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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIEGO GUZMAN and KEVIN
WHITLATCH, individually and on behalf of
all similarly situated current and former
employees,

Plaintiffs,

vs.

DOW AGROSCIENCES LLC, CORTEVA
AGRISCIENCE LLC, and DOES 1 through
10, inclusive.

Defendants.

3:22-CV-04962-RS

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Judge: Hon. Joseph C. Spero,
Chief Magistrate Judge

Complaint Filed: 08/30/2022
Trial Date: Not set

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1 Plaintiffs Diego Guzman and Kevin Whitlatch, individually and on behalf of all similarly
2 situated current and former employees (collectively “Plaintiffs”), and Defendants Dow Agrosciences
3 LLC and Corteva Agrisciences LLC (“Defendants”) (collectively, the “Parties”), subject to the
4 terms and conditions hereof and final approval by the Court, hereby enter into this Joint
5 Stipulation of Class Action Settlement and Release (“Settlement Agreement”). This Settlement
6 Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and
7 settle the Released Claims subject to the terms and conditions set forth herein.

8 I. RECITALS

9 A. Background and Procedural History

10 1. Plaintiffs commenced the Class Action by filing a complaint against Defendants in the
11 United States District Court, Northern District of California, Case No. 3:22-CV-04962-RS, on
12 August 22, 2022. Plaintiffs subsequently filed a First Amended Complaint on December 9, 2022,
13 which is the operative complaint in this Action (the “Complaint”). Plaintiffs brought claims for (1)
14 Failure to Pay Reporting Time Pay (IWC Wage Order 1-2001; 8 C.C.R. § 11010; Labor Code § 218);
15 (2) Failure to Pay All Wages Earned at Termination (Labor Code §§ 200-203); (3) Failure to Furnish
16 Accurate Itemized Wage Statements (Labor Code §§ 226 and 226.3); (4) Violations of the California
17 Unfair Competition Law (Business & Professions Code § 17200 *et seq.*); and (5) Liability for Civil
18 Penalties Under the Private Attorneys General Act (Lab. Code § 2698 *et seq.*).

19 2. Plaintiffs allege that Defendants violated California’s wage and hour laws by regularly
20 scheduling the operators at their Pittsburg, California plant for 12-hour shifts, and requiring those
21 employees to be on-call for primary relief shifts. Plaintiffs allege that the employees are required to
22 be available to be contacted by Defendants during a designated period of time to work primary relief
23 shifts, and their activities were significantly constrained and prevented from going out of town,
24 sleeping, taking a class, going camping, or being at any location without cell service including, for
25 example, elevators and rural areas. Plaintiffs also allege that those employees were only paid when
26 they were actually called in to work relief shifts, and not for the period of time they were required be
27 on call. Plaintiffs allege Defendants have failed to pay reporting time pay, failed to pay all wages
28 earned at termination, and failed to furnish timely and accurate wage statements. Plaintiffs allege that

1 Defendants have also violated the Private Attorneys General Act, Labor Code 2698 et seq., and
2 engaged in unfair business practices pursuant to Business & Professions Code §17200 et seq.
3 Plaintiffs have not filed a motion for class certification in this action.

4 3. On July 27, 2023, the Parties participated in mediation with Steve Serratore. At the
5 conclusion of the Mediation, the Parties accepted the Mediators' Proposal.

6 **B. Parties' Statements and Recognition of the Benefits of the Settlement**

7 4. Class Counsel has conducted extensive investigation into the facts of the Class Action,
8 including informal disclosures and other investigation undertaken by counsel for Plaintiffs.
9 Furthermore, the Parties engaged in extensive negotiations and the exchange of data, documents, and
10 information in this litigation. Based on a thorough investigation and evaluation of this case, Class
11 Counsel and Plaintiffs have concluded that the settlement with Defendants for the consideration and
12 on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
13 interest of the class in light of all known facts and circumstances, including the risk of significant
14 delay, defenses asserted by Defendants, and numerous potential appellate issues.

15 5. Defendants deny each and all of the claims alleged by Plaintiffs in the Class Action.
16 Defendants expressly deny any liability or wrongdoing of any kind whatsoever associated with the
17 claims alleged in the Class Action, and further deny that, for any purpose other than settling this
18 Class Action, this Class Action is appropriate for class or representative treatment. With respect to
19 Plaintiffs' claims, Defendants contend, among other things, that they have complied with all
20 applicable state, federal and local laws affecting Plaintiff and the Settlement Class. Nevertheless,
21 Defendants have taken into account the uncertainty and risks inherent in any litigation and have also
22 concluded that further conduct of the instant action would be protracted and expensive. Defendants,
23 therefore, have determined that it is desirable and beneficial that the Class Action be settled in the
24 manner and upon the terms and conditions set forth in this Settlement Agreement. Neither this
25 Settlement Agreement, nor any document referred to or contemplated herein, nor any action taken to
26 carry out this Settlement Agreement, is, may be construed as, or may be used as an admission,
27 concession, or indication by or against Defendants of any fault, wrongdoing or liability whatsoever.

II. DEFINITIONS

1. “Administrative Costs” shall mean the Settlement Administrator’s fees, costs, and expenses in connection with the claims administration services to be rendered pursuant to this Settlement Agreement, including providing the Notice of Settlement, various efforts to locate Class Members, and making settlement distributions to Class Members. The amount of those Administrative Costs is subject to the Court’s approval.
2. “Attorneys’ Fees and Costs” shall mean the amount of attorneys’ fees and litigation expenses and costs approved by the Court to be paid to Class Counsel.
3. “Class Action” shall mean the civil action captioned, filed in the USDC Northern District of California, Case No. 3:22-cv-04962-RS.
4. “Class Counsel” shall mean the attorneys representing Plaintiffs in the Class Action: Randy Renick and Cornelia Dai of Hadsell Stormer Renick & Dai LLP and Jay Smith and Joshua F. Young of Gilbert & Sackman, a Law Corporation.
5. “Class” or “Class Members” shall mean: all current and former hourly employees of Defendants who worked at the Pittsburg, California plant, and who have been assigned primary relief shifts that required them to be ready to report to the refinery if contacted, since August 30, 2018 preliminary approval of the Settlement, who do not request to exclude themselves (i.e. opt out) from the settlement.
6. “Class Period” shall mean the period from December 30, 2018 through the date of Preliminary Approval.
7. “Defense Counsel” shall mean the attorneys Nathan W. Austin and Evan McBride of Jackson Lewis P.C.
8. The “Effective Date” of this Settlement Agreement shall mean three (3) calendar days after all of the following conditions have been satisfied:
 - (a) Execution of this Settlement Agreement by all Parties, Class Counsel, and Defense Counsel;
 - (b) Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court;

- 1 (c) Preliminary Approval of the settlement by the Court;
- 2 (d) Mailing of the Notice of Settlement to the Class Members in accordance with
- 3 the Preliminary Approval Order;
- 4 (e) Expiration of the opt-out period as defined in the Notice of Settlement;
- 5 (f) Five percent (5%) or fewer of the Class Members submit timely and valid
- 6 requests to opt out of the Class (or if more than five percent (5%) opt out, and none of the
- 7 Defendants exercise their right to rescind and void the Settlement Agreement);
- 8 (g) A formal fairness hearing, Final Approval of the settlement by the Court, and
- 9 entry of a written final order by the Court approving this Settlement Agreement and entering
- 10 final judgment with respect to the Class Action. Provided, that in the event there are written
- 11 objections made prior to the formal fairness hearing, or an appeal of the Court's approval of
- 12 the settlement taken, then the Effective Date shall be the later of the following events: when
- 13 the period for filing any appeal, writ, or other appellate proceeding opposing the settlement
- 14 has elapsed without any appeal, writ, or other appellate proceeding having been filed; or any
- 15 appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally
- 16 and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or
- 17 other appellate proceeding has upheld the Court's final order with no right to pursue further
- 18 remedies or relief.

19 The occurrence of the Effective Date is a prerequisite to any obligation to fund or make distributions

20 from the Settlement Fund.

21 9. "Final Approval Hearing" means the hearing to be conducted by the Court, or any

22 other court taking jurisdiction of this matter, to determine whether to finally approve the settlement.

23 In the event that the Court does not issue a Final Approval Order, or any such Final Approval Order

24 does not take effect for any reason, or is modified in any material respect, the Effective Date does not

25 occur, or that any of the conditions set forth above do not occur, this Settlement Agreement shall be

26 deemed null and void and shall be of no force or effect whatsoever, and shall not be referred to or

27 utilized for any purpose whatsoever.

28

1 10. “Final Approval Order” and “Final Approval” means an order that finally and
2 unconditionally grants final approval of this Settlement Agreement, enters final judgment with
3 respect to the Class Action, and authorizes payments to the Class Members, the Named Plaintiffs, the
4 Settlement Administrator, and Class Counsel as provided in this Settlement Agreement, substantially
5 in the same form as Exhibit C attached hereto.

6 11. “Named Plaintiffs” shall mean Diego Guzman and Kevin Whitlach.

7 12. The “Net Settlement Proceeds” shall equal the Settlement Fund minus the total of:
8 Court-approved Attorneys’ Fees and Costs; Court-approved Service Awards to the Named Plaintiffs;
9 Court-approved Administrative Costs; and Payment to the LWDA for PAGA penalties.

10 13. “Notice of Settlement” refers to the official Notice of Settlement of Class Action,
11 attached hereto as Exhibit A.

12 14. “Notice Response Deadline” means 60 days from the initial date of mailing the Notice
13 Packet to Class Members, or such other date as set by the Court in the Preliminary Approval Order,
14 to postmark a timely objection, or request for exclusion.

15 15. “Preliminary Approval Order” and “Preliminary Approval” refers to the Court order or
16 statement of decision granting preliminary approval of this Settlement Agreement substantially in the
17 same form as Exhibit B attached hereto.

18 16. “Released Claims” shall include all claims under state, federal and local law that were
19 or could have been asserted based on the facts and allegations made in the Action, and any
20 amendments thereto, as to the Class Members, including without limitation, California Labor Code
21 sections 200-203, 218.5, 226, 226.3, and 558, California Industrial Commission Wage Orders, and
22 Business and Professions Code sections 17200, *et seq.*, and including all claims for wages for being
23 on call, reporting time wages as set forth in Wage Order 1-2001 and 8 Cal. Code of Regulations §
24 11010; failure to pay all wages earned at termination, failure to furnish accurate itemized wage
25 statements, unfair competition, unfair business practices, unlawful business practices, fraudulent
26 business practices, failure to pay additional 401(k) benefits and/or deferred compensation benefits
27 and/or matching benefits for payments received under the Settlement, conversion, class actions,
28 injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, statutory

1 penalties of any nature, interest, fees, costs, as well as all other claims and allegations alleged in the
2 Action, during the Class Period.

3 17. “Released PAGA Claims” shall include all claims under PAGA, California Labor
4 Code sections 2698, et seq., that were or could have been asserted based on the facts and allegations
5 made in the Action, and any amendments thereto, as to the Class Members, including without
6 limitation, California Labor Code sections 200-203, 218.5, 226, 226.3, 558, and 2698, et seq.,
7 California Industrial Commission Wage Orders, and including all claims for wages for being on call,
8 reporting time wages as set forth in Wage Order 1-2001 and 8 Cal. Code of Regulations § 11010;
9 failure to pay all wages earned at termination, failure to furnish accurate itemized wage statements,
10 unfair competition, unfair business practices, unlawful business practices, fraudulent business
11 practices, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or
12 matching benefits for payments received under the Settlement, conversion, class actions, injunctive
13 relief, declaratory relief, accounting, punitive damages, liquidated damages, statutory penalties of any
14 nature, interest, fees, costs, as well as all other claims and allegations alleged in the Action, from
15 August 30, 2021 through preliminary approval.

16 18. “Released Parties” shall collectively mean: (i) Dow Agrosiences LLC and Corteva
17 Agrisciences LLC (“Defendants”); (ii) each of Defendants’ past, present, and future direct and
18 indirect parents, including, but not limited to Corteva, Inc.; (iii) the respective past, present, and
19 future direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past, present, and
20 future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,
21 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans,
22 transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or
23 entity which could be jointly liable with any of the foregoing.

24 19. “Service Award” shall mean a court-approved sum to be paid to each Named Plaintiff
25 in accordance with Section III.B.

26 20. “Settlement Administrator” shall mean CAC Services Group, LLC of Eden Prairie
27 Minnesota . The Settlement Administrator is the entity that has been selected to provide notice of this
28

1 proposed class action settlement to the Class and to perform other related functions to administer the
2 settlement contemplated by this Settlement Agreement as described herein.

3 21. "Settlement Fund" refers to the gross settlement amount of Three Million and Eight
4 Hundred Thousand Dollars (\$3,800,000) which is the total and maximum amount Defendants will be
5 required to pay under this Settlement Agreement, except that Defendants will pay the employer's
6 share of any payroll taxes (FICA and FUTA) for wages it pays hereunder. The Settlement Fund will
7 include the following elements: (i) payments to Class Members, as described herein; (ii) payment to
8 the State of California Labor and Workforce Development Agency ("LWDA") under PAGA, as
9 described herein; (iii) Service Awards paid to the Named Plaintiffs, as described herein; (iv) Class
10 Counsel's Attorneys' Fees and Costs, as described herein; and (v) Administrative Costs, as described
11 herein.

12 22. "Workweeks" shall mean the number of weeks worked by a Class Member during the
13 Class Period while assigned a 12-hour rotating shift and who was scheduled for one or more primary
14 relief shift at the Pittsburg, California manufacturing plant. The Settlement Administrator will
15 calculate the number of workweeks, excluding leaves, worked by the Class Members during the
16 Class Period based on Defendants' records. Defendants' records shall be presumed to be correct.
17 Partial workweeks will not be counted; however, if a Class Member worked less than one week as a
18 Class Member, such Class Member will be credited with having worked one workweek for purposes
19 of the Settlement.

20 III. TERMS OF SETTLEMENT AGREEMENT

21 A. Distribution Of The Settlement Fund

22 23. IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for
23 themselves and the Class) and Defendant, by and through their respective attorneys, that, subject to
24 the approval of the Court, the Class Action will be finally and fully compromised, released, resolved,
25 discharged, and settled, and will be dismissed with prejudice as to Defendants, subject to the terms
26 and conditions of this Settlement Agreement, as follows:

27 24. In consideration for settlement of the Class Action and the release of claims of the
28 Class, Defendants agree to pay the Settlement Fund, which is a total of Three Million and Eight

1 Hundred Thousand Dollars (\$3,800,000). Any Administrative Costs, Attorneys' Fees and Costs,
2 payment to the LWDA under PAGA, Service Awards for the Named Plaintiffs, and payments to
3 Class Members shall be paid from the Settlement Fund. The Settlement Fund is the maximum total
4 amount Defendants are required to pay for any and all purposes under this Settlement Agreement,
5 except that Defendants will pay the employer's share of any payroll taxes (FICA and FUTA) in
6 addition to the Settlement Fund.

7 25. This is a non-reversionary settlement in which Defendants are required to pay the
8 entire gross settlement amount. No portion of the Settlement Fund will revert to any Defendant.

9 26. The Parties have agreed to the appointment of CAC Services Group, LLC to serve as
10 the Settlement Administrator for the purpose of administering the settlement process.

11 **B. The Named Plaintiffs' Service Awards**

12 27. In addition to the amounts determined to be due to the Named Plaintiffs as Class
13 Members under this Settlement Agreement, Class Counsel and Named Plaintiffs intend to apply to
14 the Court for Service Awards for Named Plaintiffs, in the total amount of no more than Fifteen
15 Thousand Dollars (\$15,000) per Named Plaintiff. Plaintiffs request an enhancement for the Named
16 Plaintiffs' roles in prosecuting the Class Action, taking the risks of serving as the named
17 representatives, providing factual information and documentation necessary to the prosecution of the
18 Class Action, attending the mediation, providing a general release of all claims, maintaining contact
19 with Class Counsel, and other participation necessary to the successful prosecution of the Class
20 Action and implementation of this Settlement Agreement. Any Service Award approved by the
21 Court in conjunction with the Settlement shall be paid from the Settlement Fund and shall reduce the
22 amount of the Net Settlement Fund payable to Class Members. Defendants will not oppose a request
23 for a Service Award of up to \$5,000 per Named Plaintiff.

24 28. In exchange for this Service Award, each Named Plaintiff agrees not to publicize the
25 settlement beyond what is required or expressly approved by the Court, agrees not to respond to any
26 media inquiry regarding the settlement and agrees to a general release as to any and all claims he
27 might have against any Defendant or Released Party, whether such claim is known or unknown. In
28 the event that Class Members seek to discuss the Settlement or ask questions regarding the Settlement

1 with either of the Named Plaintiffs, the Named Plaintiffs will respond only by directing the Class
2 members to contact the Settlement Administrator or Class Counsel.

3 29. In the event that the Court denies, modifies, or reduces any request for a Service
4 Award, Named Plaintiffs, Class Counsel, and the Class Members shall not: seek to modify, revoke,
5 cancel, terminate, or void this Settlement Agreement; seek, request, or demand an increase in the
6 Settlement.

7 30. If Plaintiffs appeal the Court's ruling on the request for a Service Award for Named
8 Plaintiffs, any ruling of any appellate court in such an appeal (regardless of its substance) shall not
9 constitute a material alteration of this Settlement Agreement, and shall not give Named Plaintiffs,
10 Class Counsel, or the Class Members the right to modify, revoke, cancel, terminate, or void this
11 Settlement Agreement.

12 31. Notwithstanding the above, each Named Plaintiff shall receive payment of his or her
13 Service Award only after executing and delivering to Defendants this Settlement Agreement, and
14 only after the Effective Date has passed.

15 **C. Attorneys' Fees And Costs**

16 32. Class Counsel may request a reasonable award of Attorneys' Fees and Costs from the
17 Court up to 25% of the Settlement Fund (i.e. \$950,000) as well as the reimbursement of costs up to
18 \$30,000 to compensate them for fees and costs incurred for work already performed in this Class
19 Action, and the work remaining to be performed in documenting the Settlement Agreement, securing
20 court approval of the Settlement Agreement, administering the Settlement Agreement, obtaining
21 dismissal of the Class Action with prejudice, and defending against any appeals, as well as all
22 associated expenses. The amount awarded to Class Counsel shall be left to the discretion of the
23 Court. Defendants will not oppose a reasonable request for attorneys' fees and costs.

24 33. Class Counsel will submit an application for Attorneys' Fees and Costs to the Court
25 for approval prior to the date of the Final Approval Hearing. The Parties agree that, over and above
26 the total amount of the court-approved Attorneys' Fees and Costs award in this Class Action, each of
27 the Parties, including all persons eligible to be Class Members, shall bear their own fees and costs
28 relative to the investigation, filing, prosecution or settlement of the Class Action, the negotiation,

1 execution, or implementation of this Settlement Agreement, and/or the process of obtaining,
2 administering or challenging a Preliminary Approval Order and/or Final Approval Order.

3 34. The Parties agree that Class Counsel shall be solely responsible for the division and
4 distribution of any and all Court-approved Attorneys' Fees and Costs awarded in the Class Action to
5 Class Counsel. Class Counsel agree to release Defendants and the Released Parties from any
6 responsibility for or liability arising out of or related to the division and distribution of any court-
7 approved Attorneys' Fees and Costs to Class Counsel.

8 35. In the event that the Court denies, modifies, or reduces Class Counsel's request for
9 Attorneys' Fees and Costs, then Plaintiffs, Class Counsel, and the Class Members shall not: seek to
10 modify, revoke, cancel, terminate, or void this Settlement Agreement; seek, request, or demand an
11 increase in the Settlement.

12 36. If Class Counsel appeal the Court's ruling on their request for Attorneys' Fees and
13 Costs, any ruling of any appellate court in such an appeal (regardless of its substance) shall not
14 constitute a material alteration of this Settlement Agreement, and shall not give Plaintiffs, Class
15 Counsel, or the Class Members the right to modify, revoke, cancel, terminate, or void this Settlement
16 Agreement.

17 37. All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs, and
18 the Class Members may possess against Defendants have been compromised and resolved in this
19 Settlement Agreement and shall not be affected by any appeal that Class Counsel may file.

20 **D. Administrative Costs**

21 38. The court-approved Administrative Costs associated with administering the settlement
22 and claims process shall be subject to all Parties' approval, and shall be deducted from the Settlement
23 Fund. The Administrative Costs are estimated to be no more than Ten Thousand Dollars (\$10,000).
24 No fewer than twenty-one (21) calendar days prior to the Final Approval Hearing, the Settlement
25 Administrator shall provide all counsel for the Parties with a statement detailing the Administrative
26 Costs incurred to date as well as any prospective costs. The Parties agree to cooperate in the
27 settlement administration process and to make all efforts to control and minimize the costs and
28 expenses incurred in the administration of this Settlement Agreement.

1 **E. PAGA Payment.**

2 39. The total amount of the Settlement Fund allocated to PAGA penalties shall be Forty
3 Thousand Dollars (\$40,000), with seventy-five percent (75%) of the PAGA penalties, Thirty
4 Thousand Dollars (\$30,000), being paid to the California Labor and Workforce Development Agency
5 ("LWDA") and twenty-five percent (25%) of the PAGA penalties, Ten Thousand (\$10,000), being
6 paid to the aggrieved employees (the "Class Members").

7 40. The amount of the Settlement Fund being paid to aggrieved employees for PAGA
8 penalties will be allocated in the manner of and as part of the Net Settlement Proceeds, as set forth in
9 Section III.G.

10 41. Pursuant to California Labor Code § 2699(l)(2), settlement of a PAGA action must be
11 approved by the Court and a copy of the proposed settlement will be provided to the LWDA at the
12 same time that it is submitted to the Court.

13 **F. No Effect on Benefits for Class Members**

14 42. Plaintiffs agree, on behalf of all Class Members, that this Settlement Agreement and
15 any payments under this Settlement Agreement shall not have any effect on the eligibility or
16 calculation of employee benefits with respect to the Class Members. This Settlement Agreement
17 does not represent any modification of any previously credited hours of service, income, or other
18 eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other
19 program or policy.

20 43. Likewise, Plaintiffs agree, on behalf of all Class Members, that no payment provided
21 under this Settlement Agreement shall be considered "compensation" or "annual earnings for
22 benefits" in any year for purposes of determining eligibility for, or benefit accrual within, any
23 employee pension benefit plan, employee welfare benefit plan, or other program or policy. For
24 purposes of this Settlement Agreement, the term "employee benefit plan" means every "employee
25 benefit plan" as defined in the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §
26 1002(3). The term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock
27 appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization,
28

1 insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or
2 policy, regardless of whether any such plan is considered an employee benefit plan.

3 **G. Allocation**

4 44. The Net Settlement Proceeds shall be allocated as follows for each Class Member:

5 (a) "Workweeks" shall mean the number of weeks worked by a Class Member
6 during the Class Period while assigned a 12-hour rotating shift at the Pittsburgh,
7 California manufacturing plant. The Settlement Administrator will calculate
8 the number of workweeks, excluding leaves, worked by the Class Members
9 during the Class Period, based on Defendant's records. Partial workweeks will
10 not be counted; however, if a Class Member worked less than one week as a
11 Class Member, such Class Member will be credited with having worked one
12 workweek for purposes of the Settlement.

13 (b) The amount to be paid per workweek to Class Members will be calculated by
14 dividing the Net Settlement Proceeds by the total number of workweeks for all
15 Class Members; any person who opts out of the Settlement is not a Class
16 Member.

17 (c) Any disputes regarding the number of workweeks allocated to a Class Member
18 will be resolved and decided by the Settlement Administrator, whose decision
19 will be final and non-appealable. Defendant's records shall be presumed to be
20 correct.

21 45. The Settlement Administrator will pay out to all Class Members on a confidential
22 basis and issue IRS tax forms as provided below.

23 46. Each Class Member's Individual Settlement Award will be allocated as follows: 20%
24 to unpaid wages, 40% to interest; and 40% to penalties. The wage component of each Individual
25 Settlement Award will be reported on Form W-2 and the portion of each Individual Settlement
26 Award allocated to interest and/or penalties reported on IRS Form 1099, as required by law.

27 47. Defendants, each Plaintiff, and each Class Member will be responsible for his, her, or
28 its own tax obligations. Nothing in this Settlement Agreement is advice by Defense Counsel

1 regarding taxes or taxability, and no Party is relying on Defense Counsel for such advice. The
2 payment by Defendants pursuant to this Agreement is for alleged failure to pay compensation due,
3 interest on the compensation sum, penalties regarding the compensation sum, and all other claims as
4 set forth in the Complaint. In accordance with both state and federal tax laws, the Settlement
5 Administrator shall withhold such sums from each Class Member's Individual Settlement Award as
6 are required in order to comply with the same. Portions of any Individual Settlement Award not
7 subject to withholding will be issued with a 1099 Form. After appropriate tax withholding from
8 Individual Settlement Awards, the net payment to be received by each Class Member, reported as
9 required by law via a W-2 Form, the Settlement Administrator shall immediately pay over all such
10 withheld funds to the appropriate state and federal taxing authorities. The Settlement Administrator
11 shall provide each Class Member with appropriate documentation setting forth the amount of any tax,
12 or other payment withheld, and employer contribution made, in accordance with state and federal tax
13 requirements.

14 48. The Settlement Administrator will notify Defendants of the amount of the employer
15 share of FICA and FUTA due and owing as to each Class Member. Defendants will pay their share of
16 FICA and FUTA separately and in addition to the Settlement Fund. The Settlement Administrator
17 will also give Defendants an estimate of the employer's share of taxes within five (5) calendar days
18 of sending out the Notice of Settlement, as described in Paragraph 65.

19 **H. Released Claims**

20 49. Releases by the Class and the Class Members. In exchange for the payments by
21 Defendants as described herein, upon the Court's Final Approval of this Settlement Agreement, and
22 except as to such rights or claims as may be created by this Settlement Agreement, the Class and each
23 Class Member, including each Named Plaintiff (who shall not opt out of the Class), jointly, severally,
24 shall, and hereby do fully release and discharge Defendants and Released Parties from the Released
25 Claims.

26 50. In exchange for the payments by Defendants as described herein, upon the Court's
27 Final Approval of this Settlement Agreement, and except as to such rights or claims as may be
28 created by this Settlement Agreement, each PAGA Member (each Class Member who was

1 employed by Defendants from August 30, 2021 through preliminary approval), including each
2 Named Plaintiff jointly, severally, shall, and hereby do fully release and discharge Defendants and
3 Released Parties from the Released PAGA Claims.

4 51. The Parties intend that this Settlement Agreement shall be binding on all Class
5 Members, whether or not they actually receive a payment pursuant to this Settlement Agreement.
6 This Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to
7 any Released Claims if raised in the future.

8 52. A Named Plaintiff or Class Member may hereafter discover facts in addition to or
9 different from those they may now know or believe to be true with respect to the subject matter of the
10 Released Claims, but, upon the Effective Date, they, and each of them, shall be deemed to have, and
11 by operation of the Final Approval Order shall have, fully, finally, and forever settled and released
12 any and all of the Released Claims, whether known or unknown, suspected or unsuspected,
13 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or
14 equity now existing or coming into existence in the future, including, but not limited to, conduct that
15 is intentional, negligent, with or without malice, or a breach of any duty, law, or rule, without regard
16 to the subsequent discovery or existence of such different or additional facts.

17 53. Additional General Releases by Named Plaintiffs. In exchange for the consideration,
18 undertakings, and covenants undertaken by Defendants in this Settlement Agreement each Named
19 Plaintiff, for himself and on behalf of his spouse, heirs, assigns, and estates, further hereby generally
20 releases, discharges, and covenants not to sue Defendants and the Released Parties with respect to
21 any and all claims, charges, demands, liens, agreements, contracts, covenants, actions, suits, causes of
22 action, disputed wages, obligations, debts, expenses, attorneys' fees, damages, penalties, interest,
23 judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether
24 now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which
25 the Named Plaintiff now owns or holds or has at any time heretofore owned or held, arising out of or
26 in any way connected with the Named Plaintiff's employment, separation of employment, or any
27 other relationship with, any Defendant or Released Party, or any other transactions, occurrences, acts
28 or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected,

1 resulting from any act or omission by or on the part of said Defendant or Released Party, committed
2 or omitted prior to the Effective Date (collectively, the “Additional General Releases” of “Named
3 Plaintiffs’ Claims”). The Parties intend the Named Plaintiffs’ Additional General Releases to be
4 general and comprehensive in nature, and to release all Named Plaintiffs’ Claims and potential
5 Named Plaintiffs’ Claims against Defendants and the Released Parties to the maximum extent
6 permitted at law.

7 54. Waiver of California Civil Code Section 1542. Each Named Plaintiff intends and/or is
8 deemed to intend that this Settlement Agreement will be effective as a bar to any and all of the
9 Named Plaintiffs’ Claims, as defined above. In furtherance of this intention, each Named Plaintiff
10 expressly waives any and all rights or benefits conferred on him by the provisions of Section 1542 of
11 the California Civil Code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
15 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

16 55. Each Named Plaintiff has consulted with or had the opportunity to consult with
17 counsel of Plaintiff’s choosing about this Settlement Agreement and specifically about the waiver of
18 section 1542, and that Each Named Plaintiff understands this Settlement Agreement and the section
19 1542 waiver, and so Each Named Plaintiff freely and knowingly assumes all risks of his Additional
20 General Release with respect to any Named Plaintiff’s Claims that have already arisen or may in the
21 future arise, whether known or unknown, suspected or unsuspected, and specifically waives all rights
22 he may have under California Civil Code § 1542. Each Named Plaintiff understands that, if any of
23 the facts relating in any manner to the Class Action, or to the release and dismissal of claims as
24 provided in this Settlement Agreement, are hereafter found to be other than or different from the facts
25 now believed to be true, he has expressly accepted and assumed that risk and agrees that this
26 Settlement Agreement and the release of claims contained herein shall nevertheless remain effective.
27 Each Named Plaintiff desires and intends, or is deemed to desire and intend, that this Settlement
28 Agreement shall be given full force and effect according to each and all of its express terms and

1 provisions, including those relating to unknown and unsuspected claims, if any, as well as those
2 relating to the claims referred to above.

3 56. The Named Plaintiffs' Additional General Releases are not intended to expand the
4 nature of the claims released by the Class Members beyond the Released Claims set out in
5 Paragraphs 16, 17, and 49 through 50.

6 **I. Schedule For Finalizing Settlement**

7 57. The Parties stipulate and agree to the following schedule and procedures for obtaining
8 the Court's approval of the settlement, including seeking certification of the Class for settlement
9 purposes only, notice to the Class, and processing all benefits provided under this Settlement
10 Agreement.

11 58. Upon the execution of this Settlement Agreement, Named Plaintiffs will file a Motion
12 for Preliminary Approval with the Court seeking:

13 (a) Certification of the Class as a settlement class under Federal Rule of Civil
14 Procedure Rule 23;

15 (b) Preliminary approval of the terms of this Settlement Agreement;

16 (c) Approval of the Notice of Settlement, settlement notice procedure, and
17 appointment of the Settlement Administrator; and

18 (d) The scheduling of a settlement fairness hearing on the question of whether the
19 terms of this Settlement Agreement should be finally approved as fair, reasonable, and
20 adequate as to the Named Plaintiffs and the Class.

21 As a part of this motion, Named Plaintiffs will submit (and attach a copy of) this Settlement
22 Agreement. Class Counsel shall provide Defendants with a reasonable opportunity to review, and
23 provide comments on the Motion for Preliminary Approval, before filing the motion and supporting
24 papers with the Court.

25 59. Solely for settlement purposes, Plaintiffs agree to seek, and each Defendant consents
26 to, certification by the Court of the Class as a Rule 23 settlement class.

27 60. The certification of the Class and appointment of Class Counsel by the Court shall be
28 binding only with respect to the settlement of this Class Action. In the event that this Settlement

1 Agreement is cancelled pursuant to its terms, the certification of the Class shall be vacated, the Class
2 Action shall proceed as though the Class had never been certified, and this Settlement Agreement
3 shall be of no force or effect.

4 61. Defendants shall not oppose the Motion for Preliminary Approval filed by Class
5 Counsel pursuant to this Settlement Agreement, so long as the motion and supporting papers are
6 consistent with the terms of this Settlement Agreement.

7 62. Within ten (10) calendar days after the filing of the Motion for Preliminary Approval,
8 Defendants shall comply with the “Notification of Settlement” requirements of the Class Action
9 Fairness Act (28 U.S.C. § 1715). Defendants shall provide Class Counsel with a copy of the notice
10 provided to the appropriate state officials, as defined under 28 U.S.C. § 1715. Prior to the date set for
11 the preliminary approval hearing, Defendants shall file a proof of service with the Court indicating
12 compliance with 28 U.S.C. § 1715.

13 **J. Providing Class Data To Settlement Administrator**

14 63. Within thirty (30) calendar days after the Preliminary Approval Order, Defendants
15 agree to provide to the Settlement Administrator a “class list” containing the following information
16 for each Class Member for the Class Period: (1) name; (2) last known address; (3) last-known
17 telephone number; (4) employment start date; (5) employment end date; (6) dates of leave, if any; and
18 (7) social security numbers.

19 64. The Settlement Administrator will calculate the number of workweeks, excluding
20 leaves, worked by the Class Members during the Class Period, and the amount to be paid to Class
21 Members per workweek based on information to be provided by Defendants. The workweeks will be
22 calculated by the Settlement Administrator for each Class Member by dividing the total days
23 employed as a Class Member during the Class Period by seven (7). Partial workweeks will not be
24 counted, and will be rounded down to the nearest whole number; however, if a Class Member worked
25 less than one week as a Class Member, such Class Member will be credited with having worked one
26 workweek for purposes of the Settlement. The Settlement Administrator shall provide the Parties
27 with its calculation of Workweeks for the Class Members, and the associated dates of hire,
28 termination, leaves. Class Counsel will then have an opportunity to review the data provided to verify

1 the accuracy of the information and to calculate the number of Workweeks and projected individual
2 payment as needed. The above-described information will be provided to the Settlement
3 Administrator and Class Counsel on a confidential basis, and the Settlement Administrator and Class
4 Counsel shall take reasonable steps to protect the confidential and private information of the Class
5 Members. Class Counsel shall destroy all such information (including copies and data or information
6 derived therefrom) within sixty (60) days of the date the Court finally approves the Settlement, shall
7 not retain copies of such information, and shall not maintain or use such information for any purpose.

8 **K. Notice Of Settlement**

9 65. If the Court grants Preliminary Approval of the settlement terms described in this
10 Settlement Agreement, a Notice of Settlement shall be provided to the Class as follows:

11 (a) Within fifteen (15) calendar days after Defendants provide to the Settlement
12 Administrator the class list referenced in Paragraph 63 the Settlement Administrator shall
13 send a Notice of Settlement to all Class Members by regular U.S. Mail, postage prepaid. In
14 order to provide the best notice practicable, any Notice of Settlement returned as undelivered
15 shall be sent to the forwarding address affixed thereto, if any. The Settlement Administrator
16 will perform an NCOA check and will skip-trace return mail and re-mail the notices within
17 three (3) business days of receipt. If the procedures herein are followed, Defendants, Class
18 Counsel, and the Settlement Administrator shall be deemed to have satisfied their obligation
19 to provide the Notice of Settlement to the Class. A copy of the proposed Notice of Settlement
20 is attached hereto as Exhibit A.

21 (b) The Notice of Settlement shall, at a minimum, include the following: the
22 number of Workweeks worked by the Class Member during the Class Period, a preliminary
23 calculation of the amount the Class Member can expect to receive based on the number of
24 Workweeks she or he worked, the contact information for Class Counsel and Defense
25 Counsel, information informing Class Members of their right to opt out, a statement that the
26 Settlement Agreement may have preclusive effect and participation in the Settlement shall
27 result in a release of Released Claims, notification that Class Members are solely responsible
28 for determining the tax consequences of payments made pursuant to this Settlement

1 Agreement; and notification that any payments under this Settlement Agreement shall not
2 have any effect on the eligibility or calculation of employee benefits, nor will it be considered
3 compensation for determining eligibility in any employee pension benefit plan, as discussed
4 in Section III.F.

5 66. Class Member Request for Exclusion. The Notice of Settlement shall inform Class
6 Members of their right to opt out of the Class and be excluded from receiving any benefits under the
7 Settlement Agreement by completing and mailing a written request for exclusion to the Settlement
8 Administrator on or before the Notice Response Date. Any Class Member who submits a timely and
9 valid request for exclusion will receive no settlement payment, will not be entitled to object to the
10 reasonableness of the Settlement, will not be entitled to appear at the Final Approval hearing, and
11 will not be bound by the terms of the Settlement Agreement, nor have any right to contest, appeal, or
12 comment thereon. However, PAGA Members may not opt out of releasing the Released PAGA
13 Claims. Late-submitted opt-out requests will not be accepted by the Settlement Administrator and
14 shall not be effective. The Settlement Administrator will certify jointly to Class Counsel and Defense
15 Counsel the number of requests for exclusion that were valid and timely submitted.

16 67. Class Member Dispute. If a Class Member disagrees with the number of Workweeks
17 on the Notice of Settlement, she or he must complete and send a notice of dispute to the Settlement
18 Administrator, together with any supporting written documentation. Such documentation may
19 consist of official records, pay stubs, weekly schedules, or personal logs. To be considered, the
20 notice of dispute and supporting written documentation must be received by the Settlement
21 Administrator no later than thirty (30) calendar days after the postmark date of the Notice of
22 Settlement.

23 68. The Settlement Administrator shall immediately notify both Class Counsel and
24 Defense Counsel of any disputes submitted by Class Members. The Settlement Administrator shall
25 share with both Class Counsel and Defense Counsel the notice of dispute and any documentation
26 submitted by a Class Member in support of his or her dispute. In the event there is a dispute
27 regarding the number of Workweeks allocated to a Class Member, Defendants will reasonably and
28 promptly cooperate with the Settlement Administrator's requests for information to resolve any such

1 disputes. The Settlement Administrator shall make the final determination regarding the dispute
2 based on the written documentation submitted by the Class Member and any materials submitted by
3 Defense Counsel. The Settlement Administrator shall inform each Class Member of the final
4 determination in writing at least five days prior to the Objection and Opt-Out Deadline.

5 69. Website. The Settlement Administrator shall create and maintain a webpage, which
6 will include links to the Settlement Agreement, Class Notice, Motions for Preliminary and Final
7 Approval, and Motion for Attorneys' Fees as they become available, until the Effective Date. The
8 website shall also include links to any other documents or information the Settlement Administrator
9 deems necessary to perform its duties. The Motion for Attorneys' Fees and any related filings shall
10 be available on the website for a reasonable period of time and no later than fourteen (14) calendar
11 days prior to the deadline for class members to file an objection to the Settlement Agreement.

12 70. At least twenty-one (21) calendar days before the Final Approval Hearing, the
13 Settlement Administrator shall prepare a declaration of due diligence and proof of mailing with
14 regard to the mailing of the Notice of Settlement, and any attempts by the Settlement Administrator
15 to locate the Class Members ("Due Diligence Declaration"), and provide it to Class Counsel and
16 Defense Counsel for presentation to the Court. Class Counsel shall be responsible for filing the Due
17 Diligence Declaration with the Court.

18 71. If at any point the Settlement Administrator determines that it needs additional time,
19 the Settlement Administrator shall inform the Parties regarding the situation, and the Parties will seek
20 from the Court a modification of the schedules contained in this Settlement Agreement or any court
21 order, to be consistent with the recommendations and requests of the Settlement Administrator.

22 **L. Objections To Settlement Agreement After Preliminary Approval**

23 72. Any Class Member who intends to object to the settlement or this Settlement
24 Agreement may submit a written objection, along with any supporting documents, to the Court, on or
25 before the Notice Response Date by mailing it to or filing it in person with the Court and send copies
26 to the Settlement Administrator. Any written objections should set forth, in clear and concise terms,
27 the legal and factual arguments supporting the objection. As set forth below, Class Members may
28 also object by appearing at the Final Approval Hearing, either in person or through their own counsel.

73. The filing of an objection allows Class Counsel or Defense Counsel, upon reasonable notice, to take the deposition of the objecting Class Member, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by the Class Member to make himself or herself available for a deposition or comply with expedited discovery requests may result in the Court striking the Class Member's objection and otherwise denying him or her the opportunity to make an objection or be further heard.

M. Duties Of The Parties In Connection With Final Court Approval

74. In connection with the Court's final approval of this Settlement Agreement, Class Counsel and Defense Counsel will submit a proposed Judgment and a proposed Final Approval Order: approving the settlement, adjudicating the terms thereof to be fair, reasonable, and adequate, and directing consummation of all terms and provisions as provided in this Settlement Agreement.

N. Timing And Manner Of Payments

75. Within fourteen (14) days of the Effective Date, the Settlement Administrator will provide Defendants' distribution calculations and funding instructions. Within seven (7) days after Defendants' receipt of distribution calculations and funding instructions from the Settlement Administrator, Defendants will fund the Settlement Fund. The Settlement Fund shall be placed in a Qualified Settlement Fund (QSF) under the exclusive control of the Settlement Administrator, and shall be used solely for the purpose of fulfilling the terms of this Settlement Agreement.

76. All interest with respect to the gross settlement amount shall accrue to the benefit of the Class. The monetary relief to the Class, all fees and expenses of the Settlement Administrator, and any and all taxes arising out of any interest or other income derived from the Settlement Fund shall be paid from the gross settlement amount. Within fourteen (14) days of the Effective Date, the Settlement Administrator shall advise Defendants of the exact amount of the employer's share of payroll taxes due.

77. Within five (5) calendar days after receipt of the Settlement Fund, the Settlement Administrator shall pay to Class Counsel any Court-approved attorneys' fees and litigation costs, pay to the Class Representatives any Court-approved Service Awards, and pay the LWDA seventy-five percent (75%) of the Court-approved amount allocated for PAGA penalties. The Settlement

1 Administrator will be responsible for making appropriate deductions, calculating and reporting the
2 employer payroll taxes on the Individual Settlement Awards, and meeting tax reporting obligations.

3 78. The Settlement Administrator shall take all reasonable efforts to make payments to
4 Class Members from the Settlement Fund within five (5) calendar days after receipt of the Settlement
5 Fund. The Settlement Administrator will send an individual check to each Class Member by regular
6 U.S. Mail to the address used by the Settlement Administrator for mailing of the Notice of
7 Settlement. Each Class Member who is entitled to a payment under this Settlement Agreement will
8 receive a single check for the total of his or her Individual Settlement Award (less applicable payroll
9 deductions required by federal and state law for the wage portion of the payment, as described
10 below).

11 79. Checks sent to Class Members under this Settlement Agreement shall remain valid
12 and negotiable for one hundred eighty (180) calendar days from the date of their mailing, and
13 thereafter may be automatically canceled if not cashed by the payee within that time. If a check is
14 returned as non-deliverable, the Settlement Administrator will perform an NCOA check and will
15 skip-trace return mail and re-mail the notices within three (3) business days of receipt. Uncashed
16 settlement check(s) will be awarded *cy pres* to the _____. In the event the
17 amount of uncashed checks is greater than \$50,000, the money shall be distributed pro rata to Class
18 Members who have not opted out. Defendants will not be responsible for the employer's share of
19 taxes for any share awarded *cy pres* and shall be returned the proportional amount of the employer's
20 share of taxes on those amounts. No person shall have any claim against Defendants, Released
21 Parties, Defense Counsel, the Named Plaintiffs, any Class Member, Class Counsel, or the Settlement
22 Administrator based on distributions and payments made in accordance with this Settlement
23 Agreement.

24 80. Within fourteen (14) calendar days after the distribution of the settlement funds and
25 payment of attorneys' fees, the Settlement Administrator will prepare and provide to the parties a
26 Post-Distribution Accounting, setting forth the total settlement fund, the total number of class
27 members, the total number of class members to whom notice was sent and not returned as
28 undeliverable, the number and percentage of claim forms submitted, the number and percentage of

1 opt-outs, the number and percentage of objections, the average and median recovery per claimant, the
2 largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of
3 payment to class members, the number and value of checks not cashed, the amounts distributed to
4 each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in
5 terms of percentage of the settlement fund, and the multiplier, if any. Within twenty-one (21)
6 calendar days after the distribution of the settlement funds and payment of attorneys' fees, Class
7 Counsel shall be responsible for filing the Post-Distribution Accounting with the Court and the
8 Settlement Administrator shall be responsible for posting the Post-Distribution Accounting on the
9 settlement website.

10 **O. Payroll Deductions And Taxes**

11 81. For each Class Member who receives an Individual Settlement Award under this
12 Settlement Agreement, the Settlement Administrator will issue:

13 (a) A W-2 Form on which the wage portion of the Individual Settlement Award
14 shall be reported, and which will reflect all payroll deductions required by state and federal
15 law; and

16 (b) A 1099 Form on which the penalties and interest of portion of the Individual
17 Settlement Award shall be reported.

18 82. The Parties agree and understand that Defendants have not made any representations
19 regarding the tax obligations or consequences, if any, related to this Settlement Agreement. The
20 Parties agree that Defendants and each Class Member are solely responsible for determining the tax
21 consequences of payments made pursuant to this Settlement Agreement and for paying taxes, if any,
22 which are determined to be owed by each of them on such payments (including penalties and interest
23 related thereto) by any taxing authority, whether state, local, or federal.

24 **P. Other Provisions**

25 83. Voiding the Settlement Agreement. A failure of the Court to approve any material
26 condition of this Settlement Agreement which effects a fundamental change of the terms of the
27 settlement shall render the entire Settlement Agreement voidable and unenforceable as to Plaintiffs
28 and Defendants, at the option of any Party; however, the Parties understand and agree that this

1 provision does not apply to the Court's final decision following an appeal, if any, for Administrative
2 Costs to the Settlement Administrator, Service Awards to the Named Plaintiffs, or Attorneys' Fees
3 and Costs to Class Counsel. Any Party may exercise its option to void this Settlement Agreement as
4 provided above by giving notice, in writing, to all other Parties and to the Court at any time prior to
5 Final Approval.

6 84. At the sole discretion of Defendants, if more than five percent (5%) of the Class
7 submits timely and valid requests for exclusion pursuant to the terms and procedures of the Notice of
8 Settlement, this entire Settlement Agreement shall become voidable and unenforceable as to Plaintiffs
9 and Defendants, if Defendants provide notice under this provision. The Settlement Administrator
10 shall report the number and percentage of Class Members who submit timely and valid requests for
11 exclusion within seven (7) calendar days following the opt-out deadline. Defendants may exercise
12 such option to void the Settlement Agreement by giving notice, in writing, to Class Counsel not more
13 than fourteen (14) calendar days following the opt-out deadline. In the event Defendants choose to
14 exercise this option, they are required to pay all settlement administration costs incurred through such
15 date.

16 85. This Settlement Agreement is contingent on approval of class certification under Rule
17 23 of the Federal Rules of Civil Procedure for settlement purposes only. Defendants expressly reserve
18 their rights to challenge the propriety of class certification or representative treatment for any other
19 purpose should the Court not approve the Settlement.

20 **Q. Notices**

21 86. Except for Class Member notices, which are required herein to be made to or by the
22 Settlement Administrator, all notices, requests, demands and other communications related to or in
23 connection with this Settlement Agreement shall be in writing, and shall be provided by appropriate
24 method depending on the urgency (e.g., personal delivery, facsimile, overnight delivery, or first-class
25 U.S. mail) to:
26
27
28

TO PLAINTIFFS AND THE CLASS:

Jay Smith
Joshua F. Young
GILBERT & SACKMAN
A Law Corporation
3699 Wilshire Boulevard, Suite 1200
Los Angeles, California 90010
Telephone: (323) 938-3000
Fax: (323) 937-9139

Randy Renick
Cornelia Dai
HADSELL STORMER RENICK & DAI, LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Tel: (626) 585-9600
Fax: (626) 577-7079

TO DEFENDANTS:

Nathan W. Austin
Evan McBride
JACKSON LEWIS P.C.
400 Capital Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 341-0404
Fax: (916) 341-0141

R. Mutual And Full Cooperation

87. Plaintiffs, Defendants, Class Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the approval by the Court of the terms of this Settlement Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts, including all efforts contemplated by this Settlement Agreement, and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement Agreement.

88. The Parties agree that they will not attempt to encourage any Class Members to object to the proposed settlement or to opt out. Plaintiffs and Class Counsel will make every reasonable effort to accurately explain the benefits of this Settlement Agreement in response to any questions from any Class Member.

S. No Admission Of Liability

89. Nothing herein shall constitute any admission by any of the Defendants of wrongdoing or liability or of the truth of any factual allegations in the Class Action. Nothing herein shall constitute an admission by any of the Defendants that the Class Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendants, and each of them, have denied and continue to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in the Class Action. To this end, the settlement of the

1 Class Action, the negotiation and execution of this Settlement Agreement, and all acts performed or
2 documents executed pursuant to or in furtherance of this Settlement Agreement or the settlement are
3 not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing
4 or liability on the part of Defendants, or any of them, or of the truth of any of the factual allegations
5 in the operative complaints, and are not, shall not be deemed to be, and may not be used as, an
6 admission or evidence of any fault or omission on the part of Defendants, or any of them, in any civil,
7 criminal or administrative proceeding in any court, administrative agency or other tribunal.

8 **T. Binding Nature of Settlement Agreement**

9 90. This Settlement Agreement shall be binding upon, and inure to the benefit of, the
10 successors or assigns of the Released Parties. The Named Plaintiffs and the Class Members
11 represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, or
12 encumbered any claim, demand, action, cause of action, or rights released in this Settlement
13 Agreement. This Settlement Agreement may be pleaded as a full and complete defense to any action,
14 suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to
15 this Settlement Agreement.

16 91. This Settlement Agreement may be amended or modified only by a written instrument
17 specifically referencing this Settlement Agreement signed by Class Counsel and the Named
18 Plaintiffs, as well as Defense Counsel and Defendants. No rights under this Settlement Agreement
19 may be waived except in writing.

20 92. This Settlement Agreement and any attached exhibits constitute the entire Settlement
21 Agreement between the Named Plaintiffs, Class Members, and Defendants relating to the terms
22 contained herein. All prior or contemporaneous settlement agreements, understandings, and
23 statements, whether oral or written, whether express or implied, and whether by a Party or its
24 counsel, are merged herein. No oral or written representations, warranties, or inducements have been
25 made to any Party concerning this Settlement Agreement or its exhibits other than the
26 representations, warranties, and covenants contained and memorialized in such documents.

27 93. Paragraph titles or captions contained herein are inserted as a matter of convenience
28 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement

1 Agreement or any of its provisions. Each term of this Settlement Agreement is intended to be
2 contractual and not merely a recital.

3 **U. Invalid Provisions**

4 94. If any provision of this Agreement is determined to be invalid or unenforceable, all of
5 the other provisions shall remain valid and enforceable notwithstanding, unless the provision found to
6 be unenforceable is of such material effect that the Agreement cannot be performed in accordance
7 with the intent of the Parties in the absence thereof.

8 **V. Dispute Resolution**

9 95. Except as authorized herein, all disputes concerning the interpretation,
10 implementation, calculation, or payment of the Settlement Amount or other disputes regarding
11 compliance with this Settlement Agreement will be resolved by the Court.

12 **W. Restriction On Publicity**

13 96. Class Counsel and Plaintiffs agree that they will not issue any press release or press
14 statement, initiate media coverage, or respond to any media inquiries regarding any of the Released
15 Claims against Defendants or the Released Parties, or this Settlement Agreement. Class Counsel
16 agrees to limit its communications with Class Members to issues related to the lawsuit and its
17 resolution.

18 **X. Governing Law And Joint Drafting Of Settlement Documents**

19 97. All terms of this Settlement Agreement and related documents shall be governed by
20 and interpreted according to the laws of the State of California, without respect to choice of law
21 provisions of any state.

22 98. Class Counsel and Defense Counsel have arrived at this Settlement Agreement as a
23 result of a series of arm's-length negotiations, taking into account all relevant factors, present and
24 potential.

25 99. This Settlement Agreement has been drafted jointly by Class Counsel and Defense
26 Counsel and, therefore, in any construction or interpretation of this Settlement Agreement, the same
27 shall not be construed against any of the Parties.

100. The Named Plaintiffs, Class Members, and Class Counsel agree that none of the documents marked confidential and provided to them by Defendants shall be used for any purpose other than the prosecution and settlement of the Class Action. Specifically, none of the documents marked confidential shall be used to pursue any subsequent claims or litigation against Defendants or the Released Parties. Class Counsel will destroy all confidential information and documents provided by Defendant or the Settlement Administrator within sixty (60) days after the Effective Date.

Y. **Counterparts**

101. This Agreement may be executed in one or more counterparts and by scanned copies or facsimile. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Once available, a complete set of executed counterparts shall be filed with the Court. All executed copies of this Settlement Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

Z. **Parties' Authority**

102. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and are fully authorized to bind the Named Plaintiffs, Class Members, and Defendants to all terms stated herein.

Dated: 12/06/2023

diego guzman
Plaintiff Diego Guzman

Dated: 12/07/2023

Kevin Whitlatch
Plaintiff Kevin Whitlatch

Dated: _____

By: _____

Title: _____

Authorized Signatory for Dow Agrosciences LLC

100. The Named Plaintiffs, Class Members, and Class Counsel agree that none of the documents marked confidential and provided to them by Defendants shall be used for any purpose other than the prosecution and settlement of the Class Action. Specifically, none of the documents marked confidential shall be used to pursue any subsequent claims or litigation against Defendants or the Released Parties. Class Counsel will destroy all confidential information and documents provided by Defendant or the Settlement Administrator within sixty (60) days after the Effective Date.

Y. Counterparts

101. This Agreement may be executed in one or more counterparts and by scanned copies or facsimile. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Once available, a complete set of executed counterparts shall be filed with the Court. All executed copies of this Settlement Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

Z. Parties' Authority

102. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and are fully authorized to bind the Named Plaintiffs, Class Members, and Defendants to all terms stated herein.

Dated:

Plaintiff Diego Guzman

Dated:

Plaintiff Kevin Whitlach

Dated:



Thomas Warnock (Dec 11, 2023 12:29 EST)

By: Thomas Warnock

Title: Associate General Counsel
Authorized Signatory for Corteva Agriscience LLC f/k/a
Dow Agrosciences LLC

1 *Hadsell Stormer Renick & Dai LLP*
2
3 Dated: 12/06/2023 *Randy Renick*
4 Randy Renick
Counsel for Plaintiffs Diego Guzman and Kevin Whitlach

5 *Gilbert & Sackman, A Law Corporation*
6 Dated: 12/06/2023 
7 Joshua F. Young
Counsel for Plaintiffs Diego Guzman and Kevin Whitlach

8
9 *Jackson Lewis P.C.*
10 Dated: _____
11 Nathan W. Austin
12 Evan McBride
Counsel for Defendants Dow Agrosiences LLC
13 and Corteva Agrisciences LLC

14 4873-8525-5033, v. 1
15
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Hadsell Stormer Renick & Dai LLP

Dated:

Randy Renick
Counsel for Plaintiffs Diego Guzman and Kevin Whitlach

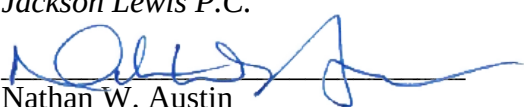
Gilbert & Sackman, A Law Corporation

Dated:

Joshua F. Young
Counsel for Plaintiffs Diego Guzman and Kevin Whitlach

Jackson Lewis P.C.

Dated: December 12, 2023



Nathan W. Austin
Evan McBride
Counsel for Defendants Dow Agrosciences LLC
and Corteva Agrisciences LLC

4873-8525-5033, v. 1

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

<ClaimID> <Barcode>
<FirstName> <LastName>
<Address>
<City> <State> <Zip>

Plaintiffs Diego Guzman and Kevin Whitlatch, individually and on behalf of all similarly situated current and former employees (collectively “Plaintiffs”), v. Defendants Dow Agrosiences, LLC and Corteva Agriscience, LLC (“Defendants”)

United States District Court
Northern District of California
No. 3:22-CV-04962-RFL

TO: All current and former hourly employees of Defendants who worked at the Pittsburg, California plant, and who have been assigned primary relief shifts that required them to be ready to report to the refinery if contacted, since August 30, 2018.

**YOUR RIGHTS MIGHT BE AFFECTED BY PROCEEDINGS IN THE ABOVE CASE.
PLEASE READ THIS NOTICE CAREFULLY.**

WHY SHOULD YOU READ THIS NOTICE?

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit currently pending in the United States District Court for the Northern District of California, entitled *Diego Guzman and Kevin Whitlatch, et al. v. Dow Agrosiences, LLC and Corteva Agriscience, LLC*, Case No. 3:22-CV-04962-RFL (the “Class Action”). If the court approves the Settlement, the Settlement will resolve all claims in the Class Action.

The purpose of this Notice is to inform you about the proposed Settlement and to explain your rights and options with respect to the Class Action and the Settlement.

HOW MUCH IS MY SHARE OF THE SETTLEMENT?

Defendants’ records indicate you worked the following number of Workweeks from August 30, 2018 to.

“Workweeks” shall mean the number of weeks worked by a Class Member during the Class Period while assigned a 12-hour rotating shift at the Pittsburg, California manufacturing plant.

Your share of the Settlement before the deduction for taxes and other withholdings is currently estimated to be: <Payment>, based on your having worked <weeks> Workweeks during the period covered by the Settlement. Your estimated share of the Settlement includes <PAGA\$>, which is your pro rata portion of the amount of the settlement allocated to the Private Attorneys’ General Act claim (PAGA).

WHAT IS THE CURRENT STATUS OF THE SETTLEMENT?

A hearing concerning the fairness of the Settlement will be held before the Hon. Richard Seeborg, at a.m. to determine whether the case should be settled under the Settlement's terms. Class Members may attend the hearing via Zoom. Instructions are provided by the Court at: <https://www.cand.uscourts.gov/judges/lin-rita-f-rfl/>.

BECAUSE YOU HAVE BEEN IDENTIFIED AS A MEMBER OF THE CLASS, YOU DO NOT NEED TO DO ANYTHING TO BE ELIGIBLE TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

WHO IS AFFECTED BY THIS PROPOSED SETTLEMENT?

The Court has certified, for settlement purposes, the following class (the "Class"):

All current and former hourly employees of Defendants who worked at the Pittsburg, California plant, and who have been assigned primary relief shifts that required them to be ready to report to the refinery if contacted, since August 30, 2018.

According to Defendants' records, you are a member of the Class ("Class Member").

WHAT IS THIS CASE ABOUT?

Plaintiffs allege that Defendants violated California's wage and hour laws by failing to provide the employees at their chemical manufacturing plant located in Pittsburg, California, (the "Pittsburg Plant") with unpaid wages owed as a result of Defendants' failure to pay reporting time pay for being on-call pursuant to Industrial Wage Commission ("IWC") Wage Order 1-2001. Plaintiffs contend that the Pittsburg Plant operates continuously, 365 days a year and 24 hours per day.

Plaintiffs allege that by failing to pay reporting time pay for being on-call, , Defendants have also violated the Private Attorneys General Act, Labor Code 2698 et seq., and engaged in unfair business practices pursuant to Business & Professions Code §17200 et seq. Plaintiffs have not filed a motion for class certification in this action.

Defendants expressly deny any liability or wrongdoing of any kind whatsoever associated with the case and Defendants contend that they have complied with all applicable state, federal and local laws affecting Plaintiff and the Class. Defendants are confident they have strong legal and factual defenses to these claims, but all Parties recognize the risks and expenses associated with continued litigation.

This Settlement is the result of good faith, arm's length negotiations between Plaintiffs, who are the Class Representatives, and Defendants, through their respective attorneys. All Parties agree that in light of the risks and expenses associated with continued litigation, the Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

The Court has not yet ruled on the merits of the Class Representatives' claims or Defendants' defenses. The Settlement is a compromise and is not an admission of liability on the part of Defendants.

WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

The lead attorneys for the Class Representatives in the Class Action ("Class Counsel") are:

Jay Smith Joshua F. Young GILBERT & SACKMAN A Law Corporation 3699 Wilshire Boulevard, Suite 1200 Los Angeles, California 90010 Telephone: (323) 938-3000 Fax: (323) 937-9139	Randy Renick Cornelia Dai HADSELL STORMER RENICK & DAI LLP 128 N. Fair Oaks Avenue Pasadena, California 91103 Telephone: (626) 585-9600 Fax: (626) 577-7079
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The attorneys for Defendants are:

Nathan W. Austin
Evan M. McBride
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, California 95814
Telephone: (916) 341-0404
Fax: (916) 341-0141
Attorneys for Defendants
DOW AGROSCIENCES, LLC and
CORTEVA AGRISCIENCE, LLC

WHAT ARE THE SETTLEMENT TERMS?

Subject to final Court approval, Defendants will pay a total of \$3,800,000 (the “Settlement Amount”) for: (a) Class Members’ claims, to be allocated based on the number of Workweeks worked as 12-hour shift employees during the Class Period; (b) PAGA penalties of \$40,000, 75 percent (75%) of which (\$30,000) will be paid to the California Labor and Workforce Development Agency (“LWDA”), and the remaining percent (25%) of which (\$10,000) will be distributed among Class Members who do not opt out of the Class in proportion to their share of the settlement; (c) Court-approved Service Awards to the Class Representatives; (d) Court-approved Class Counsel’s fees and costs; and (e) Court-approved costs of administering the Settlement.

CLASS MEMBERS’ CLAIMS.

The portion of the Settlement Amount available for distribution to Class Members (the “Net Settlement Proceeds”) will be calculated by deducting from the Settlement Amount: (a) Payment to the LWDA for PAGA penalties; (b) the Class Representatives’ Court-approved Service Awards; (c) Court-approved Class Counsel’s fees and costs; and (d) Court-approved costs of administering the Settlement. Each Class Member who does not timely request to opt out of the Settlement will receive his or her share of the Net Settlement Proceeds (“Individual Settlement Award”) based on the number of Workweeks they worked during the Class Period. The Class Period began August 30, 2018 and ended on [Date of Preliminary Approval].

The amount of each Class Member’s Individual Settlement Award will be determined as follows:

The Settlement Administrator will calculate the number of Workweeks, excluding leaves, worked by the Class Members during the Class Period, by dividing the total days employed as a Class Member during the Class Period by seven (7). Partial Workweeks will not be counted; however, if a Class Member worked less than one week as a Class Member, such Class Member will be credited with having worked one Workweek for purposes of the Settlement.

The amount to be paid per Workweek to Class Members will be calculated by dividing the Net Settlement Amount by the total number of Workweeks for all Class Members. Class Members will be paid their pro rata share based on the number of Workweeks credited to them.

For income and payroll tax purposes, each Class Member's Individual Settlement Award will be allocated as follows: percent (20%) to unpaid wages, percent (40%) to penalties, and percent (40%) to interest. The portions allocated to penalties and to interest will be subject to tax but will not be subject to required withholdings and deductions, and will be reported as non-wage income, as required by law.

In addition to the Settlement Amount, Defendants will pay the employer's share of payroll taxes.

Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member. None of the Parties or Parties' attorneys make any representations concerning the tax consequences of the Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Members are solely responsible for determining the tax consequences of payments made pursuant to the Settlement and for paying taxes, if any, which are determined to be owed by each of them on such payments (including penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

Class Counsel's Attorneys' Fees and Costs, Class Representative Service Award, and Administrative Costs. Plaintiffs will seek an award of attorney's fees up to % (\$) of the \$3,800,000 Settlement Amount, as well as the reimbursement of costs of approximately \$[].

In addition, Class Counsel will ask the Court to authorize Service Awards of up to \$15,000 to each of the two Class Representatives, in addition to the Individual Settlement Awards they will receive as Class Members, for their services in representing the Class in the Class Action.

The Parties estimate the cost of administering the Settlement, including but not limited to giving notice to the Class, calculating the Individual Settlement Awards, and making the payments authorized under the Settlement, will be less than \$10,000. Class Counsel will ask the Court to authorize those costs to be paid to the Settlement Administrator.

Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Costs will be available for review at least thirty-five (25) days prior to the deadline for Class Members to object to the Settlement.

WHAT CLAIMS ARE BEING RELEASED BY THE PROPOSED SETTLEMENT?

Upon Final Approval of the Settlement by the Court, the Class and each Class Member, including each Plaintiff jointly, severally, shall fully release and discharge Defendants and Released Parties from the Released Claims.

"Released Parties" shall collectively mean: (i) Dow Agrosiences, LLC and Corteva Agriscience, LLC y ("Defendants"); (ii) each of Defendants' past, present, and future direct and indirect parents, including, but not limited to, Dow, Inc., DowDuPont, Inc. n/k/a/ DuPont De Nemours, Inc., E.I. Du Pont De Nemours & Company, and Corteva, Inc.; (iii) the respective past, present, and future direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past, present, and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing.

"Released Claims" shall include all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to

the Class Members, including without limitation, California Labor Code sections 218.5, 226.7, 512, and 558, California Industrial Commission Wage Orders, and Business and Professions Code sections 17200, *et seq.*, and including all claims for or related to meal periods and meal period premiums, rest periods and rest period premiums, on duty meal period agreements, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties, and statutory penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, during the Class Period.

“Released PAGA Claims” shall include all claims under PAGA, California Labor Code sections 2698, *et seq.*, that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 218.5, 226.7, 512, 558, and 2698, *et seq.*, California Industrial Commission Wage Orders, and Business and Professions Code sections 17200, *et seq.*, and including all claims for or related to meal periods and meal period premiums, rest periods and rest period premiums, on duty meal period agreements, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties, statutory penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from August 30, 2018 through preliminary approval.

WHAT ARE MY OPTIONS IN THIS MATTER?

You have three options under this Settlement, each of which is discussed below. You may: (A) do nothing, remain in the Class, and receive your share of the Settlement; (B) challenge the number of Workweeks indicated on the first page of this Notice while remaining in the Class so that you can receive your share of the Settlement; or (C) exclude yourself from the Class and from the Settlement. If you choose option (A) or (B), you may also object to the Settlement as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not timely exclude yourself from the Settlement (Option C), you will be subject to any Judgment that will be entered in the Class Action, including the release of the Released Claims as described above—whether or not you cash your share of the Settlement.

OPTION A. If you agree with the number of Workweeks indicated at the top of this Notice, and you wish to participate in the Settlement, you need not take any further action. If you wish to remain in the Class and be eligible to receive a payment under the Settlement, you do not need to take any action. If this settlement receives the Court’s final approval, a check will be sent to you at the address on this Notice.

OPTION B. If you DO NOT agree with the number of Workweeks indicated at the top of this Notice, but you DO wish to participate in the Settlement, you must take the following action: Complete and send a letter entitled “Notice of Dispute” to the Settlement Administrator at the address listed below explaining that you dispute the total, together with any supporting written documentation. Such documentation may consist of official records, pay stubs, weekly schedules, or personal logs. To be considered, the Notice of Dispute and supporting written documentation must be received by the Settlement Administrator no later than **<30 DAYS FROM MAILING>**. The Settlement Administrator will make a final and binding determination regarding any disputes by **<55 DAYS FROM MAILING>**.

The Settlement Administrator will inform you of the final determination in writing. If the Settlement receives the Court's final approval, your Settlement payment check will be sent to you at the address on this Notice.

OPTION C. If You Do Not Want to Be Bound by The Settlement. If you do not want to be part of the Settlement, you must submit a signed written request to be excluded from the Settlement entitled ("Opt Out Request") to the Settlement Administrator, at the address listed below. If the Opt Out Request is sent from within the United States, it must be sent through the United States Postal Service by First-Class U.S. Mail, or the equivalent. In order to be valid, your Opt Out Request must be postmarked on or before **<60 DAYS FROM MAILING>**.

If you do not timely submit an executed Opt Out Request (as evidenced by the postmark), your Opt Out Request will be rejected, you will be deemed a Class Member, and you will be bound by all Settlement terms, including but not limited to the release of Released Class Claims as described in the "What Claims are Being Released by the Proposed Settlement?" section above.

If you timely submit an executed Opt Out Request, you will have no further role in the Class Action, and for all purposes, you will be regarded as if you never were either a party to the Action or a Class Member, and thus you will not be entitled to any benefit as a result of the Class Action and will not be entitled to or permitted to assert an objection to the Settlement.

By law, you are not permitted to opt out of the Released PAGA Claims and you will be paid your pro rata share of the amount of the settlement allocated to PAGA.

Who is the Settlement Administrator?

The Settlement Administrator is:

CAC Services Group, LLC
6420 Flying Cloud Dr Ste 101
Eden Prairie, MN 55344
Telephone: (866) 602-2260
Fax: (888) 495-9746

Objecting to the Settlement: If you believe the Settlement is unfair or inadequate in any respect, you can ask the Court to deny approval by filing a timely objection. You cannot ask the Court to order a larger or different settlement; the Court can only approve or disapprove the Settlement. If the Court denies approval, no settlement payments will be made, and the Class Action will continue. **You cannot object to the Settlement if you request exclusion from the Settlement** as provided under Option C, above.

All written objections and supporting papers must:

- (a) Identify the case name and number (Guzman, et al., v. Dow Agrosciences, LLC, et al. Case No. 3:22-CV-04962-RFL) and your name;
- (b) Be submitted to the Court by mailing them to the Clerk, United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 3 – 17th Floor 450 Golden Gate Avenue, San Francisco, CA 94102; and
- (c) Be filed or postmarked on or before **<60 DAYS FROM MAILING>**.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

Your objection must clearly state: 1) a statement of reasons why you believe the Court should find that the Settlement is not in the best interest of the Class; and 2) the reasons why the Court should not approve the Settlement.

Any Class Member who does not object to the Settlement in the manner described above shall be deemed to have waived any objections and shall be foreclosed from objecting to the fairness or adequacy of the Settlement, the payment of attorneys' fees and costs, the Service Awards to the Class Representatives, the claims process, and any and all other aspects of the Settlement.

Likewise, even if you file an objection, you will be bound by the terms of the Settlement, including applicable releases as set forth above, unless the Court does not finally approve the Settlement.

WHAT IS THE NEXT STEP IN THE APPROVAL OF THE SETTLEMENT?

The Court will hold a Final Approval Hearing on the fairness and adequacy of the Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the settlement administration costs, and the Service Awards to the Class Representatives on [] at [] a.m. Class Members may attend the hearing via Zoom. Instructions are provided by the Court at: <https://www.cand.uscourts.gov/judges/lin-rita-f-rfl/>

The Final Approval Hearing may be continued without further notice to Class Members. You are advised to check the Settlement website at [] or the Court's Public Access to Court Electronic Records (PACER) website at <https://www.cand.uscourts.gov/cm-ecf> site to confirm that the Final Approval Hearing date and/or time has not been changed. You are not required to attend the Final Approval Hearing to receive your share of the Settlement.

HOW CAN I GET ADDITIONAL INFORMATION?

This Notice only summarizes the Class Action, the basic terms of the Settlement, and other related matters. For the precise terms and conditions of the Settlement, please see the Joint Stipulation of Class Action Settlement and Release, available at [] by contacting class counsel at the address and telephone number listed above, by accessing the Court docket in this case through PACER at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102-3489, between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Court holidays

The Joint Stipulation of Class Action Settlement and Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Costs will be available for review after <15 days prior to opt-out/objection deadline> at.

Any questions regarding this Notice should be directed to the Settlement Administrator or to Class Counsel at the above addresses and telephone numbers.

WHAT HAPPENS IF MY ADDRESS HAS CHANGED OR CHANGES?

Your payment will be sent to the address on this Notice. Therefore, if your address changes or is different from the one this Notice was sent to, you must correct it by notifying the Settlement Administrator in writing, by First-Class U.S. Mail.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS..

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

EXHIBIT B

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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12 DIEGO GUZMAN and KEVIN WHITLATCH,
13 individually and on behalf of all similarly situated
14 current and former employees,

15 Plaintiffs,

16 v.

17 DOW AGROSCIENCES LLC, CORTEVA
18 AGRISCIENCE LLC, and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case No. 3:22-CV-04962-RFL

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

Complaint Filed: August 30, 2022

First Amended

Complaint: November 7, 2022

Trial Date: Not set

[PROPOSED] ORDER

On August 30, 2022, Plaintiffs filed their complaint against Defendants in Diego Guzman, et al. v. Dow Agrosciences, LLC, et al., Case No. 3:22-CV-04962-RS, United States District Court, Northern District of California. Plaintiffs subsequently filed a First Amended Complaint on November 7, 2022, which is the operative complaint in this Action (the “Complaint”). The Complaint alleges the following causes of action: (1) failure to pay reporting time pay; (2) failure to pay all wages earned at termination; (3) failure to furnish accurate itemized wage statements; (4) the California Private Attorneys General Act; and (5) unfair competition. Plaintiffs seek unpaid wages, statutory penalties, restitution, attorneys’ fees and costs, interest, and injunctive and declaratory relief for the time period from August 30, 2018 to the present.

Following an extensive investigation and arm’s-length and good-faith negotiations during a mediation with Steve Serratore on July 27, 2023, Plaintiffs and Defendants (collectively, “the Parties”) reached a tentative settlement agreement, which was subsequently reduced to writing and has been filed with this Court.

Plaintiffs move for this Court to:

1. Preliminarily approve the class action settlement for \$3,800,000;
2. Preliminarily and conditionally certify the class for purposes of settlement;
3. Preliminarily appoint Plaintiffs Diego Guzman and Kevin Whitlatch as class representatives for purposes of settlement;
4. Preliminarily appoint Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, A Law Corporation, as class counsel for purposes of settlement;
5. Approve as to form and content the Proposed Notice of Class Action Settlement;
6. Direct that the Notice of Class Action Settlement be mailed to the Settlement Class members; and
7. Schedule a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class.

That motion came on regularly for hearing before this Court on. The Court ordered the parties to make certain modifications to the Settlement papers.

1 The Court, having received and fully considered Plaintiffs' notice, motion and memorandum of
 2 points and authorities, the Settlement, as amended, the proposed Settlement Documents, which includes
 3 the revised Notice of Class Action Settlement and exhibits thereto, and the oral argument presented to
 4 the Court, and in recognition of the Court's duty to make a preliminary determination as to the
 5 reasonableness of any proposed class-action settlement and to conduct a fairness hearing as to the good
 6 faith, fairness, adequacy and reasonableness of any proposed settlement, HEREBY ORDERS and
 7 MAKES DETERMINATIONS as follows:

8 1. All defined terms contained herein shall have the same meaning as set forth in the Joint
 9 Stipulation of Class Action Settlement and Release, as amended (hereinafter "Stipulation" or
 10 "Settlement") executed by the Parties and filed with this Court.

11 2. The Court finds that certification of the following class for purposes of settlement is
 12 appropriate: All current and former hourly employees of Defendants who worked at the Pittsburg,
 13 California plant, and who have been assigned primary relief shifts that required them to be ready to
 14 report to the refinery if contacted, since August 30, 2018.

15 3. The Court appoints Plaintiffs Diego Guzman and Kevin Whitlatch as class
 16 representatives for purposes of settlement.

17 4. The Court appoints Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, A Law
 18 Corporation, as class counsel for purposes of settlement.

19 5. Federal Rule of Civil Procedure 23(e) requires court approval of a class action settlement.
 20 Approval is a two-step process under Rule 23(e). "[T]he Court first determines whether a proposed
 21 class action settlement deserves preliminary approval and then, after notice is given to class members,
 22 whether final approval is warranted." *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015)(internal
 23 citations omitted); *see also* Manual for Complex Litigation (Fourth) § 21.632 (courts "must make a
 24 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and
 25 must direct the preparation of notice of the certification, proposed settlement, and date of the final
 26 fairness hearing.").

27 Preliminary approval of a settlement is appropriate when the settlement: (1) falls within the range
 28 of possible approval; (2) appears to be the product of serious, informed, non-collusive negotiations; (3)

1 does not improperly grant preferential treatment to class representatives or segments of the class; and (4)
 2 has no obvious deficiencies. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
 3 2007). “Closer scrutiny is reserved for the final approval hearing.” *Harris v. Vector Mktg. Corp.*, No. C-
 4 08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011).

5 6. The Court has reviewed the Settlement and the proposed Settlement Documents, which
 6 were separately lodged and are incorporated herein by reference. The Court finds on a preliminary basis
 7 that the Settlement appears to be within the range of reasonableness of a settlement which could
 8 ultimately be given final approval by this Court. It appears to the Court on a preliminary basis that the
 9 settlement amount is fair and reasonable to all potential class members when balanced against the
 10 probable outcome of further litigation relating to liability and damages issues. Plaintiffs have asserted
 11 violations of California labor and unfair competition laws. Defendant agrees to a class settlement in the
 12 interest of compromising and resolving the Class Action. The Parties recognize the risk involved in
 13 prosecuting and defending the Class Action including significant delay, defenses asserted by Defendants,
 14 and further potential appellate issues.

15 7. It further appears that the proposed Settlement has been reached as the result of intensive,
 16 serious and non-collusive arm’s-length negotiations. It further appears that extensive investigation and
 17 research has been conducted such that counsel for the Parties at this time are able to reasonably evaluate
 18 their respective positions. Class Counsel has significant experience in wage and hour class actions. The
 19 proposed Settlement was reached through extensive negotiations and with the involvement of an
 20 experienced mediator, Steve Serratore.

21 8. It further appears that the proposed Settlement does not improperly grant preferential
 22 treatment to class representatives and has no obvious deficiencies.

23 9. In connection with its preliminary approval of the Settlement, the Court appoints Apex
 24 Class Action, LLC of Irvine, California, to act as the Settlement Administrator who will administer the
 25 Settlement according to the terms of the Stipulation, as approved by this Court.

26 **APPROVAL OF DISTRIBUTION OF THE NOTICE OF SETTLEMENT**

27 10. Rule 23(e) provides that a court “must direct notice in a reasonable manner to all class
 28 members who would be bound by” a proposed class action settlement. Fed. R. Civ. Pro. 23(e)(1). This

1 Court finds the proposed Notice of Class Action Settlement, which is attached hereto as Exhibit 1, fairly
 2 and adequately advises the potential class members of the terms of the proposed Settlement, as well as
 3 the right of class members to opt out of the class, to challenge the number of Workweeks reported by
 4 Defendants from their records, to file documentation in objection to the proposed Settlement, and to
 5 appear at the Final Approval Hearing to be conducted at the date set forth below. The Court further
 6 finds that Notice of Class Action Settlement and proposed distribution of such notice by first-class mail
 7 to each identified class member at his or her last known address comports with all constitutional
 8 requirements, including those of due process.

9 11. Accordingly, good cause appearing, the Court hereby approves the proposed Notice of
 10 Class Action Settlement and orders the Settlement Administrator to distribute the Settlement Documents,
 11 in the manner and pursuant to the procedures described in the Settlement.

12 12. If more than five percent (5%) of the Settlement Class submits timely and valid requests
 13 for exclusion pursuant to the terms and procedures of the Notice of Class Action Settlement, this entire
 14 Settlement Agreement shall become voidable and unenforceable as to Plaintiffs and Defendants, at
 15 Defendants' sole discretion. Defendants may exercise such option by giving notice, in writing, to Class
 16 Counsel and to the Court not more than fourteen (14) calendar days following the Opt-Out deadline.

17 **FINAL APPROVAL/FAIRNESS HEARING AND SCHEDULE**

18 13. The Court hereby grants the Plaintiffs' motion to set a fairness hearing for final approval
 19 of the Settlement ("Final Approval/Fairness Hearing") and orders the following schedule of dates for
 20 further proceedings:

- 21 a. Mailing of Settlement Documents to the class shall be completed on or before [DATE]
 22 (15 calendar days after Defendants provide Class List to the Settlement Administrator);
- 23 b. Posting of Plaintiffs' Motion for Attorney's Fees and Costs on the Settlement
 24 Administrator's website 15 days prior to the Notice Response Deadline; and
- 25 c. The deadline for class members to file and submit written objections and requests for
 26 exclusion shall be [DATE] (60 calendar days from the mailing of the Settlement
 27 Documents). The deadline for class members to file a dispute of workweeks shall be
 28 [DATE] (45 Calendar days from the mailing of the Settlement Documents).

14. The Final Approval/Fairness Hearing will be held on [date], at [time] a.m. Class Members may attend the hearing via Zoom. Instructions are provided by the Court at: <https://www.cand.uscourts.gov/judges/lin-rita-f-rfl/>. Members of the class may appear and present objections at the Final Approval/Fairness Hearing in person or by counsel.

15. Plaintiffs shall file a Motion for Final Approval two weeks prior to the hearing.

16. The Court expressly reserves the right to adjourn or to continue the Final Approval/Fairness Hearing without further notice to class members, except that notice of a continuance shall be provided to all class members who submit a proper objection.

17. IT IS FURTHER ORDERED that, if for any reason the Court does not grant final approval of the Settlement, or the Settlement otherwise does not become effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Stipulation and all evidence and proceedings held in connection with the Settlement shall be without prejudice to the status quo ante rights of the Parties to the Class Action as more specifically set forth in the Settlement.

IT IS SO ORDERED.

DATED: _____

HONORABLE RITA F. LIN
United States District Judge

EXHIBIT C

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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12 DIEGO GUZMAN and KEVIN WHITLATCH,
13 individually and on behalf of all similarly situated
14 current and former employees,

15 Plaintiffs,

16 v.

17 DOW AGROSCIENCES LLC, CORTEVA
18 AGRISCIENCE LLC, and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case No. 3:22-CV-04962-RFL

**[PROPOSED] ORDER GRANTING MOTION
FOR FINAL APPROVAL OF SETTLEMENT
AGREEMENT**

Complaint Filed: August 30, 2022

First Amended

Complaint: November 7, 2022

Trial Date: Not set

[PROPOSED] ORDER

Plaintiffs' Motion for Final Approval of Settlement Agreement came on for hearing on. The Court, having considered whether to order final approval of the class action settlement in the above-captioned action pursuant to the Joint Stipulation of Class Action Settlement and Release, as amended ("Settlement" or "Stipulation"), having read and considered all of the papers and argument of the parties and their counsel, having granted preliminary approval on, having directed that notice be given to all Class Members of preliminary approval of the Settlement, the final approval and fairness hearing, and the right to be excluded from the Settlement, and having received no objections and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. All defined terms contained herein shall have the same meaning as set forth in the Stipulation executed by the Parties and filed with this Court.

2. The Court finds that certification of the following Class is appropriate for settlement purposes:

All current and former hourly employees of Defendants who worked at the Pittsburg, California plant, and who have been assigned primary relief shifts that required them to be ready to report to the refinery if contacted, since August 30, 2018.

3. The Court hereby finds that the Notice of Settlement, as mailed to all Class Members on, fairly and adequately described the proposed Settlement, the manner in which Class Members could object to or participate in the Settlement, and the manner in which Class Members could opt out of the Settlement; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with the Federal Rules of Civil Procedure, due process, and all other applicable laws.

4. The Court further finds that a full and fair opportunity has been afforded to Class Members to participate in the proceedings convened to determine whether the proposed Settlement should be given final approval. Accordingly, the Court hereby determines that all Class Members who did not file a timely and proper request to be excluded from the Settlement are bound by this Order of

1 Final Approval and the Judgment.

2 5. The Court hereby finds that the Settlement, including the Settlement Amount, is fair,
3 reasonable, and adequate as to the Class, Plaintiffs and Defendants, and is the product of good faith,
4 arm's-length negotiations between the Parties, and further, that the Settlement is consistent with public
5 policy, and fully complies with all applicable provisions of law. The Court makes this finding based on
6 a weighing of the strength of Plaintiffs' claims and Defendants' defenses with the risk, expense,
7 complexity, and duration of further litigation.

8 6. The Court also finds that the Settlement is the result of non-collusive arms-length
9 negotiations between experienced counsel representing the interests of the Class and Defendants, after
10 thorough factual and legal investigations. In granting final approval of the Settlement, the Court
11 considered the nature of the claims, the amounts paid in settlement, the allocation of the Settlement
12 Fund among the Class Members, and the fact that the Settlement represents a compromise of the
13 Parties' respective positions rather than the result of a finding of liability after appeal. Additionally, the
14 Court finds that the terms of the Settlement do not improperly grant preferential treatment to any
15 individual Class Member.

16 7. The Court further finds that the response of the Class to the Settlement supports final
17 approval of the Settlement. Specifically, no Class Member has objected to the Settlement, and none
18 have opted out. Accordingly, pursuant to Rule 23(e), the Court finds that the terms of the Settlement are
19 fair, reasonable, and adequate to the Class and to each Class Member. *Staton v. Boeing*, 327 F.3d 938,
20 960 (9th Cir. 2003).

21 8. The Court also hereby finds that Plaintiffs have satisfied the standards and applicable
22 requirements for final approval of this class action settlement under Fed. R. Civ. P. 23, for the reasons
23 stated in the Motion for Final Approval.

24 9. The Court orders the Parties to implement, and comply with, the terms of the Settlement.

25 10. The Court approves the plan of allocation as set forth in the Stipulation.

26 11. The Court approves the settlement of the Released Claims as defined in the Settlement.

27 12. As of the Effective Date of the Settlement, as defined in the Settlement, all of the
28 Released Class Claims of each Class Member who did not timely opt out, including each Named

1 Plaintiff are and shall be deemed to be conclusively released as against the Defendants and other
2 Released Parties. Except as to such rights or claims that may be created by the Settlement, all Class
3 Members as of the date of the Order of Final Approval and the Judgment who did not timely opt out are
4 hereby forever barred and enjoined from commencing or prosecuting any of the Released Class Claims,
5 either directly, representatively or in any other capacity, against Defendants and other Released Parties.

6 13. As of the Effective Date of the Settlement, as defined in the Settlement, all of the
7 Released PAGA Claims of each PAGA Member (each Class Member who was employed by
8 Defendants from August 30, 2018 through), including each Named Plaintiff, are and shall be deemed
9 to be conclusively released as against the Defendants and other Released Parties. Except as to such
10 rights or claims that may be created by the Settlement, all PAGA Members as of the date of the Order of
11 Final Approval and the Judgment are hereby forever barred and enjoined from commencing or
12 prosecuting any of the Released PAGA Claims, either directly, representatively or in any other capacity,
13 against Defendants and other Released Parties.

14 14. As of the Effective Date of the Settlement, as defined in the Settlement, all of the claims
15 of each Named Plaintiff are and shall be deemed to be conclusively generally released against the
16 Defendants and other Released Parties. Except as to such rights or claims that may be created by the
17 Settlement, each Named Plaintiff as of the date of the Order of Final Approval and the Judgment is
18 hereby forever barred and enjoined from commencing or prosecuting any of the generally released
19 claims, either directly, representatively or in any other capacity, against Defendants and other Released
20 Parties.

21 15. Class Counsel, Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, are
22 confirmed and shall continue to serve as Class Counsel and shall oversee and perform the duties
23 necessary to effectuate the Settlement, including the submission to the Court of the Claims
24 Administrator's final distribution report, as well as all papers necessary to allow this Court to evaluate
25 the claims process and distribution of the Settlement Fund to Class Members.

26 16. Plaintiffs' Counsel is awarded attorney's fees in the amount of \$950,000. The foregoing
27 award is 25% of the Settlement Fund of \$3,800,000. Plaintiff's Counsel is further awarded
28 reimbursement of reasonable costs and expenses necessarily incurred in order to advance the litigation

1 for the benefit the class in this matter in the amount of \$[]]. These awards shall be paid from the
2 Settlement Fund.

3 17. In determining an award of attorney's fees where the class action settlement establishes a
4 common fund for the benefit of the class out of which the attorney's fee is awarded, courts have adopted
5 the percentage of fee calculation. *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 493-94 (2016).
6 The Court finds that a fee award at the Ninth Circuit 25% of the fund benchmark is reasonable in light
7 of the factors to be considered, including: (1) the results achieved; (2) the risk of litigation; (3) the skill
8 required; (4) the quality of work performed; (5) the contingent nature of the fee and the financial
9 burden; and (6) the awards made in similar cases. *See Barbosa v. Cargill Meat Solutions Corp.*, 297
10 F.R.D. 431, 449 (E.D. Cal. 2013)(citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.
11 2002).

12 18. In addition, the Court finds the fee award reasonable under the lodestar cross-check
13 method. *Laffitte*, 1 Cal. 5th at. At 506; *Vizcaino*, 290 F.3d at 1043. In so finding, the Court has
14 considered a variety of factors, including "the quality of the representation, the novelty and complexity
15 of the issues, the results obtained, and the contingent risk presented." *Lealao v. Beneficial Cal., Inc.*, 82
16 Cal. App. 4th 19, 26 (2000); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

17 19. Plaintiffs Diego Guzman and Kevin Whitlatch are confirmed as Class Representatives.
18 The Class Representatives are each awarded a service award in the amount of \$15,000. This payment
19 shall be made from the Settlement Fund and is in addition to their share as a Class Member.

20 20. Administrative Costs in the amount of \$[] from the Settlement Fund to be paid to the
21 Settlement Administrator CAC Services Group, LLC of Eden Prairie, Minnesota, are approved.

22 21. The Court allocates (\$40,000) of the Settlement Fund to penalties under the Private
23 Attorneys General Act ("PAGA"), with (75%) of the PAGA penalties, (\$30,000), to be paid to the
24 California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of the
25 PAGA penalties, (\$10000), to be paid to the Class Members.

26 22. Defendants shall have no further liability for costs, expenses, interest, attorneys' fees, or
27 for any other charge, expense, or liability, in connection with the above-captioned action except as
28 provided in the Settlement.

23. The Settlement is not an admission by Defendants, nor is this Final Approval Order and Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order or the Judgment, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendants. Notwithstanding these restrictions, Defendants and other Released Parties may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Settlement Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

24. Notice of entry of this Final Approval Order and the Judgment shall be given to all Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order and Judgment shall be posted on the Settlement Administrator's website. It shall not be necessary to send notice of this Final Approval Order and entry of Judgment to individual Class Members.

25. Within 21 days after the distribution of the settlement funds and payment of attorneys' fees, Plaintiffs shall file a Post-Distribution Accounting, which provides the following information:

a. The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any. Counsel will summarize this information in an easy-to-read chart that allows for quick comparisons with other cases.

26. Within 21 days after the distribution of the settlement funds and award of attorneys' fees, Plaintiffs shall post the Post-Distribution Accounting, including the easy-to-read chart, on the settlement website.

27. If the Settlement does not become final and effective in accordance with the terms of the Stipulation, then this Final Approval Order and the Judgment, and all orders entered in connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Settlement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action.

28. Without affecting the finality of the Order of Final Approval or the Judgment, the Court retains exclusive and continuing jurisdiction over the case, Plaintiffs, all Class Members and Defendants for purposes of supervising, implementing, interpreting and enforcing the Order of Final Approval and the Judgment and the Settlement. Nothing in the Order of Final Approval precludes any action to enforce the Parties' obligations under the Settlement or under this Order of Final Approval.

IT IS SO ORDERED.

DATED: _____

HONORABLE RITA F. LIN
United States District Court Judge