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Attorneys for Plaintiff BRAULIO JAVIER,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

BRAULIO JAVIER, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

HELENA AGRI-ENTERPRISES, LLC a
Delaware Limited Liability Company;
HELENA CHEMICAL COMPANY, a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendant.

Case No. 22CECG02269

[Consolidated with Case No.: 22CECG03145]

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: July 2, 2024

Time: 3:30 p.m.

Dept.: 502

Judge: Hon. Kristi Culver Kapetan

Complaint Filed: July 27, 2022

FAC Filed: November 14, 2022

Trial Date: None Set

1 I, James Hawkins, declare as follows:

2 1. I am an attorney, duly licensed to practice before all the Courts of the State of
3 California and I am the principal of James Hawkins, APLC, counsel of record for Plaintiff Braulio
4 Javier. I have personal knowledge of the facts set forth below, and if called to testify regarding
5 them, I could and would do so competently.

6 2. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval
7 of Class Action and PAGA Settlement, Approval of Class Notice, and Conditional Certification of
8 Settlement Class (the "Preliminary Approval Motion").

9 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Joint Stipulation and
10 Settlement Agreement entered by the Parties, which the parties ask the Court to preliminarily
11 approve (the "Settlement" or "Settlement Agreement"). Attached to the Settlement Agreement as
12 **Exhibit A** is the proposed Court Approved Notice of Class Action Settlement and Hearing Date
13 for Final Court Approval ("Class Notice")

14 4. Defendant does not oppose the Motion for Preliminary Approval.

15 5. The Settlement will resolve all claims that may be or could have been asserted
16 against the Released Parties based on the factual allegations in the operative complaint arising from
17 the contention that Defendant : (1) failed to pay minimum wages, (2) failed to pay overtime owed,
18 (3) failed to provide lawful meal periods, (4) failed to authorize and permit rest periods, (5) failed
19 to timely pay wages during employment, (6) failed to timely pay wages owed at separation, (7)
20 failed to reimburse necessary expenses, (8) made unlawful deductions, (9) knowingly and
21 intentionally failed to comply with itemized wage statement provision, (10) violated unfair
22 competition law § 17200 et seq, and (11) violated Labor Code § 2698 et seq.

23 **Procedural History**

24 6. Plaintiff Braulio Javier worked for Defendant Helena Agri-Enterprises, LLC
25 ("Defendant" or "Helena Agri"), as a Blender Operator — a non-exempt, hourly position — at
26 Defendant's facility located in Firebaugh, California from July 2018 through to July 2021.
27 Plaintiff's responsibilities included mixing chemicals to be sprayed on orchards.

28 7. On July 27, 2022, Plaintiff filed his original complaint and provided notice to the

1 LWDA of his claims. On October 4, 2022, he subsequently filed a complaint for PAGA penalties.

2 8. Prior to filing its answer, Defendant informed Plaintiff of a prior class settlement—
3 *Jorge Proctor v. Helena Agri-Enterprises, LLC, et al.*, San Diego County Superior Court Case No.
4 37-2018-00057894-CU-OE-CTL (“Proctor Settlement”)— which released claims through March
5 1, 2020 (except for the reimbursement class). Shortly thereafter, the Parties stipulated to extend
6 Defendant’s deadline to file its answer, pending the filing of Plaintiff’s First Amended Complaint
7 (“FAC” or “Operative Complaint”), which is the operative complaint in this action.

8 9. Plaintiff filed his FAC, consolidating his two actions, on November 14, 2022, The
9 operative complaint seeks remedies, including PAGA penalties for: (1) failure to pay minimum
10 wages, (2) failure to pay overtime owed, (3) failure to provide lawful meal periods, (4) failure to
11 authorize and permit rest periods, (5) failure to timely pay wages during employment, (6) failure to
12 timely pay wages owed at separation, (7) failure to reimburse necessary expenses, (8) unlawful
13 deductions, (9) knowing and intentional failure to comply with itemized wage statement provision,
14 (10) violation of unfair competition law § 17200 et seq, and (11) violation of Labor Code § 2698
15 et seq. (“Private Attorney Generals Act” or “PAGA”).

16 10. Defendant filed their answer to the complaint on December 16, 2022, denying all
17 claims and asserting various affirmative defenses.

18 **Investigation And Mediation**

19 11. The Parties agreed to conduct informal discovery and an information exchange of
20 information. Such investigation included research, and the exchange of information, documents,
21 and data through informal discovery.

22 12. Counsel engaged in a thorough and detailed investigation in preparation for a full-
23 day mediation. Plaintiff submitted substantial informal discovery requests to inform Defendant of
24 the nature of the information sought to prepare for mediation and prosecution of the matter. Such
25 information included, *inter alia*, class size information, workweek and shift details, a random
26 sampling of time and wage records for the putative class, Plaintiff’s personnel file, policies and
27 procedures including employee handbooks, and information concerning Defendant’s prior
28 settlement. Defendant produced a large volume of documents and data concerning the putative class

1 members prior to mediation. Defendant provided, among other things, a sampling of schedules,
2 time records and wage statements for the Class Members during the Class Period, and the personnel
3 file, time records, and wage statements for Plaintiff. Plaintiff also received data including the total
4 number of Class Members and Aggrieved Employees, the address of each of Defendant' locations
5 and/or facilities in California where Defendant employed Class Members, the total number of Class
6 Members and Aggrieved Employees presently employed in California, the number of workweeks
7 and pay periods in the Class and PAGA Periods, the number of shifts worked by the Class Members
8 and Aggrieved Employees during the Class and PAGA Periods broken down by shift length, the
9 average number of Class Members employed during each year of the liability period, the average
10 regular pay rate for Class Members, the average wage for each group, all schedules that
11 communicated to Plaintiff their hours of work, and any breaks. Defendant provided Plaintiff with
12 Defendant' employee handbooks used during the Class Period, policies and training materials
13 related to meal periods, rest periods, the location where employees were supposed to take meals or
14 rest periods, whether employees could leave the premises during breaks, timekeeping, timing of
15 earning and payment of overtime wages, and the calculation of the regular rate for payment of
16 overtime wages, record keeping, payment of wages during employment and at the time of
17 termination, deductions from wages, reimbursements (including any applicable forms or
18 procedures), scheduling and staffing, payment of sick leave and accrual, reporting time wages, the
19 usage of pay cards or debit cards, including any fee schedule, job descriptions for each position
20 worked by the Class Members, and any alternative workweek schedules in effect during the Class
21 Period.

22 13. Counsel for the Parties investigated the law as applied to the facts discovered
23 regarding the alleged claims of the Settlement Class Members and potential defenses thereto, and
24 the damages and penalties claimed by the Settlement Class Members. Counsel retained the
25 assistance of an expert to analyze the time and pay data and to prepare a comprehensive damages
26 analysis. The Parties conducted their own evaluations of the potential recoveries based on the
27 claims alleged in the Action.

28 14. On November 7, 2023, the Parties attended mediation with an experienced mediator,

1 Gig Kyriacou. Although the parties were unable to reach a mutually agreeable compromise at
2 mediation, they were eventually able to settle the action through continued arm's length
3 negotiations, and with continued assistance of Mr. Kyriacou. On November 20, 2023, Parties
4 accepted a proposal by Mr. Kyriacou. The information exchanged between the Parties allowed them
5 to assess the merits of the claims and defenses, and to reach a compromise on the issues.

6 15. At all times, the negotiations leading to the mediator's evaluation and proposal, and
7 eventually to the long-form Settlement Agreement, have been adversarial, non-collusive, conducted
8 at arm's length, and supported by a knowledgeable mediator.

9 16. Plaintiff and Class Counsel recognized that increases in expenses and the length of
10 proceedings would be a necessary and undesirable consequence of continued litigation against
11 Defendant through trial and through any appeals. Plaintiff and Class Counsel also have considered
12 the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays
13 inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement
14 negotiations, including the above-mentioned mediation and through the long-form Settlement
15 Agreement. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in
16 this Settlement is a fair, adequate, and reasonable settlement, and it is in the best interests of the
17 Class Members.

18 17. Although a settlement has been reached, Defendant denies all liability or
19 wrongdoing of any sort with regard to the claims and Defendant maintains that for any purpose
20 other than settlement, this Action is not appropriate for class certification. Defendant denies all
21 allegations asserted in the operative complaint, and all claims made by Plaintiff. Defendant asserts
22 that they have no liability for any Plaintiff's or any Class Member's claims under any statute, wage
23 order, regulation, common law, or equitable theory.

24 18. Plaintiff Braulio Javier is a former employee who worked for Defendant in
25 Firebaugh, California from July 2018 through July 2021. Plaintiff seeks to represent a Class of all
26 non-exempt employees employed by Helena Agri. in the State of California during the Class Period.
27 The class period for claims affected by the Proctor Settlement is March 2, 2020, through January
28 20, 2024, while those claims unaffected by the Proctor Settlement have a class period from July 29,

2018, through January 20, 2024. (Ex.1, § I.I.) It is estimated there were approximately 678 Class Members and 56,321 work weeks during the Class Period. (*Id.* at § III.O.19.)

19. While Plaintiff believes in the strength of his allegations and that his claims are appropriate for class certification, Plaintiff and Class Counsel have balanced our evaluation of the validity and merit of the asserted claims against potential problems of proof, the legal standards governing litigation of the class claims against potential problems of proof, the legal standards governing litigation of the class claims, the uncertainty of obtaining and maintaining class certification through trial, the potential for appeals, the expense and burden associated with prolonged litigation, the various defenses asserted by Defendant.

20. Based on my evaluation, I believe that the terms set forth in the Settlement are fair, adequate, and reasonable and in the best interest of the Class, including Plaintiff.

21. As set forth more extensively above, the Parties conducted a thorough investigation into the allegations in this Action. Prior to filing the Complaint, we engaged in a significant amount of research and investigation. We then drafted formal and informal discovery to propound to Defendant. In lieu of Defendant responding to formal discovery, the Parties agreed to attend mediation, and thereafter directed their efforts towards preparing for fruitful mediation. The Parties engaged in a significant amount of research, investigation, and information exchange prior to mediation. Defendant produced hundreds of pages of documents containing voluminous data, including multiple spreadsheets comprised of payroll and timekeeping data for the putative class. I believe that this substantial exchange of information was sufficient to permit the parties to realistically assess the strengths and weaknesses of their claims and defenses, and the parties' respective assessments allowed them to conduct an informed mediation and reasonable settlement negotiations in good faith.

22. Class Counsel engaged in numerous discussions with the Plaintiff regarding the claims set forth in the complaint.

23. Class Counsel is knowledgeable about and has conducted extensive research with respect to the applicable law and potential defenses to the claims in this Class Action and with regard to the impact of the prior settlement. Class Counsel believes Defendant produced sufficient

1 documents and information that allowed the parties to engage in well-informed mediation based
2 upon good faith negotiations. Information was also exchanged during the course of the mediation,
3 which informed subsequent negotiations between the parties and the eventual agreement upon the
4 terms of Settlement.

5 24. As Class Counsel, we have used this extensive informal discovery and investigation
6 to create a comprehensive damages and potential liability model for each of the asserted claims,
7 described below, with the assistance of an expert. This damages analysis created from the records
8 produced was used to determine Defendant's potential liability for Plaintiff's claims.

9 25. The negotiated Settlement thus resulted from the damages and potential liability
10 model developed from Defendant's records and the remaining production documents and produced
11 information. To this end, the parties and their counsel exchanged substantial information through
12 informal discovery, information exchange, and correspondence. Counsel for the parties believe they
13 have conducted sufficient discovery, investigation, and research to evaluate the strengths and
14 weaknesses of their respective claims and defenses. After this assessment, Plaintiff and Class
15 Counsel believe this Settlement is fair and reasonable.

16 **The Terms of the Settlement**

17 26. Subject to Court approval, the parties have agreed under the Settlement that
18 Defendant will pay a Gross Settlement Amount of \$600,000. (Ex.1, § I.U.)

19 27. The Net Settlement Amount ("NSA") is the amount available for distribution to
20 Class Members in the form of Individual Settlement Payments following deduction of the requested
21 fees, awards, and costs. (Ex.1, § I.X.)

22 28. Subject to Court approval, the NSA is estimated to be \$329,000 after deduction of
23 the requested fees, costs, service award, and penalties as follows:

- 24 a. Attorney Fee Award to Class Counsel of up to thirty-five percent (35%) of the
25 Gross Settlement Amount equal to \$210,000. (Ex.1, § I.X.)
26 b. Cost Award (for reasonable costs incurred by Class Counsel) of up to \$20,000.
27 (*Id.* at § I.M.)
28

- 1 c. Class Representative Service Award of \$10,000 to Plaintiff Braulio Javier. (*Id.*
2 at § I.K.)
- 3 d. Administration Costs (to be paid the Settlement Administrator) of up to
4 \$15,000 (*Id.* at § I.A.)
- 5 e. PAGA Payment (to Aggrieved Employees and LWDA) of \$15,000. (*Id.* at §
6 I.Z).

7 29. Each Participating Class Member will receive a proportionate share of the Net
8 Settlement Amount , calculated using the following formula: (the number of points the employee
9 earned during the Class Period) ÷ (the total number of points earned by any and all Participating
10 Class Members collectively) x (the Net Settlement Amount). (Ex.1 at § III.G.1.a.) The value of
11 each Participating Class Member's Individual Settlement Share ties directly to the number of pay
12 periods that he or she worked.

13 30. Within fifteen (15) days of Preliminary Approval, Defendant will provide the Class
14 List to the Settlement Administrator. (Ex.1, § III.K.2.a.)

15 31. All Class Members will receive notice of the Settlement and are not required to
16 submit a claim form for their share of the Net Settlement Amount. (Ex.1, § I.V.) Class Members
17 shall have until the Response Deadline to dispute the number of workweeks that they are credited.
18 (*Id.* at § III.K.2.d.) Within twenty-one (21) calendar days after the entry of the Preliminary
19 Approval Order, and upon receiving the class list from Defendant, the Settlement Administrator
20 will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Id.* at § III.K.2.a–
21 b.)

22 32. Prior to mailing, the Settlement Administrator will perform a search based on the
23 National Change of Address Database for information to update and correct the Class List based
24 on any known or identifiable address changes. (Ex.1, § III.K.2.a–b.) The Settlement Administrator
25 will also attempt to obtain valid mailing addresses on Notice Packets returned as undeliverable in
26 accordance with the terms of the Settlement. (*Id.* at § III.K.2.C.)

27 33. The Response Deadline will be forty-five (45) calendar days from the initial mailing
28 of the Notice Packet by the Settlement Administrator. (Ex.1, § I.HH.) Class Members to whom

1 Notice Packets are re-mailed in accordance with the notice procedure set forth in the Settlement
2 shall have ten (10) calendar days from the date of re-mailing, or until the Response Deadline,
3 whichever is later, to submit a Request for Exclusion, an Objection, or a dispute. (*Id.* at § III.K.2.C.)

4 Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. (*Id.*)

5 34. In order for any Class Member to validly exclude themselves from the Class and this
6 Settlement, a written request for exclusion containing all the required information must be filled
7 out and timely sent to the Settlement Administrator, postmarked by no later than the Response
8 Deadline (45 days after the date the Administrator mails the Notice). (Ex.1, § III.k.4.)

9 35. A Class Member who requests to be excluded from the Class in writing will not be
10 deemed a Settlement Class Member for any purpose, will not receive an Individual Settlement
11 Payment, and will not be subject to the terms of the Settlement. (Ex.1, § III.k.4.a.)

12 36. In accordance with the terms of the Settlement, the entire NSA will be disbursed to
13 Participating Class Members—that is, all Class Members who do not submit timely and valid
14 Requests for Exclusion. (Ex.1, § III.k.4.a.)

15 37. In order for any Class Member to object to the Settlement, or any term of the
16 Settlement, the Class Member making the objection must not submit a request for exclusion, and
17 must, by not later than 45 days after the Notice was initially mailed to Class Members, submit the
18 Objection to the Court and Class Counsel, along with all supporting papers, in accordance with the
19 terms of the Notice and by the Response Deadline. (Ex.1, § III.k.3.)

20 38. To the extent that the Individual Settlement Payment checks are undeliverable, or
21 the Individual Settlement Payment checks are uncashed 180 days after the date listed on the check,
22 the amount of those checks shall be sent to the State of California Controller's Office Unclaimed
23 Property Fund to be held in the name of the Class Member. (Ex.1, § III.K.10.)

24 39. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be
25 reported on an IRS Form W2); and 80% as interest and statutory penalties (to be reported on an
26 IRS Form 1099.) (Ex.1, § III.G.2.)

27 40. The Settlement Administrator shall issue to Plaintiff and Participating Class
28 Members Forms W-2 and 1099 – MISC for the amounts paid. (Ex.1, § III.G.2.)

1 41. ILYM Group, Inc. shall be the Settlement Administrator. (Ex.1, § I.II.) The
2 Settlement Administration Expenses are currently estimated to be \$11,000 and will not exceed
3 \$15,000. (*Id.* at § I.A) These will include, *inter alia*, fees and costs payable to the Settlement
4 Administrator for printing, distributing (including with appropriate postage), and tracking
5 documents for this Settlement, any searches to locate any Settlement Class Members, translating
6 the notice and related documents into Spanish, providing notice of the proposed settlement to the
7 appropriate state and federal officials in accordance with the requirements of the Class Action
8 Fairness Act, 28 U.S.C. § 1715, calculating estimated amounts per Class Member, tax reporting,
9 distributing the Individual Settlement Payments, Class Representative Service Award, and Class
10 Counsel Fees and Costs and providing necessary certification of completion of notice, reports and
11 declarations, establishing and maintaining a website, establishing and administering a qualified
12 settlement fund account, required tax reporting on the Individual Settlement Payments, the issuing
13 of required tax forms, and other responsibilities as requested by the Parties and the Court. (*Id.* §
14 III.H.4.)

15 42. On the date set forth in the Notice of Proposed Class Action Settlement, a Final
16 Approval Hearing shall be held before the Court in order to (1) review this Settlement and
17 determine whether the Court should give it final approval, and (2) consider any timely objections
18 made, and all responses by the Parties to such objections. (Ex.1, §§ III.K.3.a, III.K.6) At the Final
19 Approval Hearing, the Parties will ask the Court to give final approval to the Settlement and shall
20 submit to the Court a Proposed Final Order Approving Settlement of Class Action, which the
21 Parties shall jointly agree upon in advance, and which shall be entered in the Action. (*Id.* at §
22 III.K.6.c.)

23 43. No later than sixty-five (65) calendar days after the Effective Final Settlement Date,
24 Defendant shall deposit the entire Gross Settlement Amount and additional funds needed to pay the
25 entire GSA and associated taxes by wiring the funds into a QSF set up and controlled by the
26 Settlement Administrator. (Ex.1, § III.K.9.A.) It is the Parties' intention that the Settlement shall be
27 final for purposes of the Effective date when the Final Approval of the Settlement can no longer be
28 appealed, or, if there are no objectors and no Plaintiff in intervention at the time the Court grants

1 Final Approval of the Settlement, the date the court enters judgment granting. (*Id.* § I.Q.)

2 44. In the event it becomes impossible to secure approval of the settlement by the Court,
3 the Parties shall be restored to their respective positions in the Action prior to entry of this
4 settlement. (Ex.1, § III.K.6.b.) If this Settlement is not approved by the Court or reversed or
5 materially modified on appellate review, the Settlement will become null and void and no Party
6 shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any
7 appropriate orders when denying approval; and/or (b) there are any terms and conditions in this
8 Settlement Agreement specifically stated to survive the settlement being voided or not approved,
9 and which control in such an event. (*Id.*)

10 **The Settlement is Fair, Reasonable, and Adequate**

11 45. Class Counsel are experienced wage and hour class action attorneys. We have
12 represented, mediated, tried, and settled other employee class actions in wage and hour litigation
13 and have knowledge of the strengths and weaknesses of the parties' respective positions sufficient
14 to evaluate the fairness of the proposed settlement herein.

15 46. Class Counsel and Plaintiff understand the uncertain and risky nature of the class
16 certification process as well as the potential merits of both legal and factual defenses be raised by
17 Defendant. Based upon the uncertainty associated with Defendant's asserted defenses, the risk in
18 certifying a class, the possibility of Defendant prevailing on potentially dispositive motions, and a
19 potential trial, Class Counsel and the Plaintiff believe the \$600,000 Gross Settlement Amount to
20 settle the Released Claims is fair, reasonable, and adequate under the circumstances and will
21 provide Participating Class Members meaningful compensatory relief, without any reversion to
22 Defendant. The Settlement affords the Class Members prompt and substantial relief, while avoiding
23 significant legal and factual obstacles that otherwise may have prevented the Class Members from
24 obtaining any recovery at all. Indeed, the outcome of class certification, trial, and any attendant
25 appeals, is inherently uncertain. Throughout this litigation and the settlement process, Defendant
26 has denied and continues to deny any liability or wrongdoing of any kind associated with Plaintiff's
27 claims alleged in the Actions. Defendant has also produced evidence to support their various
28 affirmative defenses, including Defendant's contentions that its policies were facially lawful, such

1 that full recovery is highly uncertain.

2 47. Defendant has also consistently denied the propriety of class certification, except
3 for the exclusive purpose of settling the Action. With this in mind, the Parties have concluded that
4 the risks and future expenses involved in continuing the Action will be substantial and have chosen
5 to eliminate any further litigation costs, attorneys' fees, and uncertainty in connection with the
6 Action. In particular, given the heavily disputed nature of the case—both factual and legal
7 grounds—it is expected that substantial expenses would be incurred in determining issues
8 concerning formal discovery, litigating any class certification or decertification motion and appeals,
9 bringing potentially dispositive motions, and in connection with any trial or appeals after trial.
10 Without admitting or conceding any liability or damages, Defendant has entered into the Settlement
11 to fully resolve this litigation; to bar further litigation on these legal and factual issues under the
12 terms and conditions set forth in the Settlement; and in order to avoid the burden, expense, and
13 uncertainty associated with the litigation.

14 48. Plaintiff alleged that Defendant (1) failed to pay minimum wages, (2) failed to pay
15 overtime owed, (3) failed to provide lawful meal periods, (4) failed to authorize and permit rest
16 periods, (5) failed to timely pay wages during employment, (6) failed to timely pay wages owed at
17 separation, (7) failed to reimburse necessary expenses, (8) made unlawful deductions, (9)
18 knowingly and intentionally failed to comply with itemized wage statement provision, (10)
19 violated unfair competition law, and (11) violated Labor Code § 2698 et seq.

20 49. Based upon initial review of the documents and information provided, Plaintiff's
21 counsel estimated that maximum total liability if the claims were entirely successful at trial,
22 Defendant did not prevail on any defenses, and all penalties sought were awarded, Plaintiff and the
23 Class would be awarded approximately \$10,748,112 in damages and \$10,515,000 in civil penalties
24 under PAGA. These estimates were based on the following figures provided prior to mediation:
25 678 class members (400 former and 278 current employees), 63,873 workweeks during the Class
26 Period, \$20.33 average hourly wage, and 19,986 PAGA pay periods.

- 1 a. Off-the Clock Work: 63,873 workweeks with off-the-clock work, 1 hour of
2 off-the-clock work per week at a rate of \$20.33 per hour, with 83.5% of off-
3 the-clock hours qualifying as overtime = \$1,084,279.31
- 4 b. Overtime (Regular Rate): \$1,593,080 based on an approximately 374
5 employees who worked 13,532 pay period in which they worked overtime and
6 received annual incentive bonuses.
- 7 c. Unpaid Meal Period Premiums: 91,401 missed or late meal periods x \$20.33
8 hourly rate = \$1,858,190.
- 9 d. Unpaid Rest Period Premiums: 81,787 shifts with rest period violations x
10 \$20.33 hourly rate, plus interest = \$1,662,729.71.
- 11 e. Waiting Time Penalties: 400 former employees x \$184.30 average daily pay x
12 30 days = \$2,211,643.
- 13 f. Failure to Comply with Itemized Wage Statement Provisions: 20,512 Pay
14 Periods in Wage Statement Period at \$50 per initial violation and \$100 per
15 subsequent violation and \$4000 maximum penalty per employee = \$2,025,550.
- 16 g. Failure to Reimburse Necessary Business Expenses: \$20 average unreimbursed
17 expenses per month, per employee = \$312,140.
- 18 h. PAGA Penalties: \$10,515,500
- 19 i. Waiting Time: 244 Former Aggrieved Employees x \$100 penalty per
20 pay period = \$24,400.
- 21 ii. Unpaid Wages: 19,986 PAGA Pay Periods x \$100 penalty per pay
22 period = \$1,998,600.
- 23 iii. Overtime: 9,814 PAGA Pay Periods x \$100 penalty per pay period =
24 \$981,400.
- 25 iv. Meal Periods: 11,272 PAGA Pay Periods x \$100 penalty per pay period
26 = \$ 1,127,200.
- 27 v. Rest Periods: 19,986 PAGA Pay Periods x \$100 penalty per pay period
28 = \$1,998,600.

- vi. Wage Statements: 19,986 PAGA Pay Periods x \$100 penalty per pay period = \$1,998,600.
- vii. Reimbursement: 19,986 PAGA Pay Periods x \$100 penalty per pay period = \$1,998,600.
- viii. Sick Pay: 747 PAGA Pay Periods x \$100 penalty per pay period = \$74,700.
- ix. Meal Premiums (Regular Rate): 3,134 Pay Periods x. \$100 penalty per pay period = \$313,40.

50. Class certification was far from certain given Defendant' defenses and the current state of the law regarding certification and establishing common questions of fact. As a result, the considerable risk that Defendant could defeat certification, defeat the representative claims, and prevail on its defenses, thus defeating any and all recovery to the class, warranted a compromise of the class claims and resulted in the parties arriving at the terms of their proposed Settlement.

51. Defendant argued that its timekeeping, meal, and rest period policies were compliant, that it permitted its employees lawful meal and rest periods, the conduct of Plaintiff and the Class contributed to the experienced harms, and that Plaintiff and the Class waived certain meal and rest periods. Defendant has denied and continues to deny all of Plaintiff's allegations and any liability. Based upon Defendant's arguments, defenses, risks to certification and merits, Plaintiff's Counsel determined that the realistic exposure was approximately \$2,687,028, exclusive of PAGA penalties and \$2,886,888 inclusive of PAGA penalties.

52. The negotiated settlement of \$600,000 is approximately 20.1% of the realistic liability. Accordingly, I respectfully submit that this settlement is well within the ballpark of reasonableness, and that the settlement is fair, reasonable, and adequate.

53. This case also has the potential to generate enormous litigation costs on all of the parties, as Defendant is expected to continue challenging Plaintiff's allegations and to increase the pace of their investigation and opposition. Although it is difficult to foresee the ultimate result of a trial, we anticipate an expensive, complex, and time-consuming process. We foresee the possibility of a lengthy and costly appeal regardless of the outcome of a trial on the merits, especially given

1 the unsettled legal landscape governing this case. In order to succeed on the merits, Class Members
2 would also need to prevail on several hotly disputed legal and factual issues. Some of these issues
3 include the ability of the proposed Class Representative to advance the interests of all Class
4 Members and assert claims which are representative of the entire class. Plaintiff would need to
5 continue to tenaciously litigate this case through intense discovery, investigation and heavy law
6 and motion pertaining to manageability, class certification and possible summary judgment issues,
7 based on Defendant's aggressive posturing and vigorous dispute of liability and damages. Given
8 these realities, it is highly likely that the future expense of this litigation, and its likely duration if
9 the settlement is not approved, would be significant and weigh heavily in favor of approval of this
10 Settlement.

11 54. The proposed Class Representative, Braulio Javier, provided extensive supporting
12 documents and knowledge to enable counsel to develop the information necessary to litigate and
13 settle this case. Plaintiff conducted extensive record review and consultation with counsel to assist
14 in evaluating and proving the claims, provided information and documents that were vital to Class
15 Counsel's prosecution of this matter, and dedicated invaluable effort required to advance this matter
16 to resolution. He also assisted counsel in preparing for mediation, made himself available to answer
17 any questions that arose during the course of the mediation, and has been actively involved in this
18 matter since its inception. The Settlement provides for a Class Representative Service Award to be
19 paid up to \$10,000. (Ex.1, ¶ I.K.) The primary consideration for this payment is to compensate
20 Plaintiff for his services and efforts to prosecute this class action, and the risk and potential
21 consequences he assumed by virtue of serving as Class Representative and Plaintiff. The proposed
22 Class Representative Award is a small portion of the Gross Settlement Amount, and little in
23 comparison to the Net Settlement Amount guaranteed to be paid to the Settlement Class. The Class
24 Representative Service Award is fair and justified as part of the Settlement. Per Defendant's
25 request, Plaintiff has also individually executed a general release of all known and unknown claims,
26 as opposed to the limited release by participating Class Members. (Ex.1, ¶ I.EE–FF, II.L–N).
27 Plaintiff is not receiving preferential treatment, and all Settlement Class Members will receive
28 compensation consistent with their proportional share through the efforts of Plaintiff in the context

1 of this suit. Plaintiff will provide a declaration regarding her efforts at the time of final approval.

2 55. Commonality: Class Certification, as requested by the parties for the purposes of the
3 Settlement only, should be granted because Plaintiff alleges that the proposed Class Members’
4 claims all stem from the same alleged conduct, e.g., that Defendant failed to pay minimum and
5 overtime wages, failed to provide lawful meal periods, failed to authorize and permit rest periods,
6 failed to pay meal or rest period premiums, made unlawful deductions, failed to timely pay wages
7 earned during employment, failed to timely pay wages upon separation from employment, failed
8 to provide accurate wage statements, and violated the Business and Professions Code § 17200 et
9 seq, as well as Labor Code section 2698 et seq.

10 56. The nature and types of claims available to the Class Members are identical and
11 arise out of application of uniform policies. For purposes of the Settlement, the main individualized
12 differences between Class Members relate to the amount of compensation each Class Member
13 would be entitled to receive based upon workweeks worked. This Action seeks recovery of unpaid
14 wages and penalties pursuant to the California Labor Code, California Industrial Welfare
15 Commission (“IWC”) Wage Orders, and Section 17200 of the Business and Profession Code on
16 behalf of Plaintiff and the rest of the Class Members, who all share claims arising out of the same
17 policies and practices. In addition, Defendant’s primary defense that its policies were facially
18 lawful and lawful as applied is common to all members of the Class. Under these circumstances,
19 the commonality requirement for certification for settlement purposes is satisfied.

20 57. Typicality: The typicality requirement is met, as the proposed Class Representative
21 and the Class Members have claimed that Defendant violated Federal and California law by the
22 above-specified conduct. Under these specific circumstances, the typicality requirement for class
23 certification for settlement purposes is satisfied because the Class Representatives and the proposed
24 Class Members all claim that Defendant committed similar violations based upon similar conduct,
25 policies and practice and they seek the same remedies. Plaintiff contends, and Defendant do not
26 dispute for settlement purposes, that their claims are typical of the claims of the Settlement Class
27 because they arise from the same factual basis and are based upon the same legal theories as those
28 applicable to the Class Members.

1 58. Adequacy and Numerosity: The adequacy requirement is also satisfied. The Class
2 Representative will receive a reasonable award for her time and efforts assisting counsel with
3 factual issues surrounding the case. Other than this specific payment, all Class Members will
4 receive a proportionate share of the Net Settlement Amount based on the number of workweeks
5 worked during the Class Period divided by the total number of workweeks worked by the Class
6 during the Class Period. As a result, there is no conflict of interest between the Class Representative
7 and the Class Members. Additionally, the Class Representative and our firm have prosecuted this
8 action vigorously on behalf of the Class Members and have represented the proposed Class's
9 interests in obtaining documents and information related to the claims in litigation, in settlement
10 negotiations, and at mediation. Our firm is well-versed in handling complex wage and hour class
11 action litigations such as this one and submits that the class size of approximately 678 Class
12 Members is sufficiently numerous to warrant conditional class certification. Class Counsel has kept
13 in regular touch with Plaintiff, and believes this settlement is fair to both Plaintiff and Class
14 Members. I am unaware of any interests of the Class Representative which are adverse or
15 antagonistic to the interests of the Class.

16 59. Superiority: The named Class Representative and our firm, as Class Counsel,
17 believe that common questions of law and fact predominate over individual questions, and class-
18 wide treatment of this dispute is superior to individual litigation. Plaintiff alleges that the Class in
19 this case is sufficiently cohesive, since all Class Members, as non-exempt, hourly employees, share
20 a common nucleus of facts and potential legal remedies, and because all of the Class Members and
21 the Class Representative seek unpaid wages, penalties, and interest from Defendant for the
22 allegations described herein. Plaintiff alleges that common questions predominate over individual
23 questions, and the Class Members' potential legal remedies are identical. The alternative method
24 of resolution is individual claims for lesser amounts of damages; individual cases, however, would
25 be uneconomical for potential plaintiffs because the cost of litigation dwarfs their potential
26 recovery. While there are many Class Members, many of the Class Members' claims would be too
27 small to justify individual litigation. Further, hundreds of separate lawsuits would be an
28 unnecessary drain on judicial resources and could result in conflicting obligations being imposed

1 upon Defendant. Therefore, class treatment is the preferred method of resolution.

2 60. Ascertainability: The proposed Class is ascertainable because all of the Class
3 Members have worked for Defendant as non-exempt, hourly employees and can be identified
4 through Defendant's employee and personnel files and payroll records. Indeed, Defendant have
5 already identified from their records approximately 678 current and former hourly non-exempt
6 employees comprising the potential Class, which the Parties respectfully request the Court
7 preliminarily certify for settlement purposes. Finally, for the purpose of settlement only, Plaintiff
8 and Defendant have stipulated to class certification.

9 61. The Parties' proposed Class Notice is attached hereto as **Exhibit A**. The plan for
10 providing class notice will entail the Settlement Administrator mailing the Class Notice to all
11 known and reasonably ascertainable Class Members based on Defendant's business records by
12 USPS first class mail. The Class Notice is consistent with notices approved by numerous federal
13 and state courts and is believed to be the best notice practicable under the circumstances of this
14 case.

15 62. The Class Notice also fulfills the neutrality requirement. It summarizes the
16 proceedings to date along with the terms and conditions of the Settlement in an informative and
17 coherent manner, and is accurate, objective, and understandable to all Class Members, as is required
18 under prevailing precedent. The Class Notice clearly states the Settlement does not constitute an
19 admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also
20 states the final settlement approval decision has yet to be made. Accordingly, the Class Notice
21 complies with the standards of fairness, completeness and neutrality required of a settlement class
22 notice.

23 63. I have a great deal of experience in wage and hour class action litigation. I have been
24 certified and approved as class counsel in many other wage/hour class actions, and I am currently
25 litigating numerous others before this Court and others. Although not an all-inclusive list, over the
26 years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of
27 which implicated similar law and facts to those associated with this Action:

28 a. *Mojica v. Compass Group, Inc., et. al.* USDC Central District, Case No. 8:13-cv-

1 01754. Wage and Hour Class Action case seeking past wages for meal and rest break
2 violations for production workers in the State of California. Plaintiff's Counsel
3 preliminarily appointed as Class Counsel. Case settled. Final approval granted, and
4 funds fully disbursed.

5 b. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-04554.
6 Wage and Hour Class Action case seeking past wages for "off the clock," overtime
7 and meal and rest break violations for production workers in the State of California.
8 Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final Approval
9 granted, no objections and funds fully distributed.

10 c. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
11 Wage and Hour Class Action case seeking past wages for meal and rest period
12 violations for retail employees in the State of California. Plaintiff's counsel
13 appointed co-lead counsel. Case settled, Final Approval granted, no objections and
14 funds fully distributed.

15 d. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
16 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal
17 and rest period violations for retail employees in the State of California. Plaintiff's
18 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
19 objections and funds fully distributed.

20 e. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
21 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
22 wages for overtime, meal, and rest break violations for driver employees in the State
23 of California. Stipulation for "binding arbitration." Arbitration Award for Plaintiff
24 Class. Arbitration Award confirmed. Plaintiff's counsel lead trial counsel and class
25 counsel.

26 f. *Gonzalez v. Superior Industries International, Inc., et al.*, Los Angeles County
27 Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past
28 wages for overtime, meal, and rest breaks violations for production employees in

1 the State of California. Plaintiff's counsel appointed as lead counsel. Case settled,
2 Final Approval granted, no objections and funds fully distributed.

3 g. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
4 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
5 wages for overtime, meal, and rest break violations for production employees in the
6 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,
7 Final Approval granted, no objections and funds fully distributed.

8 h. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
9 Wage and Hour Class Action seeking past wages for unlawful deductions, meal, and
10 rest break violations for restaurant employees in the State of California. Plaintiff's
11 counsel appointed as lead counsel. Case settled. Final Approval granted and funds
12 fully distributed.

13 i. *Padron v. Universal Protection Service, et al.*, Orange County Superior Court, Case
14 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime,
15 meal, and rest break violations for security officers in the State of California.
16 Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval
17 granted, no objections and funds fully distributed.

18 j. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court, Case
19 No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking
20 past wages for meal and rest break violations for security officers employed by
21 Defendant in the State of California. Plaintiff's counsel and co-counsel. Case settled,
22 Final Approval granted and funds fully distributed.

23 k. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
24 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for
25 overtime, meal and rest break violations for housekeepers employed by Defendant
26 in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled,
27 Final Approval granted, no objections and funds fully distributed.

28 l. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,

1 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal
2 and rest period violations for non-exempt employees employed by Defendant in the
3 state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff
4 has petitioned the Court for Lead Counsel.

5 m. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
6 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past
7 wages for field and branch employees of Defendant in the State of California.
8 Plaintiff's counsel appointed as lead counsel. The case is settled and awaiting Final
9 Approval.

10 n. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
11 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
12 employees of Defendant in the State of California. Plaintiff's counsel appointed as
13 lead counsel. Case settled, Final Approval granted, no objections and funds fully
14 distributed.

15 o. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
16 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
17 break violations for security guards employed by Defendant in the State of
18 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final
19 Approval granted, no objections and funds fully distributed.

20 p. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
21 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
22 rest break violations for production employees employed by Defendant in the State
23 of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
24 Approval granted, no objections and funds fully distributed.

25 q. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
26 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
27 break violations for restaurant employees employed by Defendant in the State of
28 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final

- 1 Approval granted, no objections and funds fully distributed.
- 2 r. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
- 3 330145. Wage and Hour Class Action seeking past wages of overtime for
- 4 misclassification of managers employed by Defendant, DBA Carl's Jrs. in the State
- 5 of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
- 6 Approval granted, no objections and funds fully distributed.
- 7 s. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
- 8 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
- 9 break violations for retail employees employed by Defendant in the State of
- 10 California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval
- 11 granted, no objections and funds fully distributed.
- 12 t. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
- 13 07CC00015. Wage and Hour Class Action seeking past wages of overtime for
- 14 misclassification of managers employed by Defendant in the State of California.
- 15 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
- 16 objections and funds fully distributed.
- 17 u. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
- 18 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime,
- 19 meal and rest break violations for production workers employed by Defendant in
- 20 the State of California. Plaintiff's counsel appointed lead counsel. Case settled,
- 21 Final Approval granted, no objections and funds fully distributed.
- 22 v. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case
- 23 No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal
- 24 and rest period violations for production employees employed by Defendant in the
- 25 State of California. Plaintiff counsel appointed as lead counsel. Case settled. Final
- 26 Approval granted, no objections and funds fully distributed.
- 27 w. *Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour*
- 28 *Cases*, Los Angeles Superior Court, Case No. JCCP 4545. Wage and Hour Class

1 Action seeking past wages for overtime, meal and rest period violations for security
2 guards employed by Defendant in the State of California. Certification granted.
3 Plaintiff's counsel appointed as co-lead counsel. Writ taken. Court stays action
4 pending Appellate Court ruling. Court lifts stay.

5 x. *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County Superior Court,
6 Case No. 30-2013-00694012-CU-OE-CXC. Wage and Hour Class Action seeking
7 past wages for overtime, meal and rest period violations, and penalties on behalf of
8 non-exempt production, maintenance, shipping, and receiving employees employed
9 by Defendant in California. Plaintiff counsel appointed as lead counsel. Case settled.
10 Final Approval granted, no objections and funds fully distributed.

11 y. *Trani v. Lisi Aerospace, et al.*, Los Angeles Superior Court, Case No. BC495527.
12 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
13 violations, and penalties on behalf of non-exempt manufacturing employees
14 employed by Defendant in California. Plaintiff counsel appointed as lead counsel.
15 Case settled. Final Approval granted, no objections and funds fully distributed.

16 z. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-2013-
17 00637062-CU-OE-CXC, Wage and Hour Class Action seeking past wages for meal
18 period violations, and non-compliant wage statements on behalf of non-exempt
19 production employees employed by Defendant in California. Plaintiff counsel
20 appointed as lead counsel. Case settled. Final Approval granted, no objections and
21 funds fully distributed.

22 aa. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-
23 00653425-CU-OE-CXC. Wage and Hour Class Action seeking past wages for
24 overtime, meal and rest period violations, inaccurate wage statements, and penalties
25 on behalf of non-exempt employees employed by Defendant in California. Plaintiff
26 counsel appointed as lead counsel. Case settled. Final Approval granted, no
27 objections and distribution of funds pending.

28 bb. *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-1967-CAS(MAN).

1 Wage and Hour Class Action seeking past wages for meal and rest period violations,
2 failure to indemnify necessary expenses, inaccurate wage statements, and penalties
3 on behalf of non-exempt employees working in positions related to servicing,
4 refabricating, and repairing storage tanks employed by Defendant in California.
5 Plaintiff counsel appointed as lead counsel. Case settled. Final Approval granted, no
6 objections and funds fully distributed.

7 cc. *Williams v. Il Fornaio America Corp.*, Sacramento County, Case No. 34-2011-
8 0009616. Wage and Hour Class Action seeking past wages for overtime, meal and
9 rest period violations, reimbursements, and penalties on behalf of non-exempt
10 restaurant employees employed by Defendant in California. Plaintiff counsel
11 appointed as lead counsel. Case settled. Final Approval granted, and funds fully
12 distributed.

13 dd. *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-002687141-CU-OE-
14 CXC. Wage and Hour Class Action seeking past wages for overtime, meal and rest
15 period violations, and penalties on behalf of non-exempt retail clerks employed by
16 Defendant in California. Plaintiff counsel appointed as lead counsel. Case settled.
17 Final Approval granted, no objections and funds fully distributed.

18 ee. *Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County, Case No. 30-
19 2012-00611260. Wage and Hour Class Action seeking past wages for overtime,
20 meal and rest period violations, reimbursements, and penalties on behalf of non-
21 exempt employees employed by Defendant in California. Plaintiff counsel
22 appointed as lead counsel. Case settled. Final Approval granted, no objections and
23 funds fully distributed.

24 ff. *Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-00460278.
25 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
26 violations, reimbursements, and penalties on behalf of non-exempt production
27 workers employed by Defendant in California. Plaintiff counsel appointed as lead
28 counsel. Case settled. Final Approval granted, no objections and funds fully

1 distributed.

2 64. The Parties' Settlement asks the Court to award in attorneys' fees what would be
3 35% of the Gross Settlement Amount (\$600,000), or up to \$210,000.00, to Class Counsel. (Ex.1, ¶
4 I.C). Given the extensive efforts of counsel, 35% of the Gross Settlement Amount is respectfully
5 believed to be a reasonable award. Our firm has borne the entire risk and cost of this litigation on
6 a pure contingency basis. The legal issues raised in this case were complex and drew significantly
7 upon the experience of Class Counsel. The proposed attorneys' fees accurately reflect the legal
8 marketplace and are within the range of customarily approved fees by California courts.

9 65. Despite the complexity of this case, Class Counsel has, through our investment of
10 substantial effort and resources, secured an outstanding settlement on behalf of the Class Members.
11 Class Counsel encountered and overcame many complex issues and arguments in order to achieve
12 the negotiated settlement terms. Each required skillful advocacy that arises only out of experience,
13 professional perspective, and success. Plaintiff would have faced substantial legal and factual
14 obstacles in demonstrating that Class certification was appropriate and that his claims would prevail
15 on the merits in light of Defendant's asserted defenses. In spite of these obstacles, Class Counsel
16 has negotiated a substantial settlement on behalf of the Class for such claims. Plaintiff would have
17 also been required to establish a significant amount of witness and expert testimony, evidence of
18 pattern and practice, statistics and sampling, and other evidence in order to evaluate and present
19 arguments at both a class certification hearing and at trial. Defendant has vigorously challenged the
20 claims pled in the operative complaint, contested liability, the amount of claimed damages, the
21 propriety of Class Certification, and would have continued to do so through trial. Accordingly,
22 Class Counsel believes the Settlement to be fair, reasonable, and adequate and that it is in the best
23 interest of the Class Members. The fairness and adequacy of the Settlement is confirmed by all
24 known facts and circumstances, including the risk of significant delay and uncertainty associated
25 with litigation, the various defenses asserted by Defendant, and numerous potential appellate issues.
26 Defendant and Defendant's Counsel also agree that the settlement is fair, reasonable, and adequate.

27 66. Plaintiff and Class Counsel respectfully submit the fees and costs provision of the
28 Settlement is fair and reasonable both when cross-checked under the lodestar and common fund

1 method. The total billable hours that counsel have invested and will continue to invest in
2 prosecuting this action and fully securing relief for the Plaintiff Class, should this honorable Court
3 approve the settlement, are substantial. I respectfully submit that our fees and costs request is fair
4 and reasonable because we have personally expended substantial time and effort in achieving the
5 proposed Settlement, including the following tasks: investigating the factual and legal basis of the
6 action; analyzing documents provided by Plaintiff, including time and payroll documents and
7 policy documents; investigating Defendant's organization and structure from publicly available
8 information; preparing the Complaint and the First Amended Complaint; preparing and reviewing
9 informal document and data discovery requests; engaging in meet and confer efforts regarding
10 informal discovery; reviewing and analyzing hundreds of pages of document produced by
11 Defendant, including a significant volume of time and payroll data for the class; conversations with
12 defense counsel regarding the claims alleged in this action, and the information needed for analysis,
13 preparing complex damages analysis and extrapolation of damages to the entire Class; preparing
14 for and attending a full day of mediation; negotiating and finalizing a Settlement with Defendant's
15 Counsel in the months following mediation; soliciting proposals from settlement administrators;
16 and drafting the preliminary approval motion and supporting papers. As such, I respectfully submit
17 that a lodestar cross-check will support the reasonableness of the requested fees, and a low
18 multiplier, if any, need be applied to reach the requested fee allocation.

19 67. I submit that the requested attorneys' fees of \$210,000, or 35% the Gross Settlement
20 Amount that Class Counsel has obtained on behalf of the Class Members, are fair and reasonable,
21 as are the hourly rates at which our attorneys bill. The fee request (at final approval) will be
22 supported by a detailed explanation of the qualifications of each timekeeper, and their
23 corresponding hourly rate, along with an explanation of the amount of time performed on the
24 various tasks performed on behalf of Plaintiff and the Class Members.

25 68. The Settlement that Class Counsel negotiated on behalf of the Class confronts
26 exceedingly difficult and individualized issues which make certification and proof of merits
27 challenging and work intensive. Our firm's attorneys and paralegals have secured this Settlement
28 through persistent advocacy of the class claims, by applying an in-depth understanding of legal

1 nuances and skillful negotiation techniques to achieve a very favorable result for the Class
2 Members. Absent our experience and comprehensive knowledge and perspective in connection
3 with complex employment litigation, it is unlikely the Class would have achieved such superior
4 settlement terms on behalf of the Class and would not have been able to do so in the time in which
5 we accomplished settlement. I believe the requested amount of up to \$210,000.00 in attorneys' fees
6 under the Settlement is a reasonable allocation given the excellent result we have secured for the
7 Class Members. I, therefore, respectfully request the Court approve the allocated attorney fee award
8 under the parties' Settlement. Defendant and its counsel do not oppose the requested fee allocation.

9 69. In serving as Plaintiff's counsel and Class Counsel in this matter, Class Counsel will
10 also seek a Cost Award as reimbursement for out-of-pocket costs up to \$20,000. (Ex.1, ¶ I.M). Any
11 sums not awarded will be available for distribution to the Class as part of the Net Settlement
12 Amount. I will provide the Court with a detailed summary of the total costs at the time of the Final
13 Approval Motion. I believe that all of these fees and costs are reasonable and necessarily incurred
14 in litigating this matter and in pursuit of the settlement. (*Id.*)

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

17 Executed on May 9, 2024, in Irvine, California.

18 
19 _____
20 James R. Hawkins
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Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Braulio Javier ("Plaintiff") and Defendant Helena Agri-Enterprises, LLC ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$11,000 shall not exceed \$15,000. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- C. **Attorney Fee Award**: The amount, not to exceed 35% of the Gross Settlement Amount (estimated approximately \$210,000.00), finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Class Action**: The lawsuit filed by Plaintiff Braulio Javier on July 27, 2022, entitled *Braulio Javier v. Helena Agri-Enterprises, LLC, et al.* Case No. 22CECG02269 in the State of California, Fresno County Superior Court.
- E. **Class**: All current and former non-exempt employees, employed by Defendant within the State of California during the Class Period.
- F. **Class Counsel**: James R. Hawkins, and Christina M. Lucio of JAMES HAWKINS APLC.
- G. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- I. **Class Period**: For claims covered by the class settlement in *Jorge Proctor v. Helena Agri-Enterprises, LLC*, San Diego County Superior Court Case No. 37-2018-00057894-CU-OE-CTL ("*Proctor*"), the time period is from March 2, 2020 through January 20, 2024. For claims not covered by the class settlement in *Proctor*, the Class Period will be a time period from July 29, 2018 through January

20, 2024.

- J. **Class Representative or Plaintiff:** Braulio Javier.
- K. **Class Representative Service Award Payment:** The amount the Court awards to Plaintiff Braulio Javier for his services as a Class Representative, which will not exceed \$10,000. These payments shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This Service Award is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. **Complaint:** The complaint filed by Plaintiff Braulio Javier in the case entitled *Braulio Javier v. Helena Agri-Enterprises, LLC et al.*, Case No. 22CECG02269 in the State of California, Fresno County Superior Court, which include the original complaint filed on July 27, 2022, the First Amended Complaint.
- M. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000.00. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- N. **Counsel for Defendant:** Attorneys John E. Fitzsimmons and Rochelle L. Calderon of Barnes & Thornburg LLP (US).
- O. **Court:** The State of California, Fresno County Superior Court.
- P. **Defendant:** Helena Agri-Enterprises, LLC
- Q. **Effective Final Settlement Date:** The effective date of this Settlement will be when the Final Approval of the Settlement can no longer be appealed, or, if there are no objectors and no Plaintiff in intervention at the time the Court grants Final Approval of the Settlement, the date the court enters judgment granting Final Approval of the Settlement.
- R. **Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA payment shall consist of all current and former non-exempt employees who worked for Defendant within the State of California between July 27, 2021, through January 20, 2024 ("PAGA Period").



- S. **Exclusion Form**: The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- T. **Judgment or Final Approval**: The final order entered by the Court finally approving this Agreement.
- U. **Gross Settlement Amount or GSA**: The total value of the Settlement is a non-reversionary Six Hundred Thousand Dollars and Zero Cents (\$600,000.00). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Service Award payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer is not included in the GSA and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- V. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- W. **LWDA**: California Labor and Workforce Development Agency.
- X. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Service Award, the portion of the PAGA Payment paid to the LWDA and aggrieved employees, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement.
- Y. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- Z. **PAGA Payment**: The PAGA Payment consists of \$16,000.00 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of the PAGA Payment (\$12,000.00) shall be paid to the LWDA, and twenty-five percent (25%) (\$4,000.00) of the

PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro-rata basis, as set forth below.

- AA. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- BB. **Parties**: Plaintiff Braulio Javier as an individual and as Class Representative, and Defendant Helena Agri-Enterprises, LLC.
- CC. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the proposed Settlement.
- DD. **Qualified Settlement Fund or QSF**: A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff, and Class Counsel.
- EE. **Released Claims**: Upon Defendant's fulfillment of their payment obligations under Section III (K)(9)(a) below, the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement are all claims, demands, rights, liabilities and causes of action that were asserted in the operative Complaint or that could have been asserted based on the factual allegations in the operative Complaint. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position). Provided, however, that as to Plaintiff Braulio Javier, nothing in this paragraph shall be construed to limit the scope of Plaintiff's full general release of all claims as set forth in Section II(N) below.
- FF. **Released Parties**: Defendant and their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys.
- GG. **Response Deadline**: Forty-five (45) calendar days from the initial mailing of the Notice.
- HH. **Settlement Administration**: The Settlement Administrator will conduct a review of the National Change of Address Database for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the review of the National Change of Address Database. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.



II. **Settlement Administrator**: The third-party administrator agreed upon by Parties to administer this Settlement is ILYM Group, Inc.

JJ. **Superior Court**: The State of California, Fresno County Superior Court.

II. **RECITALS**

- A. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of pay periods in the Class Period. Plaintiff also interviewed dozens of Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- B. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including formal mediation on November 7, 2023. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- C. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- D. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged makes no concessions or admissions of liability of any sort and contends that for any purpose other than settlement, the Class Action is not appropriate for class treatment. Defendant asserts a number of defenses to the



claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

- E. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Six Hundred Thousand Dollars and Zero Cents (\$600,000).
- B. Notice to the Labor and Workforce Development Agency ("LWDA").** On July 22, 2022, Plaintiff filed and served their Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 Thus, Plaintiff has satisfied their notice obligations under the PAGA.
- C. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims

in a non-settlement context in this Class Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

- E. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- F. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court shall appoint Class Counsel to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of points he or she earned during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of points earned by any and all Participating Class Members collectively, during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. Each pay period in which at least one day was worked will be credited as a pay period for purposes of this calculation. For each pay period a Participating Class Member worked during the period from July 29, 2018 through March 1, 2020, he or she will earn one (1) point. For each pay period a Participating Class Member worked during the period from March 2, 2020 through January 20, 2024, he or she will earn three (3) points. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of pay periods that he or she worked.

- 2. Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% as interest, penalties, and reimbursement of expenses. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement



Share.

H. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

- 1. To the Plaintiff, Braulio Javier** In addition to his respective Individual Settlement Share, and subject to the Court's approval, Plaintiff Braulio Javier will receive up to Ten Thousand Dollars and Zero Cents (\$10,000.00) as a Class Representative Service Award Payment. The Settlement Administrator will pay the Class Representative Service Award Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Service Award Payments. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Service Award Payments. In the event the Court does not approve the entirety of the application for the Class Representative Service Award Payments, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) (estimated approximately \$210,000.00) of the GSA and a Cost Award not to exceed \$20,000.00. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll

withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.

4. **To the Settlement Administrator.** The Parties will obtain bids from at least three potential third-party settlement administrators. The parties will agree to a mutually agreeable neutral third-party administrator. The Settlement Administrator – ILYM Group, Inc. - will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$11,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
 5. **To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
 6. **To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each eligible aggrieved employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Period (i.e., the sum of all pay periods of employment for each eligible aggrieved employee), and dividing that number into the \$4,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Period to determine that individual's proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Joint Stipulation and Settlement Agreement shall expire 180 days from the date they are issued by Defendant. Any unclaimed funds after the 180 days shall be remitted to the California State Controller.
- I. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that ILYM Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Putative Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class

Members; calculating and mailing the aggrieved employees Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; sending any funds remaining in the QSF as a result of uncashed checks to the State Controller's Unclaimed Property Fund; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in ILYM Group, Inc. or otherwise have a relationship with ILYM Group, Inc. that could create a conflict of interest.

J. CIRCULAR 230 DISCLAIMER. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

K. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Exclusion Form. Class counsel will submit to Defendant's counsel for review drafts of the motions for Preliminary Approval of settlement, Class Notice and Exclusion Form ("notice packets") to class members. Defendant's counsel shall have five business days to review the Motion and related documents. Defendant's counsel will not unreasonably withhold approval and will provide any suggested edits within five business days. Plaintiff's counsel will not submit motions to the Court for Preliminary

Approval, or notice packets, without providing Defendant at least five business days to review the Motion and related documents before filing.

- b. At the Preliminary Approval Hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval Hearing.
 - c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Service Award shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Service Award shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Service Awards.
2. **Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:
- a. Within Fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; and (5) the total number of pay periods during which the Class Member performed any actual work during the Class Period as a member of the Class ("Database"). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will update each Class Member's mailing address using the National Change of Address Database. The Database shall be based on Defendant's

payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- b. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of a review of the National Change of Address Database.
- c. If a Class Notice is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip- trace or forwarded mail, will have between the later of (a) an additional ten (10) days or (b) the Response Deadline to postmark an Exclusion Form, or file and serve an objection to the Settlement. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.
- d. Class Members may dispute the information provided in their Class Notice but must do so in writing, via first-class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of pay periods to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's



records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible pay periods that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.

- e. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (e) signature of the Objector and (f) provide true and

correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing.

- b. **Notice of Intent to Appear.** Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline.

- 4. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.

- a. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

- b. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

- c. **Defendant's Option to Terminate.** If more than five percent (5%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void. To exercise this option Defendant must do so within thirty (30) days after the expiration of the Response Deadline.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Service Award; and (5) PAGA Payment. Class Counsel will also move the Court for and order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt-out of the Settlement.
- b. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Service Award, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration

matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.
9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount and the employer-side payroll taxes for the wage portion of the Settlement. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.
 - a. **Funding the Settlement:** No later than sixty-five (65) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Six Hundred Thousand Dollars (\$600,000) and additional funds needed to pay the entire GSA and associated taxes by wiring the funds into a QSF set up and controlled by the Settlement Administrator. In the event there are objectors to the Joint Stipulation and Settlement Agreement, payment shall be made within sixty-five (65) calendar days after the time to appeal has run or all appeals have been

exhausted, whichever occurs later. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Share.

- b. **Disbursement:** Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Service Awards, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Aggrieved Employees during the PAGA Period, which are released under this Agreement.
- c. **QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to State of California Controller's Unclaimed Property Fund to be held in the name of the participating Class Member.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.



12. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Amount.

- L. Release of Claims.** As of the Effective Final Settlement Date and Defendant's fully funding the GSA, Class Members, who do not submit a timely and valid request for exclusion, hereby release, remise and forever discharge the Released Parties from the Released Claims during the Class Period. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.
- M. Release of PAGA Claims.** As of the Effective Final Date and Defendant's fully funding the GSA, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly releases and forever discharges any and all claims seeking civil penalties under the California Labor Code predicated on the PAGA Claims asserted in the Action, during the PAGA Period against Defendant and/or any other Released Party.
- N. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date and Defendant's fully funding the GSA, and in exchange for the Class Representative Service Award Payment to the Plaintiff in an amount not to exceed \$10,000.00 (Ten Thousand Dollars and No Cents), in recognition of his work and efforts in obtaining the benefits for the Class, undertaking the risk for the payment of costs in the event this matter had not successfully resolved and in exchange for a General Release. In connection with this Settlement, Plaintiff hereby provides a general release of claims for himself and his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date Plaintiff executes this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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.

The foregoing release is intended to be as broad as the Parties can possibly create and includes but is not limited to any liability whatsoever:



- which arises directly or indirectly out of or is in any manner related to Plaintiff's employment by Defendant;
- which arises directly or indirectly out of or is in any manner related to the causes of action or injuries or damages alleged in the Action; or
- which arises directly or indirectly out of or is in any manner related to any of the matters, occurrences or transactions which were raised or could have been raised in the Action, including without limitation, any and all claims for compensatory, economic, non-economic, punitive or other damages.

If any claim is not subject to release, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

O. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Class Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Service Award Payments and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative Service Awards and/or Individual Settlement Shares paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or

employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Service Award Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

3. **No Solicitation of Individual Settlements.** Defendant and its Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Defendant and its Counsel will not attempt to procure any individual settlements from the Class Members. Should this clause be violated, Plaintiff reserves the right to terminate the Settlement Agreement. Plaintiff and their counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Plaintiff and their counsel shall not attempt to procure from Class Members any requests for exclusion from the Settlement. Should this clause be violated, Defendant reserves the right to terminate the Settlement Agreement.
4. **Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. The Parties and their Counsel agree to decline to respond to any media inquiries concerning the Settlement.
5. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
6. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or

on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

7. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
8. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
9. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
10. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
11. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
12. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
13. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
14. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations

regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

- 15. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 17. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 19. Class Size Pro-Rata Escalator.** Defendant provided data which Plaintiff analyzed as indicating that the class includes approximately 678 employees with 56,321 workweeks from March 2, 2020 through November 7, 2023. If the actual number of total workweeks from March 2, 2020 through January 20, 2024 exceeds ten percent (10%) or more greater than the 56,321 workweeks represented by Defendant, i.e., more than 61,953 work weeks, the GSA shall be subject to a pro-rata increase.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

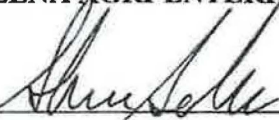
Dated: 04/01/2024

BRAULIO JAVIER

Page 23 of 23 / Apr 1, 2024 13:57 PDT

Dated: 4/2/2024

HELENA AGRI-ENTERPRISES, LLC


Signature

By: Sherrie Scardino

Its: HR Director

Dated: 04.01.2024

JAMES HAWKINS APLC

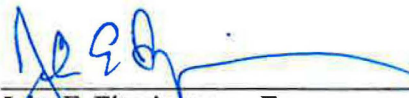

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

*Attorneys for Plaintiff, individually and on behalf of all other
Class Members and Aggrieved Employees*

Dated: 4/2/2024

BARNES & THORNBURG LLP


John E. Fitzsimmons, Esq.

Rochelle L. Calderon, Esq.

Attorneys for Helena Agri-Enterprises, LLC

Exhibit A

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

Braulio Javier v. Helena Agri-Enterprises, LLC, et al.
Fresno Superior Court Case No. 22CECG02269

The Superior Court for the State 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 an employee class action lawsuit (“Action”) against Helena Agri-Enterprises, LLC (“Defendant”) for alleged wage and hour violations. The Action was filed by a former employee of Defendant, Braulio Javier (“Plaintiff”) and seeks payment of (1) unpaid minimum wages and overtime, meal and rest period premiums, civil penalties, and other relief for a class of current and former non-exempt employees who worked for Defendant in California during the Class Period (defined below); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all current and former non-exempt employees who worked for Defendant in California from July 27, 2021 through January 20, 2024 (“Eligible Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Settlement Shares, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Shares and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Settlement Share is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Share is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Share, then according to Defendant’s records you are not eligible for an Individual PAGA Share under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] workweeks** during the PAGA Period. If you believe that you worked more workweeks 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 Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Eligible Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Settlement Share and/or an Individual PAGA Share. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) Opt-Out of the Class Settlement. You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Settlement Share. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Eligible Aggrieved Employee, remain eligible for an Individual PAGA Share. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant 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 Settlement Share and an Individual PAGA Share (if any). In exchange, you will give up your right to assert the wage claims against Defendant 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 be a Non-Participating Class Member and no longer eligible for an Individual Settlement Share. Non-Participating Class Members 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. Defendant must pay Individual PAGA Shares to all Eligible Aggrieved Employees and the Eligible Aggrieved Employees must give up their rights to pursue Released PAGA 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 Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
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	The amount of your Individual Settlement Share 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

Written Challenges Must be Submitted by [REDACTED]	Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.
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1.WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to pay minimum wages and overtime, failure to provide meal and rest periods, failure to timely pay wages, waiting time penalties, failure to provide accurate itemized wage statements, failure to reimburse necessary business expenses, and unfair competition . Based on the same claims, Plaintiff have also asserted a claim for civil penalties under PAGA.

Plaintiff is represented by attorneys James R. Hawkins and Christina M. Lucio of James Hawkins APLC.

Defendant strongly 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 Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of 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 Defendant 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, Defendant does not admit any violations or concede the merits of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has 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 in the best interests of the Class Members and Eligible 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. **Defendant Will Pay \$600,000.00 as the Gross Settlement Amount (Gross Settlement).** Defendant 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 Settlement Shares, Individual PAGA Shares, Class Representative Service Award Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 65 days after the Effective Final Settlement Date.

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 \$210,000.00 (35% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000.00 as a Class Representative Service Award Payment to Plaintiff for filing the Action, working with Class Counsel in representing the Class, and agreeing to a general release against Defendant. A Class Representative Service Award Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Settlement Share and any Individual PAGA Share.

C. Up to \$11,000.00 to the Administrator for services administering the Settlement.

D. Up to \$16,000.00 for PAGA Penalties, allocated 75% to the Labor and Workforce Development Agency ("LWDA") and 25% in Individual PAGA Shares to the Eligible Aggrieved Employees based on their PAGA Period Pay Periods. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Amount Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by paying Individual Settlement Shares to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Settlement Share to taxable wages ("Wage Portion") and 80% to penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholding and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual Settlement Shares are subject to applicable tax withholdings and will be reported on IRS 1099 Forms. The amounts paid as penalties and interest shall be subject to IRS 1099 reporting and shall not be subject to withholdings.

Although Plaintiff and Defendant 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 Settlement Shares and Individual PAGA Shares will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check are sent to the California 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 45 days after receiving this notice, 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 [redacted] 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 Settlement Shares but will preserve their rights to personally pursue wage and hour claims against Defendant.

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 Shares and are required to give up their right to assert PAGA claims against Defendant 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 enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (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, 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 Defendant have 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 Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

Upon Defendant's fulfillment of their payment obligations under the Settlement Agreement, the Participating Class Members will release Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys ("Released Parties") from all claims, demands, rights, liabilities and causes of action that were asserted in the operative Complaint or that could have been asserted based on the factual allegations in the operative Complaint.

The released claims include, but are not limited to, claims for unpaid overtime and minimum wages, meal and rest period premiums, waiting time penalties, improper wage statements, civil penalties under the Private Attorneys General Act, and any other claims that were or could have been asserted based on the allegations in the Complaint. The release applies only to the time periods when the Participating Class Members were employed by Defendant in non-exempt positions in California during the Class Period from July 29, 2018 through January 20, 2024.

10. Eligible Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Eligible Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Eligible 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 Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Eligible Aggrieved Employees’ Releases and Non-Participating Class Members are as follows:

Upon Defendant's fulfillment of their payment obligations under the Settlement Agreement, the Eligible Aggrieved Employees will release Defendant and the Released Parties from all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were asserted in Plaintiff's PAGA Notice to the LWDA and/or the operative Complaint, or that could have been asserted based on the factual allegations in the PAGA Notice and/or the Complaint. The release of PAGA claims applies only to the time periods when the Eligible Aggrieved Employees were employed by Defendant in non-exempt positions in California during the PAGA Period from July 27, 2021, through January 20, 2024.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Settlement Shares. The Administrator will calculate Individual Settlement Shares by (1) determining the total number of workweeks worked by each Participating Class Member during the Class Period from March 2, 2020 through January 20, 2024 ("Workweeks"); (2) assigning 3 points for each Workweek to Participating Class Members; (3) determining the total number of additional workweeks worked by each Participating Class Member during the Class Period from July 29, 2018 through March 1, 2020 ("Additional Workweeks"); (4) assigning 1 point for each Additional Workweek to Participating Class Members; (5) adding the points for Workweeks and Additional Workweeks for each Participating Class Member to determine each Participating Class Member's "Total Points"; (6) adding all Participating Class Members' Total Points together to calculate the "Total Settlement Points"; (7) dividing each Participating Class Member's Total Points by the Total Settlement Points to determine each Participating Class Member's "Settlement Ratio"; and (8) multiplying the Net Settlement Amount by each Participating Class Member's Settlement Ratio to determine each Participating Class Member's Individual Settlement Share.

2. Individual PAGA Shares. The Administrator will calculate Individual PAGA Shares by (1) determining the total number of pay periods worked by each Eligible Aggrieved Employee during the PAGA Period from July 27, 2021 through January 20, 2024 ("PAGA Pay Periods"); (2) adding together all Eligible Aggrieved Employees' PAGA Pay Periods to calculate the "Total PAGA Pay Periods"; (3) dividing the Eligible Aggrieved Employees' portion of the PAGA Payment (\$4,000) by the Total PAGA Pay Periods to determine the "Pay Period Value"; and (4) multiplying each Eligible Aggrieved Employee's PAGA Pay Periods by the Pay Period Value to determine each Eligible Aggrieved Employee's Individual PAGA Share.

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 Defendant's records, are stated on the first page of this Notice. You have until [REDACTED] 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 challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of 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 Defendant'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) including those who also qualify as Eligible Aggrieved Employees. The single check will combine the Individual Settlement Share and the Individual PAGA Share.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Share 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 in 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?

If you do not wish to participate in the Class Settlement, you may be excluded from the Settlement by submitting a written request to the Settlement Administrator. Your request for exclusion must (1) contain your full name, address, telephone number, and last four digits of your Social Security Number; (2) be signed by you; (3) identify the case name and number (Javier v. Helena-Agri, Case no. 22CECG02269); and (4) contain a clear statement that you wish to be excluded from the Settlement Class. 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 [redacted], or it will be invalid.** If you submit a timely and valid request for exclusion, you will not be bound by the Settlement or the release of claims, and you will not receive an Individual Settlement Share. If you do not make a timely and valid request for exclusion from the Settlement, you will be bound by all terms of the Settlement, including the release of claims, and you will give up your right to pursue a separate legal action against Defendant for the released claims. 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 Defendant are asking the Court to approve. At least 16 court days before the [redacted] 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 Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. 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 [redacted] (url) or the Court's website [redacted] (url).

A Participating Class Member who disagrees with any aspect of the 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 [redacted].** 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 "Javier v. Helena-Agri, Case no. 22CECG02269" and include your name, current address, telephone number, and approximate dates of employment for Defendant 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.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [redacted] at (time) [redacted] in Department 502 of the Superior Court of California, County of Fresno, located at the 1130 O Street, Fresno, CA 93724. 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 comments from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. 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 [redacted] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant 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 go to [redacted]'s website at [redacted] (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to <https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/> and entering the Case Number for the Action, Case No. 22CECG02269.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray
Email Address: info@jameshawkinsapl.com
Name of Firm: James Hawkins APLC
Mailing Address: 9880 Research Drive, Suite 200, Irvine, CA 92618
Telephone: (949) 387-7200

Settlement Administrator:

Name of Company: ILYM GROUP, INC.

Email Address: [redacted]

Mailing Address: [redacted]

Telephone: [redacted]

Fax Number: [redacted]

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.