35 days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payments stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Settlement Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payments may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Rubian Saflor, et al. v. ESA Management, LLC*, and include your name, current address, telephone number, and approximate dates of

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employment for ESA and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing. In the event that you object to the Settlement and your objection is overruled, you will be treated as a Participating Class Member to the Settlement.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Courtroom A – 15th Floor, located at 450 Golden Gate Avenue, San Francisco, CA 94102. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via _____. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Settlement Agreement sets forth everything ESA and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to telephone or send an email to Class Counsel or the Administrator using the contact information listed below. You can also make an appointment to personally review court documents in the Clerk's Office at the U.S. District Courthouse by calling (415) 522-2000.

DO NOT TELEPHONE THE U.S. DISTRICT COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

Class Counsel:

MATERN LAW GROUP, PC
Matthew J. Matern (CA SBN 159798)
mmatern@maternlawgroup.com
Joshua D. Boxer (CA SBN 226712)
jboxer@maternlawgroup.com
Sara B. Tosdal (CA SBN 280322)

ESA's Counsel:

LITTLER MENDELSON, P.C.
Rebecca M. Aragon, Bar No. 134496
raragon@littler.com
Nathaniel H. Jenkins, Bar No. 312067
njenkins@littler.com
633 West 5th Street, 63rd Floor
Los Angeles, California 90071
Telephone: 213.443.4300

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stosdal@maternlawgroup.com
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
Telephone: (310) 531-1900
Facsimile: (310) 531-1901

Fax No.: 213.443.4299

Settlement Administrator:

Phoenix Settlement Administrators

P.O. Box 7208

Orange, CA 92863

Phone: (800) 523-5773

Email: info@phoenixclassaction.com

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.