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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DONALD MCGARITY, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NV COMMUNICATION; and DOES 1
through 20, inclusive

Defendants.

Case No. 34-2022-00323514

*Assigned for All Purposes to:
Judge Lauri A. Damrell; Dept. 28*

**AMENDED JOINT STIPULATION OF
CLASS ACTION AND PAGA
SETTLEMENT**

1 Court of the State of California for the County of Sacramento.

2 b. "Agreement" means this Amended Joint Stipulation of Class Action and PAGA
3 Settlement, including the attached Exhibits.

4 c. "Class Counsel" means the attorneys for Named Plaintiff, the Class Members, and
5 the PAGA Employees:

6 AEGIS LAW FIRM, PC
7 Samuel A. Wong
8 Kashif Haque
9 Jessica L. Campbell
10 Jamie M. Loos
11 9811 Irvine Center Drive, Suite 100
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12 d. "Class List" means a list based on Defendant's business records that identifies each
13 Class Member's name, last known home or mailing address, social security number or, as
14 applicable, other taxpayer identification number, dates of employment, and the number of
15 Qualifying Workweeks worked during the Class Period and PAGA Period.

16 e. "Class Member(s)" or "Class" means all current and former non-exempt employees
17 who were employed by Defendant in California at any time during the Class Period.

18 f. "Class Period" means January 17, 2018, through November 16, 2023.

19 g. "Court" means the California Superior Court for the County of Sacramento, where
20 the Action is currently pending.

21 h. "Date of Finality" means the later of the following: (i) the date the Final Order is
22 signed if no objections are filed to the Settlement; (ii) if objections are filed and overruled, and no
23 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (iii) if an appeal or
24 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
25 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
26 final.

27 i. "Defendant" means Defendant NV Communication.

28 j. "Defense Counsel" means counsel for Defendant:

1 NEWMEYER & DILLION LLP
Michael J. Studenka
2 Thomas H. Reilly
895 Dove Street, Second Floor
3 Newport Beach, California 92660
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4 Facsimile: (949) 854-7099

5 k. "Disposition" means the method by which the Court approves the terms of the
6 Settlement and retains jurisdiction over its enforcement, implementation, construction,
7 administration, and interpretation.

8 l. "Final Order Approving Settlement of Class and PAGA Action" or "Final Order"
9 means the final formal court order signed by the Court following the Final Fairness and Approval
10 Hearing in accordance with the terms herein, approving this Agreement.

11 m. "Gross Settlement Amount" means One Million, Fifty Thousand Dollars and Zero
12 Cents (\$1,050,000.00), to be paid by Defendant as provided in Section 3.06(a) of this Agreement to
13 settle the Action. All payments to the Class Members, all payments to the PAGA Employees, the
14 LWDA Payment, the Settlement Administration Costs, the Incentive Award to Named Plaintiff, and
15 Class Counsel's attorneys' fees and costs, will be paid out of the Gross Settlement Amount.
16 However, the employer's share of payroll taxes arising from the payments to Class Members under
17 this Settlement will be paid by Defendant separate from and in addition to the Gross Settlement
18 Amount. No part of the Gross Settlement Amount will revert to Defendant.

19 n. "Incentive Award" means a monetary amount of up to Ten Thousand Dollars and
20 Zero Cents (\$10,000.00) to be paid to Named Plaintiff from the Gross Settlement Amount, subject
21 to Court approval, in recognition for his efforts and work in prosecuting the Action on behalf of
22 Class Members and PAGA Employees, and in consideration for his general release of claims.

23 o. "Individual Settlement Payment(s)" means each Participating Class Member's
24 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
25 by the calculations provided in Section 3.06(g) of this Agreement.

26 p. "Individual PAGA Payment(s)" means each PAGA Employee's respective share of
27 the PAGA Settlement Amount. Individual PAGA Payments will be determined by the calculations
28 provided in Section 3.06(h) of this Agreement.

1 q. “LWDA” means the State of California Labor and Workforce Development Agency.

2 r. “LWDA Payment” means seventy-five percent (75%) of the PAGA Settlement

3 Amount which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(f) of

4 this Agreement, as provided for below.

5 s. “Motion for Final Approval” means Named Plaintiff’s submission of a written

6 motion, including any evidence as may be required for the Court, to conduct an inquiry into the

7 fairness of the Settlement set forth in this Agreement, to conduct a Final Fairness and Approval

8 Hearing, and to enter a Final Order in this Action.

9 t. “Motion for Preliminary Approval” means Named Plaintiff’s submission of a written

10 motion, including any evidence as may be required for the Court, to grant preliminary approval of

11 the Settlement set forth in this Agreement as required by Rule 3.769 of the California Rules of Court.

12 u. “Named Plaintiff” means Plaintiff Donald McGarity.

13 v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved

14 Settlement Administration Costs, Class Counsel’s attorneys’ fees and costs, the Incentive Award,

15 and the PAGA Settlement Amount.

16 w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to

17 the Settlement Administrator a valid and timely written request to be excluded from the Class

18 pursuant to Section 3.04(b) below.

19 x. “Notice Packet” means and includes (i) the Notice of Proposed Class Action and

20 PAGA Settlement in a form substantially similar to the Notice of Proposed Class Action and PAGA

21 Settlement attached hereto as **Exhibit A**, subject to Court approval; the Objection Form attached

22 hereto as **Exhibit B**, subject to Court approval; and the Request for Exclusion Form attached hereto

23 as **Exhibit C**, subject to Court approval.

24 y. “PAGA” means the California Private Attorneys General Act of 2004, which is

25 codified at California Labor Code §§ 2698 *et seq.*

26 z. “PAGA Complaint” means the written notice Plaintiff provided to the LWDA and

27 Defendant regarding Defendant’s alleged Labor Code violations, as required by Lab. Code §

28 2699.3(a).

1 aa. “PAGA Employees” means all current and former non-exempt employees who were
2 employed by Defendant in California at any time during the PAGA Period. It is stipulated by the
3 Parties that, for purposes of this Settlement, all PAGA Employees are “aggrieved employees” as
4 defined pursuant to PAGA.

5 bb. “PAGA Period” means July 14, 2021, through November 16, 2023.

6 cc. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
7 allocated to the resolution of Named Plaintiff’s and the PAGA Employees’ claims arising under
8 PAGA. The Parties have agreed that the PAGA Settlement Amount is Fifty Thousand Dollars and
9 Zero Cents (\$50,000.00), subject to Court approval. Of the PAGA Settlement Amount, seventy-five
10 percent (75%) or \$37,500.00 will be the LWDA Payment, and the remaining twenty-five percent
11 (25%) or \$12,500.00 will be will be distributed to the PAGA Employees.

12 dd. “Participating Class Member(s)” means a Class Member who does not timely
13 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
14 Settlement Amount automatically without the need to return a claim form. Each Participating Class
15 Member will be paid his or her Individual Settlement Payment.

16 ee. “Preliminary Approval Date” means the date the Court preliminarily approves the
17 Settlement embodied in this Agreement.

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

21 gg. “Qualifying Workweeks” means the number of weeks that Class Members worked
22 for Defendant as non-exempt employees during the Class Period.

23 hh. “Qualifying Pay Periods” means the number of pay periods that PAGA Employees
24 worked for Defendant as non-exempt employees during the PAGA Period.

25 ii. “Released PAGA Claims” means all claims for penalties and any other available
26 relief pursuant to PAGA, to the extent asserted in Named Plaintiff’s administrative exhaustion letter
27 submitted to the LWDA in this Action on July 14, 2022, arising during the PAGA Period.

28 jj. “Released Parties” means Defendant and its owners, shareholders, directors, officers,

employees, attorneys, agents and insurers.

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

11. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administering the Settlement, including, but not limited to, mailing of the Notice Packets to the Class Members and PAGA Employees; calculation and mailing of the Individual Settlement Payments; calculation and mailing of the Individual PAGA Payments; preparation of the Individual Settlement Payment checks, Individual PAGA Payment checks, and related tax reporting forms; administration of any unclaimed checks; and preparation of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiff for the Incentive Award, and to the LWDA for its portion of the PAGA Settlement Amount. The Settlement Administration Costs will be paid from the Gross Settlement Amount.

mm. “Settlement Administrator” means ILYM Group, Inc. The Parties have agreed that the Settlement Administrator will be responsible for the administration of the Settlement and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulated Background

On July 15, 2022, Named Plaintiff filed a putative Class Action complaint in the Action alleging the following labelled causes of action: (a) Failure to Pay Minimum Wages; (b) Failure to Pay Overtime Wages; (c) Failure to Provide Meal Periods; (d) Failure to Permit Rest Breaks; (e) Failure to Reimburse Business Expenses; (f) Failure to Provide Accurate Itemized Wage Statements (g) Failure to Pay Wages Timely During Employment; (h) Failure to Pay All Wages Due Upon

1 Separation of Employment; and (i) Violation of Business and Professions Code §§17200, *et seq.* In
2 his Complaint, Named Plaintiff sought to represent all persons that worked for Defendant in
3 California as an hourly-paid, non-exempt employee at any time during the period beginning four
4 years before the filing of the complaint and ending when the class is certified.

5 On July 14, 2022, Named Plaintiff submitted the “PAGA Complaint to the LWDA, alleging
6 that Defendant had violated various provisions of the Labor Code and/or the Wage Order issued by
7 the Industrial Welfare Commission by: (a) failing to provide 30-minute uninterrupted meal periods
8 within the appropriate time intervals; (b) failing to pay an additional hour of pay at the regular rate
9 when an employee suffered a meal period violation; (c) failing to authorize or permit paid 10-minute
10 rest periods for every four hours of work or major fraction thereof; (d) failing to pay an additional
11 hour of pay at the regular rate when an employee suffered a rest break violation; (e) failing to pay
12 at least the legal minimum wage and overtime wage for all hours worked; (f) failing to compensate
13 employees for necessary business-related expenses incurred as a direct consequence of the discharge
14 of their job duties; (g) failing to provide accurate, itemized wage statements; (h) failing to maintain
15 accurate and complete records showing the hours worked daily by employees and wages paid to
16 employees; and (i) failing to pay all wages owed during employment and following the end of
17 employment (the “PAGA Claim”).

18 On September 17, 2022, Named Plaintiff satisfied the administrative exhaustion requirement
19 that is a prerequisite to filing a claim for civil penalties under PAGA. On September 27, 2022,
20 Named Plaintiff filed a First Amended Complaint in the Action, adding a cause of action for civil
21 penalties under PAGA.

22 **Section 2.02: Stipulation of Class Certification for Settlement Purposes Only.**

23 Solely for purposes of settling the Action, the Parties and their respective counsel stipulate
24 and agree that the requisites for establishing class certification with respect to the Class Members
25 have been met and are met. Specifically, for settlement purposes only, the Parties stipulate and agree
26 that:

27 a. The Class is ascertainable and so numerous as to make it impracticable to join all
28 Class Members.

1 b. There are common questions of law and fact including, but not limited to, the
2 following:

- 3 i. Whether Defendant paid proper wages to the Class;
- 4 ii. Whether Defendant paid proper minimum wages to the Class;
- 5 iii. Whether Defendant paid proper overtime wages to the Class;
- 6 iv. Whether Defendant provided meal periods to the Class;
- 7 v. Whether Defendant permitted rest periods to the Class;
- 8 vi. Whether Defendant indemnified the Class for employment-related
9 expenditures;
- 10 vii. Whether Defendant paid compensation timely throughout Class Members'
11 employment;
- 12 viii. Whether Defendant provided accurate itemized wage statements to the Class;
- 13 ix. Whether waiting-time penalties are available to Class Members who are no
14 longer employed by Defendant for violation of Labor Code section 203;
- 15 x. Whether Defendant paid proper meal period pay or rest period pay to the
16 Class;
- 17 xi. Whether Defendant compensated employees paid on a piece rate basis for
18 non-productive time; and
- 19 xii. Whether Defendant engaged in unlawful or unfair business practices
20 affecting the Class in violation of California Business and Professions Code
21 sections 17200 through 17208.

22 c. Named Plaintiff's claims are typical of the claims of the Class Members.

23 d. Named Plaintiff and Class Counsel will fairly and adequately protect the interests of
24 the Class.

25 e. The prosecution of separate actions by individual members of the Class would create
26 the risk of inconsistent or varying adjudications, which would establish incompatible standards of
27 conduct.

28 f. With respect to the Class, questions of law and fact common to the members of the

1 Class predominate over any questions affecting any individual member in such Class, and a class
2 action is superior to other available means for the fair and efficient adjudication of the controversy.

3 Should, for whatever reason, the Settlement not become effective, the fact that the Parties
4 were willing to stipulate to class certification as part of the Settlement will have no bearing on, and
5 will not be admissible in connection with, the issue of whether the Class Members and/or the Class
6 Claims should be certified in a non-Settlement context in this Action or in any other lawsuit.
7 Defendant expressly reserves its right to oppose class certification in the Action or any other action
8 should this Settlement not become effective.

9 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
10 claims alleged in the Action, and Defendant further denies that, for any purpose other than settling
11 the Action, that the Action is appropriate for class or representative treatment. With respect to
12 Named Plaintiff's claims, Defendant contends, among other things, that Named Plaintiff, the Class
13 Members, and the PAGA Employees have been paid proper wages, have been paid proper minimum
14 wages, have been paid proper overtime wages, have been provided meal periods or they have been
15 made available as required, have been provided rest periods or they have been authorized and
16 permitted as required, have been reimbursed for all employment-related expenditures, have been
17 paid timely wages during employment, have been paid timely wages upon separation from
18 employment, and have been provided with accurate itemized wage statements. Defendant contends,
19 among other things, that it has complied at all times with the Labor Code and the applicable Wage
20 Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant
21 contends that it has complied at all times with the California Business and Professions Code.

22 This Agreement requires preliminary and final approval by the Court and, accordingly, the
23 Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the
24 approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties
25 were willing to stipulate for purposes of this Agreement to a Class will have no bearing on, nor be
26 admissible in connection with, the issue of certification of a Class with respect to all causes of action
27 alleged in the Action. Defendant does not consent to certification of the Class for any purpose other
28 than to effectuate settlement of the Action.

1 If the Date of Finality does not occur, or if Disposition of the Action is not effectuated, any
2 certification of the Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the
3 Class will be returned to their positions with respect to the Action as if the Agreement had not been
4 entered into. Specifically, in the event that the Date of Finality does not occur: (a) any Court orders
5 preliminarily or finally approving certification of any class contemplated by this Agreement will be
6 null, void, and vacated, and will not be used or cited thereafter by any person or entity; (b) the fact
7 of the settlement reflected in this Agreement, the fact that Defendant did not oppose the certification
8 of a Class under this Agreement, or that the Court preliminarily approved the certification of the
9 Class, will not be used or cited thereafter by any person or entity, in any manner whatsoever,
10 including without limitation any contested proceeding relating to the certification of any class; and
11 (c) this Agreement will be deemed null and void, will be of no force or effect whatsoever, and will
12 not be referred to or used for any purpose whatsoever.

13 **Section 2.02: Purpose of Settlement; Mutual Cooperation.**

14 Through this Settlement, the Parties intend to fully, finally, and forever settle, compromise,
15 and discharge all disputes and claims arising from or related to the PAGA Complaint and the First
16 Amended Complaint in the Action.

17 Class Counsel has conducted a thorough investigation into the facts of this Action, including
18 an extensive review of relevant documents, and has diligently pursued an investigation of the Class
19 Members' and PAGA Employees' claims against Defendant. Based on its own independent
20 investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for
21 the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and
22 is in the best interest of the Class Members and PAGA Employees in light of all known facts and
23 circumstances, including the risk of significant delay, the risk the Class would not be certified by
24 the Court, the defenses asserted by Defendant, and numerous potential appellate issues. Defendant
25 and Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class
26 Members and PAGA Employees.

27 The Parties and their respective counsel will take all steps that may be requested by the Court
28 relating to the approval and implementation of this Agreement and will otherwise use their

1 respective best efforts to obtain Court approval and implement this Agreement. If the Court does
2 not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties
3 agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
4 resolution, the Parties agree to seek the assistance of mediator Jill R. Sperber, Esq. to resolve the
5 dispute.

6 The Parties agree to stay all proceedings in the Action, except such proceedings necessary
7 to implement and complete the Settlement, pending the Final Fairness and Approval Hearing to be
8 conducted by the Court.

9 **ARTICLE III**

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

11 The procedure for obtaining Court approval of and implementing this Agreement will be as
12 follows:

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

14 Named Plaintiff will bring a motion before the Court for an order conditionally certifying
15 the Class with respect to all claims pled in the Action based on the preliminary approval of this
16 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
17 "Preliminary Approval Date."

18 **Section 3.02: The Settlement Administrator**

19 The Parties have chosen ILYM Group, Inc. to act as the Settlement Administrator, including
20 but not limited to (a) distributing and responding to inquiries about the Notice Packet; (b)
21 determining the validity of requests for exclusion/opt-outs; (c) calculating the Net Settlement
22 Amount, the Individual Settlement Payments to the Class Members, and the Individual PAGA
23 Payments to the PAGA Employees; (d) establishing and maintaining the QSF; (e) issuing the
24 Individual Settlement Payment checks and distributing them to Participating Class Members; (f)
25 issuing the LWDA Payment to the LWDA and the Individual PAGA Payments to the PAGA
26 Employees from the PAGA Settlement Amount; (g) issuing payment to Class Counsel from the
27 Gross Settlement Amount for attorneys' fees and costs; (h) issuing payment to Named Plaintiff from
28 the Gross Settlement Amount for the Incentive Award; and (i) issuing payment of the employer

1 payroll taxes to the appropriate taxing authorities. The Settlement Administrator will expressly agree
2 to all of the terms and conditions of this Agreement.

3 All Settlement Administration Costs, including but not limited to, all costs and fees
4 associated with preparing, issuing and mailing any and all notices to Class Members; all costs and
5 fees associated with calculating, processing, and mailing the Individual Settlement Payments, the
6 Individual PAGA Payments, and the LWDA Payment; all costs and fees associated with preparing
7 any tax returns and any other filings required by any governmental taxing authority or agency; all
8 costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared
9 in the course of administering disbursements from the Net Settlement Amount; and any other costs
10 and fees incurred and/or charged by the Settlement Administrator in connection with the execution
11 of its duties under this Agreement, will be paid to the Settlement Administrator from the Gross
12 Settlement Amount.

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

14 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
15 provide the Settlement Administrator with a Class List in electronic format based on its business
16 records, identifying the names of the Class Members, their last known home addresses, social
17 security numbers or, as applicable, other taxpayer identification numbers, their dates of
18 employment, their Qualifying Workweeks during the Class Period, and their Qualifying Pay Periods
19 during the PAGA Period. Absent mutual written agreement of counsel for the Parties or Court order,
20 the Settlement Administrator will keep the Class List confidential and secure, will use the Class List
21 only for the purposes described herein, and will return the Class List to Defendant upon final
22 approval of the Settlement or destroy electronic records containing the Class List data after the
23 Settlement is final and all payments are distributed as required under this Agreement.

24 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
25 Administrator will send Class Members, by first-class mail, at their last known address, the Court-
26 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
27 Class. The Notice Packet will include a calculation of the Class Member's approximate share of the
28 Net Settlement Amount, including the Class Member's estimated Individual Settlement Payment

1 and Individual PAGA Payment.

2 Class Members will have sixty (60) days from the date of mailing in which to postmark
3 objections or requests for exclusion.

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

12 If a Notice Packet is returned with a forwarding address, the Settlement Administrator will
13 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
14 Notice Packets are returned to the Settlement Administrator as undeliverable, the Settlement
15 Administrator will promptly attempt to obtain a valid mailing address by performing a skip trace or
16 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
17 identified, will re-mail the Notice Packet to the newly identified address. The Parties intend that the
18 Settlement Administrator will use reasonable means to locate Class Members and that the Settlement
19 Administrator will have discretion to take steps in order to facilitate notice of the Settlement and
20 delivery of the Individual Settlement Payments to all Participating Class Members and delivery of
21 the Individual PAGA Payments to all PAGA Employees.

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

25 In the event a Class Member's or PAGA Employee's Notice Packet remains undeliverable
26 sixty (60) calendar days after the Notice Packet was initially mailed, the Settlement Administrator
27 will not mail the Class Member's Individual Settlement Payment and/or the PAGA Employee's
28 Individual PAGA Payment. The Settlement Administrator will hold the Class Member's Individual

1 Settlement Payment and/or the PAGA Employee's PAGA Settlement Payment during the check
2 cashing period on behalf of the Class Member or PAGA Employee. If at the conclusion of the check
3 cashing period the Notice Packet and Individual Settlement Payment and/or Individual PAGA
4 Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will
5 distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in
6 Section 3.06(g) and 3.06(h) below.

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

12 **Section 3.04: Responses to Notice**

13 **a. Class Member Disputes**

14 If any Class Member or PAGA Employee disagrees with Defendant's records as to his/her
15 Qualifying Workweeks during the Class Period or Qualifying Pay Periods during the PAGA Period
16 as reflected in the Notice Packet, the Class Member or PAGA Employee will set forth in writing the
17 Qualifying Workweeks he/she claims to have worked during the Class Period and Qualifying Pay
18 Periods he/she claims to have worked during the PAGA Period, and submit such writing to the
19 Settlement Administrator by the Response Deadline (or fifteen (15) days after the Settlement
20 Administrator re-mails the Notice Packet to the Class Member, whichever is later), along with any
21 supporting documentation. The Notice Packet will describe the method for any Class Member
22 and/or PAGA Employee to challenge the employment data on which his/her Individual Settlement
23 Payment and/or Individual PAGA Payment is based. The Settlement Administrator will contact the
24 Parties regarding any such dispute and the Parties will work in good faith to resolve it. If the Parties
25 are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the
26 Qualifying Workweeks for each Class Member during the Class Period and the Qualifying Pay
27 Periods for each PAGA Employee during the PAGA Period, based on the information provided to
28 the Settlement Administrator.

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

2 For any Class Member to exclude himself or herself from the Class and this Settlement (i.e.,
3 to effectively opt out), a Request of Exclusion form (included in the Notice Packet) must be signed
4 by the Class Member or his/her authorized representative, and must be sent to the Settlement
5 Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the
6 Settlement Administrator re-mails the Notice Packet to the Class Member, whichever is later). The
7 Notice Packet contains a Request for Exclusion form with instructions on how a Class Member can
8 effectively exclude himself or herself from the Class and this Settlement (i.e., opt out). The date of
9 the initial mailing of the Notice Packet, and the date the signed Request for Exclusion form was
10 postmarked, will be conclusively determined according to the records of the Settlement
11 Administrator. Any Class Member who submits a timely and valid Request for Exclusion from the
12 Class and this Settlement (i) will not have any rights under this Settlement other than a right to
13 receive a pro-rata share of the PAGA Settlement Payment (i.e., an Individual PAGA Payment) if
14 the Class Member is also PAGA Employee; (ii) will not be entitled to receive an Individual
15 Settlement Payment under this Settlement; and (iii) will not be bound by this Settlement or the
16 Court's Order and Final Judgment other than as it applies to the PAGA Claim.

17 Any Class Member who fails to submit a timely and valid Request for Exclusion will
18 automatically be deemed a Participating Class Member whose rights and claims with respect to the
19 issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class
20 and PAGA Action, and by the other rulings in the Action. Thus, said Participating Class Member's
21 rights to pursue any claims covered by the Action and/or released in this Agreement will be
22 extinguished.

23 **c. Defendant's Option to Revoke Settlement.**

24 If, after the Response Deadline, the number of Class Members who submit timely and valid
25 written Requests for Exclusion is more than seven and one-half percent (7.5%) of the total number
26 of Class Members, Defendant will have, in its sole discretion, the option to terminate this Settlement.
27 If Defendant exercises the option to terminate this Settlement, Defendant will (a) provide written
28 notice to Class Counsel within seven (7) calendar days after the Response Deadline; and (b) pay all

1 Settlement Administration Costs incurred up to the date or because of the termination of the
2 Settlement. The Parties will then proceed in all respects as if this Agreement had not been executed.

3 **d. Class Members Cannot Exclude Themselves from PAGA Settlement.**

4 A Class Member submitting a timely and valid Request for Exclusion will nevertheless still
5 receive an Individual PAGA Payment, i.e., his/her pro rata share of the PAGA Settlement Payment.
6 If the Court approves the compromise of the PAGA Claim, all PAGA Employees are bound by the
7 Court's resolution of that Claim. Named Plaintiff will serve a notice of settlement to the California
8 Labor and Workforce Development Agency at or before the time Named Plaintiff files the Motion
9 for Preliminary Approval.

10 **e. Objections to Settlement**

11 For any Class Member to object to this Settlement, or any term of the Settlement, the Class
12 Member making the objection (i) must not submit a Request for Exclusion (*i.e.*, must not opt out),
13 and (ii) must send to the Settlement Administrator, postmarked or faxed no later than the Response
14 Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice Packet to the
15 Class Member, whichever is later), a written Objection Form (included in the Notice Packet) stating
16 the grounds of objection and signed by the objecting Class Member or his/her attorney, along with
17 all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed
18 Objection Form was postmarked, will be conclusively determined according to the records of the
19 Settlement Administrator. The Settlement Administrator will send any Objection Forms it receives
20 to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members
21 may also appear at the final approval hearing to object. Class Counsel will ensure that any written
22 Objection Forms are transmitted to the Court for the Court's review (either by Class Counsel with
23 the Motion for Final Approval or as an attachment to a declaration from the Settlement
24 Administrator).

25 An objection alone will not satisfy the requirement that a Participating Class Member must
26 either make a timely complaint in intervention before final judgment or file a motion to set aside
27 and vacate the class judgment under Code of Civil Procedure § 663, to have standing to appeal entry
28 of judgment approving this Settlement, as is required under the California Supreme Court decision

1 in *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Participating Class Member who
2 does not object prior to or at the Final Approval Hearing will be deemed to have waived any
3 objections and will be foreclosed from making any objections (whether by appeal, or otherwise) to
4 the Settlement. If the objecting Participating Class Member does not formally intervene in the action
5 or move to set aside any judgment and/or if the Court rejects the Participating Class Member's
6 objection, the Participating Class Member will still be bound by the terms of this Agreement and
7 the Settlement.

8 Class Counsel and Defense Counsel may, at least five (5) calendar days (or some other
9 number of days as specified by the Court) before the Final Fairness and Approval Hearing, file
10 responses to any written objections submitted to the Court. The Court retains final authority with
11 respect to the consideration and admissibility of any Participating Class Member's objections.

12 **f. Encouragement of Class Members**

13 The Parties and their counsel will not, directly or indirectly, through any person, encourage
14 or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to
15 it. However, Class Counsel may respond to inquiries from Class Members.

16 **g. Right of Named Plaintiff to Adjust Gross Settlement Amount**

17 Defendant has estimated the number of Class Members as 426 employees and former
18 employees, and the number of Qualifying Workweeks during the Class Period as 17,210
19 workweeks. If the number of Class Members or Qualifying Workweeks during the Class Period
20 increases by more than ten percent (10%), i.e., increases to more than 469 Class Members or more
21 than 18,931 Qualifying Workweeks during the Class Period, there will be a pro rata adjustment to
22 the Gross Settlement Amount equal to \$2,464,79 per additional Class Member or \$61.01 per
23 additional Qualifying Workweek during the Class Period, whichever is greater.

24 **Section 3.05: Final Fairness and Approval Hearing**

25 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
26 Fairness and Approval Hearing will be held before the Court to (a) review this Agreement and
27 determine whether the Court should give it final approval, and (b) consider any objections made and
28 all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the

Parties will ask the Court to grant final approval to this Settlement and will submit to the Court a Proposed Final Order Approving Settlement of Class and PAGA Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Class Claims, Released PAGA Claims, and Named Plaintiff's Released Claims, and other valuable consideration set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of One Million, Fifty Thousand Dollars and Zero Cents (\$1,050,000.00), in accordance with the following payment schedule: (i) the gross amount of Five Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00) to be deposited in the GSA no later than sixty (60) days after entry of the Final Order Approving Settlement of Class and PAGA Action; and (ii) the additional gross amount of Five Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00) to be deposited in the GSA no later than three hundred and sixty-five (365) days after entry of the Final Order Approving Settlement of Class and PAGA Action. The Gross Settlement Amount is subject to a pro rata increase under the condition set forth in Section 3.04(g). The Settlement Administrator will use the Gross Settlement Amount to fund the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Payment to Named Plaintiff, the LWDA Payment, the Individual PAGA Payments to the PAGA Employees, and the Settlement Administration Costs.

Within ten (10) court days after receiving Defendant's final payment funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Payment to Named Plaintiff, the LWDA Payment, the Individual PAGA Payments to the PAGA Employees, and the Settlement Administration Costs.

b. Employer's Share of Payroll Taxes

The Individual Settlement Payments will be deemed twenty percent (20%) compensation for alleged wages owed, and eighty percent (80%) compensation for alleged penalties and interest. The Individual PAGA Payments will be deemed one hundred percent (100%) compensation for alleged penalties.

1 Defendant will be separately responsible for any employer payroll taxes required by law for
2 the portion of Individual Settlement Payments allocated to alleged wages due, including the
3 employer FICA, FUTA, and SDI contributions. The Settlement Administrator will calculate and
4 submit to Defense Counsel the employer's share of payroll taxes due for the portion of the Individual
5 Settlement Payments allocated to alleged wages due, in the aggregate, on or before the date of the
6 Final Fairness and Approval Hearing. Concurrent with the settlement payment made 365 days after
7 entry of the Final Order Approving Settlement of Class and PAGA Action as discussed in Section
8 3.06(a), above, Defendant will deposit in the GSF Defendant's share of employer-side payroll taxes
9 for the portion of the Individual Settlement Payments characterized as wages.

10 Except for the employer share of such payroll taxes, it is understood and agreed that
11 Defendant's maximum total liability under this Settlement will not exceed the Gross Settlement
12 Amount.

13 **c. Payment of Attorneys' Fees and Costs**

14 Class Counsel will submit an application for an award of attorneys' fees of up to one-third
15 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Three
16 Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00). Class Counsel will submit an
17 application for an award of costs not to exceed Twenty Thousand Dollars and Zero Cents
18 (\$20,000.00). Such application for attorneys' fees and costs will be heard by the Court at the Final
19 Fairness and Approval Hearing. Defendant will not object to or oppose any such application in said
20 amounts. Class Counsel will serve Defendant with copies of all documents submitted in support of
21 their application for an award of attorneys' fees and costs.

22 Any attorneys' fees and costs awarded to Class Counsel by the Court will be paid from the
23 Gross Settlement Amount and will not constitute payment to any Class Members or PAGA
24 Employees. The amount of attorneys' fees and costs approved by the Court will encompass all work
25 performed, costs, and expenses incurred by Class Counsel in the Action through the Date of Finality.
26 To the extent that the Court approves less than the amount of attorneys' fees and/or costs that Class
27 Counsel requests, the difference between the requested and awarded amounts will be reallocated to
28 the Net Settlement Amount.

1 **d. Payment of Settlement Administration Costs**

2 The Settlement Administration Costs will be paid out of the Gross Settlement Amount and
3 will not constitute payment to any Participating Class Members or PAGA Employees. The
4 Settlement Administration Costs will not exceed Nine Thousand Eight Hundred and Fifty Dollars
5 and Zero Cents (\$9,850.00).

6 **e. Payment of Incentive Award to Named Plaintiff**

7 Subject to Court approval, the Named Plaintiff will receive an Incentive Award of up to Ten
8 Thousand Dollars and Zero Cents (\$10,000.00), the request for which Defendant will not object to
9 or oppose. The Incentive Award will be paid out of the Gross Settlement Amount and will not
10 constitute payment to any Participating Class Member or PAGA Employee other than Named
11 Plaintiff. To the extent that the Court approves less than the amount of Incentive Award that Class
12 Counsel requests, the difference between the requested and awarded amounts will be reallocated to
13 the Net Settlement Amount. Named Plaintiff agrees not to opt-out of the Class or object to the
14 Settlement based upon the Incentive Award approved by the Court.

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

20 **f. Payment to the Labor and Workforce Development Agency**

21 Class Counsel will request that the Court approve allocation of Fifty Thousand Dollars and
22 Zero Cents (\$50,000.00) from the Gross Settlement Amount to settlement of the PAGA Claim, i.e.,
23 the PAGA Settlement Amount. Seventy-five percent (75%) or \$37,500.00 of the PAGA Settlement
24 Amount will be paid to the California Labor and Workforce Development Agency as the LWDA
25 Payment, and twenty-five percent (25%) or \$12,500.00 of the PAGA Settlement Amount will be
26 paid to the PAGA Employees as Individual PAGA Payments. Defendant will not oppose this
27 request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
28 The Court's adjustment, if any, of the amount allocated to the PAGA Settlement Amount will not

1 invalidate this Agreement.

2 **g. Payment of Individual Settlement Payments to Participating Class**
3 **Members**

4 The Parties agree that the Net Settlement Amount will be used to fund Individual Settlement
5 Payments. The Parties agree that each Participating Class Member will be paid a pro-rata share of
6 the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will
7 be determined based on the Participating Class Member's Qualifying Workweeks during the Class
8 Period. The Net Settlement Amount will be divided by the total number of Qualifying Workweeks
9 by all Participating Class Members during the Class Period to yield a Qualifying Workweek Value.
10 The Qualifying Workweek Value will then be multiplied by the Qualifying Workweeks of the
11 Participating Class Member during the Class Period to yield his/her Individual Settlement Payment.
12 Partial Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's
13 approximate Individual Settlement Payment amount will be included in his/her Notice Packet. After
14 final approval by the Court, the Individual Settlement Payments will be dispersed to Participating
15 Class Members (those who did not exclude themselves) from the Net Settlement Amount in
16 accordance with the above calculation method.

17 No later than ten (10) business days after the last installment of the Gross Settlement Amount
18 is deposited in the GSA by Defendant, the Settlement Administrator will prepare and mail checks
19 for the Individual Settlement Payments to the Participating Class Members. Individual Settlement
20 Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable
21 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
22 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 for the
23 interest and penalty portion of the Individual Settlement Payments.

24 Participating Class Members will have 180 days from the date their Individual Settlement
25 Payment checks are dated to cash their checks. Any checks that are not cashed upon the expiration
26 of that 180-day time period will be void, and the Settlement Administrator will tender the funds to
27 the State Controller Unclaimed Property Fund in the name of the Participating Class Member for
28 whom the funds are designated.

1 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator will promptly attempt to obtain a valid mailing address by performing a skip trace or
3 a mass search on LexisNexis or comparable databases using set criteria and, if another address is
4 identified, the Settlement Administrator will re-mail the check to the newly identified address. If the
5 Settlement Administrator is unable to obtain a valid mailing address through this process, the
6 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
7 Unclaimed Property Fund in the name of the Participating Class Member for whom the funds are
8 designated.

9 **h. Payment of PAGA Payments to the PAGA Employees**

10 PAGA Settlement Payments will be paid out of the PAGA Settlement Amount (deducted
11 from the Gross Settlement Amount) after the LWDA Payment (75 percent of the PAGA Settlement
12 Amount) is paid to the LWDA. Each PAGA Employee will receive a pro-rata share of the remainder
13 of the PAGA Settlement Amount, as calculated by the Settlement Administrator. Class Members
14 who are PAGA Employees will not be permitted to exclude themselves from this portion of the
15 Settlement.

16 Each PAGA Employee's pro-rata share will be determined based on the PAGA Employee's
17 Qualifying Pay Periods during the PAGA Period. After deducting the LWDA Payment from the
18 PAGA Settlement Amount, the remainder of the PAGA Settlement Amount will be divided by the
19 total number of Qualifying Pay Periods of all PAGA Employees during the PAGA Period to yield
20 a Qualifying Pay Period Value. The Qualifying Pay Period Value will then be multiplied by the
21 Qualifying Pay Periods of the PAGA Employee during the PAGA Period to yield his/her Individual
22 PAGA Payment. Partial Qualifying Pay Periods will be rounded up to the next whole integer. Each
23 PAGA Employee's approximate Individual PAGA Payment amount will be included in his/her
24 Notice Packet. After final approval by the Court, the Individual PAGA Payments will be dispersed
25 to the PAGA Employees from the PAGA Settlement Amount in accordance with the above
26 calculation method. Individual PAGA Payments in the appropriate amounts will be distributed by
27 the Settlement Administrator by mail to the PAGA Employees at the same time Individual
28 Settlement Payments are distributed to Participating Class Members. The Settlement Administrator

1 will issue a Form 1099 for each Individual PAGA Payment.

2 PAGA Employees will have 180 days from the date their Individual PAGA Payment checks
3 are dated to cash their Individual PAGA Payment checks. Any checks that are not cashed upon the
4 expiration of that 180-day time period will be void, and the Settlement Administrator will tender the
5 funds to the State Controller Unclaimed Property Fund in the name of the PAGA Employee for
6 whom the funds are designated.

7 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
8 Administrator will promptly attempt to obtain a valid mailing address by performing a skip trace or
9 a mass search on LexisNexis or comparable databases using set criteria and, if another address is
10 identified, the Settlement Administrator will re-mail the check to the newly identified address. If the
11 Settlement Administrator is unable to obtain a valid mailing address through this process, the
12 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
13 Unclaimed Property Fund in the name of the PAGA Employee for whom the funds are designated.

14 i. **Allocation of Settlement Payments**

15 As discussed above, the Parties have agreed that Individual Settlement Payments will be
16 allocated as follows: twenty percent (20%) to wages, and eighty percent (80%) to penalties and
17 interest. The Individual PAGA Payments will be allocated one hundred percent (100%) to penalties.
18 Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and
19 each Participating Class Member will receive an IRS Form W-2 with respect to the wage portion of
20 his or her Individual Settlement Payment. The Participating Class Member's share of payroll taxes
21 and other required withholdings will be remitted by the Settlement Administrator to the appropriate
22 taxing authorities as set forth above, along with Defendant's employer portion of FICA and FUTA
23 contributions, based on the allocation to wages in the Individual Settlement Payment. IRS Forms
24 1099 will be issued by the Settlement Administrator to each Participating Class Member and/or
25 PAGA Employee reflecting the payments for penalties and interest. Participating Class Members
26 and PAGA Employees are responsible to pay appropriate taxes due on the Individual Settlement
27 Payments and Individual PAGA Payments they receive.

28 j. **No Credit Toward Benefit Plans.**

1 It is expressly understood and agreed that the receipt of Individual Settlement Payments
2 made to Participating Class Members under this Agreement, the receipt of Individual PAGA
3 Payments made to PAGA Employees under this Agreement, and any other payments made pursuant
4 to this Agreement, will not be used to calculate any additional benefits under any benefit plans to
5 which any Class Members or PAGA Employees may be eligible, including, but not limited to: profit-
6 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
7 plans, or any other benefit plans. It is the intent of all Parties that the Individual Settlement Payments
8 and Individual PAGA Payments provided for in this Settlement are the sole payments to be made
9 by Defendant to the Participating Class Members and PAGA Employees, and that the Participating
10 Class Members and PAGA Employees are not entitled to any new or additional compensation or
11 benefits as a result of having received the Individual Settlement Payments and/or Individual PAGA
12 Payments, notwithstanding any contrary language or agreement in any benefit or compensation plan
13 document that might have been in effect during the period covered by this Settlement.

14 **ARTICLE IV**

15 **LIMITATIONS ON USE OF THIS SETTLEMENT**

16 **Section 4.01: No Admission**

17 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
18 Class would not have been certified in the Action. This Agreement is entered into solely for the
19 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
20 construed as an admission of liability or wrongdoing by Defendant.

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

22 Regardless of whether the Date of Finality occurs, neither this Agreement, nor any of its
23 terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as,
24 received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the
25 Released Parties, including but not limited to, evidence of a presumption, concession, indication, or
26 admission by Defendant or any of the other Released Parties of any liability, fault, wrongdoing,
27 omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against
28 Defendant or any of the other Released Parties in any further proceeding in the Action, except for

1 the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish
2 that any Participating Class Member or PAGA Employee has resolved any of his/her claims released
3 through this Agreement.

4 **Section 4.03: Nullification**

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

19 In the event of a timely appeal from the Final Order, the Final Order will be stayed and the
20 Gross Settlement Amount will not be distributed pending the completion of the appeal.

21 **ARTICLE V**

22 **RELEASES**

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

24 Upon the Date of Finality, each and every Participating Class Member, on behalf of such
25 Participating Class Member and such Participating Class Member's heirs and assigns, hereby
26 releases Defendant and the other Released Parties from the following claims that arose during the
27 Class Period (the "Released Class Claims"):

- 28 a. All causes of action and factual or legal theories that were alleged in the First

1 Amended Complaint in the Action, or that reasonably could have been alleged therein against
2 Defendant or any other Released Parties, based on the facts alleged therein, including but not limited
3 to claims for: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii)
4 failure to provide proper meal and rest periods and to properly provide premium pay in lieu thereof;
5 (iii) failure to provide complete, accurate or properly formatted wage statements; (iv) failure to
6 reimburse business expenditures; (v) failure to timely pay all wages due during employment,
7 including but not limited to, non-productive time worked by piece rate employees; (vi) failure to
8 pay all wages due upon separation of employment; (vii) failure to pay waiting time penalties; (viii)
9 engaging in unfair business practices that could have been premised on the claims, causes of action
10 or legal theories of relief described above or any of the claims, causes of action or legal theories of
11 relief pleaded in the First Amended Complaint in the Action; (ix) any and all other claims or
12 penalties under the Labor Code or other wage-and-hour laws pled in the Action or that reasonably
13 could have been alleged against Defendant or any other Released Parties based on the factual
14 allegations asserted in the Action; (x) any and all claims arising under the related provisions of the
15 Labor Code, including but limited to, Labor Code sections 201-204, 210, 216, 218.6, 226, 226.3,
16 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1197, 1198, 2802; (xi) any and all derivative claims
17 under Business & Professions Code sections 17200 et seq., and (xii) any and all damages, penalties,
18 liquidated damages, interest, attorneys' fees and costs, and other amounts recoverable under said
19 claims, causes of action or legal theories of relief.

20 b. This waiver and release will be final and binding on the Date of Finality and will
21 have every preclusive effect permitted by law. Named Plaintiff and the Participating Class Members
22 may hereafter discover facts or legal arguments in addition to or different from those they now know
23 or currently believe to be true with respect to the Released Class Claims. The discovery of new facts
24 or legal arguments will in no way limit the scope or definition of the Released Class Claims. By
25 virtue of this Agreement, Named Plaintiff and the Participating Class Members will be deemed to
26 have, and by operation of the final judgment approved by the Court, will have, fully, finally, and
27 forever settled and released all of the Released Class Claims.

28 c. The res judicata effect of the final judgment with respect to Participating Class

1 Members will be the same as that of the Released Class Claims. Released Class Claims expressly
2 exclude all other claims by Class Members, including claims for vested benefits, wrongful
3 termination, unemployment insurance, disability insurance, social security, workers' compensation,
4 and claims outside of the Class Period.

5 d. The Parties understand and agree that the scope of the Released Class Claims
6 described: (i) is a material part of the consideration for this Agreement; (ii) was critical in justifying
7 the agreed upon economic value of this settlement and without it Defendant would not have agreed
8 to the consideration provided; and (iii) is narrowly drafted and necessary to ensure that Defendant
9 is obtaining peace of mind regarding the resolution of claims that were or could have been alleged
10 based on the factual allegations contained in the First Amended Complaint in the Action.

11 **Section 5.02: Released Claims by PAGA Employees**

12 Upon the Date of Finality, Named Plaintiff, the PAGA Employees, and the State of
13 California hereby release Defendant and the other Released Parties from the following claims that
14 arose during the PAGA Period (the "Released PAGA Claims"):

15 a. All claims for civil penalties arising during the PAGA Period that could have been
16 sought by the California Labor Commissioner for the violations identified in the PAGA Complaint,
17 to the extent the violations identified in the PAGA Complaint were alleged in the First Amended
18 Complaint in the Action. The Released PAGA claims include all claims by the PAGA Employees
19 for civil penalties that reasonably could have been sought by the Labor Commissioner based upon
20 Defendant's alleged (i) failure to provide 30-minute uninterrupted meal periods within the
21 appropriate time intervals; (ii) failure to pay an additional hour of pay at the regular rate when an
22 employee suffered a meal period violation; (iii) failure to authorize or permit paid 10-minute rest
23 periods for every four hours of work or major fraction thereof; (iv) failure to pay an additional hour
24 of pay at the regular rate when an employee suffered a rest break violation; (v) failure to pay at least
25 the legal minimum wage and overtime wage for all hours worked; (vi) failure to compensate
26 employees for necessary business-related expenses incurred as a direct consequence of the discharge
27 of their job duties; (vii) failure to provide accurate, itemized wage statements; (viii) failure to
28 maintain accurate and complete records showing the hours worked daily by employees and wages

1 paid to employees; and (ix) failure to pay all wages owed during employment and following the end
2 of employment, including but not limited to, non-productive time worked by piece rate employees.
3 Named Plaintiff and the State of California do not release any of the PAGA Employees' individual
4 claims for wages or damages. By virtue of this Agreement, the PAGA Employees will be deemed
5 to have, and by operation of the final judgment approved by the Court, will have, fully, finally, and
6 forever settled and released all of the Released PAGA Claims.

7 b. The res judicata effect of the final judgment with respect to the PAGA Employees
8 will be the same as that of the Released PAGA Claims. The Released PAGA Claims expressly
9 exclude all other claims by the PAGA Employees, including claims for vested benefits, wrongful
10 termination, unemployment insurance, disability insurance, social security, workers' compensation,
11 and claims outside of the PAGA Period.

12 c. The Parties understand and agree that the scope of the release described in this
13 section: (i) is a material part of the consideration for this Agreement; (ii) was critical in justifying
14 the agreed upon economic value of this settlement and without it Defendant would not have agreed
15 to the consideration provided; and (iii) is narrowly drafted and necessary to ensure that Defendant
16 is obtaining peace of mind regarding the resolution of claims that were or could have been alleged
17 based on the factual allegations contained in the PAGA Complaint and/or the First Amended
18 Complaint in the Action.

19 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

20 Upon the Date of Finality, Named Plaintiff on behalf of himself and his heirs and assigns,
21 hereby releases Defendant and the other Released Parties from the following claims (the "Named
22 Plaintiff's Released Claims"):

23 a. Any and all Released PAGA Claims (as defined above) and any and all Released
24 Class Claims (as defined above), as well as any and all other claims, charges, complaints, liens,
25 demands, agreements, contracts, covenants, actions, suits, causes of action, penalties, wages,
26 obligations, debts, expenses, damages, attorneys' fees, costs, judgments, orders, and liabilities, of
27 whatever kind or nature, in law, equity, or otherwise, known or unknown, suspected or unsuspected,
28 that Named Plaintiff had, now has, or may hereafter claim to have against the Released Parties,

1 arising out of, or relating in any way to, Named Plaintiff's hiring by, employment with, or separation
2 of from employment with Defendant, or any other transactions, occurrences, acts or omissions or
3 any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting
4 from any act or omission by or on the part of any Released Party, arising or accruing from the
5 beginning of time up through the date of the Date of Finality. Named Plaintiff's Released Claims
6 include, but are not limited to, any and all tort claims, contract claims, wage claims, wrongful
7 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
8 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
9 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
10 federal, state or other governmental statute, law, regulation or ordinance, including but not limited
11 to, any claims arising under the California Labor Code; the Wage Orders of the Industrial Welfare
12 Commission; California Business and Professions Code sections 17200, et seq.; the Fair
13 Employment and Housing Act, Cal. Gov't Code sections 12900, et seq.; the Healthy Workplaces,
14 Healthy Families Act, Cal. Labor Code sections 245, et seq., Title VII of the Civil Rights Act of
15 1964, 42 U.S.C. sections 2000e, et seq.; the Americans with Disabilities Act, 42 U.S.C. sections
16 12101, et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. sections 1001, et
17 seq.; the Fair Labor Standards Act, 29 U.S.C. sections 201, et seq., the Portal to Portal Act, 29 U.S.C.
18 sections 251, et seq., the Families First Coronavirus Response Act, and/or any other federal, state
19 or other governmental statute, law, regulation or ordinance.

20 b. Named Plaintiff acknowledges that he has read Section 1542 of the Civil Code of the
21 State of California, which provides:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
25 RELEASE AND THAT, WHICH IF KNOWN BY HIM OR HER, WOULD
26 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
27 DEBTOR OR RELEASED PARTY.

28 Named Plaintiff further warrants that he understands that Section 1542 gives him the right
not to release existing claims of which he is not now aware, unless he voluntarily chooses to waive

1 this right. Having been so apprised, Named Plaintiff nevertheless voluntarily waives the rights
2 described in Section 1542, and elects to assume all risks and to release the claims set forth in this
3 subsection, that now exist in his favor, whether known or unknown.

4 c. The res judicata effect of the final judgment with respect to Named Plaintiff will be
5 the same as that of Named Plaintiff's Released Claims. Named Plaintiff's Released Claims expressly
6 excludes claims that cannot be waived, including claims for unemployment insurance and workers'
7 compensation.

8 d. The Parties understand and agree that the scope of Named Plaintiff's Released
9 Claims described in this subsection: (i) is a material part of the consideration for this Agreement;
10 (ii) was critical in justifying the agreed upon economic value of this settlement and without it
11 Defendant would not have agreed to the consideration provided; and (iii) is narrowly drafted and
12 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims
13 that were or could have been alleged based on the factual allegations contained in the PAGA
14 Complaint and/or the First Amended Complaint in the Action.

15 **ARTICLE VI**

16 **MISCELLANEOUS PROVISIONS**

17 **Section 6.01: Amendments or Modification**

18 The terms and provisions of this Agreement may be amended or modified only by an express
19 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.
20 This Settlement may not be discharged except by performance in accordance with its terms or by a
21 writing signed by the Parties hereto.

22 **Section 6.02: Assignment**

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

1 **Section 6.03: Governing Law**

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

5 **Section 6.04: Entire Agreement**

6 This Agreement, including the Exhibits referred to herein, which form an integral part
7 hereof, contains the entire understanding of the Parties with respect to the subject matter contained
8 herein. In case of any conflict between text contained in Articles I through VI of this Agreement
9 and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) will be
10 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
11 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
12 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
13 supersedes all prior agreements and understandings among the Parties with respect to the settlement
14 of the Action, including the Memorandum of Understanding executed by Named Plaintiff on or
15 about November 29, 2023, any correspondence between Class Counsel and Defense Counsel, and
16 any drafts of prior agreements or proposals.

17 **Section 6.05: Waiver of Compliance**

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

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

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

1 as an original signature.

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

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

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

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

10 **Section 6.09: Cooperation in Drafting**

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

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

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

20 **Section 6.11: Headings**

21 The descriptive heading of any section or paragraph of this Agreement is inserted for
22 convenience of reference, and in no way defines, limits, extends, or describes the scope of this
23 Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a
24 recital.

25 **Section 6.12: Notice**

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

To Named Plaintiff and the Class:

Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Jamie Loos
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
(949) 379-6250; (949) 379-6251 (fax)

And

To Defendant:

Michael J. Studenka
Thomas H. Reilly
NEWMYER & DILLION LLP
895 Dove Street, Second Floor
Newport Beach, CA 92660
(949) 854-7000; (949) 854-7099 (fax)

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

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

Section 6.14: Mutual Full Cooperation

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

1 to this Agreement will use their best efforts, to effectuate and implement this Agreement and its
2 terms. In the event the Parties are unable to reach agreement on the form or content of any document
3 needed to implement the Settlement, or on any supplemental provisions that may become necessary
4 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

5 **Section 6.15: Authorization to Act**

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

12 **Section 6.16: Class Counsel Signatories**

13 It is agreed that because the Class Members are so numerous, it is impossible or impractical
14 to have each Class Member execute this Settlement. The Notice Packet will advise all Class
15 Members of the binding nature of the Released Class Claims and Released PAGA Claims, and that
16 the release will have the same force and effect as if this Settlement were executed by each
17 Participating Class Member.

18 **Section 6.17: No Reliance on Representations**

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

26 **Section 6.18: Final Judgment**

27 The Parties agree that, upon final approval of the Settlement, final judgment of this Action
28 will be made and entered in its entirety at or following the Final Approval and Fairness Hearing.

1 The final judgment may be included in the Order granting Final Approval of the Settlement.

2 **EXECUTION BY PARTIES AND COUNSEL**

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Agreement as set forth below:

5
6 Dated: July 3, 2024.

PLAINTIFF DONALD MCGARITY

7
8 
Donald McGarity (Jul 3, 2024 10:55 PDT)

9
10
11 Dated: June __, 2024.

DEFENDANT NV COMMUNICATION

12 By: _____
13 Its: President

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1 **APPROVED AS TO FORM ONLY:**

2

3 Dated: July 3, 2024

AEGIS LAW FIRM, PC

4

Samuel A. Wong

Jamie M. Loos

5

Jessica L. Campbell

6

By: _____



7

Attorneys for Plaintiff Donald McGarity, individually, and
on behalf of all others similarly situated

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10

11

12

Dated: June ___, 2024

NEWMAYER DILLION, LLP

13

Michael Studenka

Thomas H. Reilly

14

15

By: _____

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Attorneys for Defendant NV Communication

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