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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

CALEB DOLLOFF and CODY JAMES HICKS,
 Individually and on Behalf of Other Members of
 the Public Similarly Situated,

Plaintiffs,

v.

PACIFIC SURF SCHOOL, INC., EMILIANO
 ABATE, and DOES 1-10, INCLUSIVE,

Defendants.

Case No. 37-2022-00033860-CU-OE-CTL

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

Judge: Hon. Katherine Bacal
 Dept: 69

Complaint Filed: August 19, 2022
 FAC Filed: November 10, 2022
 Trial Date: Not Set

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Plaintiffs Caleb Dolloff and Cody James Hicks
7 (“Plaintiffs”), individually and on behalf of Class Members and PAGA Group Members on the one
8 hand, and Defendants Pacific Surf School, Inc. (“PSS”), Emiliano Abate (“Abate”), and Lorynn
9 Mara (“Maya”) (collectively “Defendants”) on the other hand (Plaintiffs and Defendants collectively
10 “the Parties”). The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded pursuant to the terms and conditions of this Agreement and for the consideration set forth
12 herein.

13 ARTICLE I

14 DEFINITIONS

15 Unless otherwise defined herein, the following terms used in this Agreement shall have the
16 meanings ascribed to them as set forth below:

17 a. “Action” means the action described as follows: *Caleb Dolloff and Cody James*
18 *Hicks, Individually and on Behalf of Other Members of the Public Similarly Situated, Plaintiffs; v.*
19 *Pacific Surf School, Inc., Emiliano Abate, and Does 1 – 10, Inclusive, Defendants*, Case No. 37-
20 2022-00033860-CU-OE-CTL, commenced on August 19, 2022, with the operative First Amended
21 Complaint filed on November 10, 2022, in the Superior Court of the State of California for the
22 County of San Diego, Central Division.

23 b. “Agreement” or “Settlement” means this Joint Stipulation of Class and
24 Representative Action Settlement and Release, including the Notice Packet attached as Exhibit A.

25 c. “Class” means all non-exempt surf instructors or equivalent positions who worked at
26 PSS in California at any time during the Class Period.

27 d. “Class Counsel” shall refer to London D. Meservy, Esq. of Meservy Law, P.C. and
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Matthew S. Dente, Esq. of Dente Law, P.C.

e. “Class Member(s)” means all members of the Class. In reaching this Agreement, Defendants have made the material representation that there are approximately 199 Class Members.

f. “Class Period” means August 19, 2018, through and including October 4, 2022.

g. “Court” means the California Superior Court for the County of San Diego, Central Division, where the Action is currently pending.

h. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, 65 days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the Settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

i. “Defendants” means Pacific Surf School, Inc., Emiliano Abate, and Lorynn Maya.

j. “Defense Counsel” shall refer to Lisa Hird Chung, Esq. and Annie M. Ellis, Esq. of Schor Vogelzang & Chung LLP.

k. “Enhancement Payments” means a monetary amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to be split equally between the two Plaintiffs (\$5,000.00 each), subject to Court approval, in recognition of their effort and work in prosecuting the Action on behalf of Class Members and PAGA Group Members and in exchange for their general release of claims.

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

m. “Gross Settlement Amount” means Four Hundred Seventeen Thousand Four Hundred Dollars and Zero Cents (\$417,400.00) to be paid by Defendants to settle this Action. The Net Settlement Amount, Settlement Administration Costs, Enhancement Payments, PAGA Settlement Amount, and Class Counsels’ attorneys’ fees and costs shall be paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made under this Settlement shall be paid by Defendants separately from and in addition to the Gross Settlement

1 Amount. The Gross Settlement Amount is subject to pro rata increases as set forth in this Agreement.

2 No part of the Gross Settlement Amount shall revert to Defendants.

3 n. "Individual Settlement Payment(s)" means each Participating Class Member's
4 respective share of the Net Settlement Amount and any payment a PAGA Group Member is entitled
5 to receive from the PAGA Fund. Individual Settlement Payments will be determined by the
6 calculations provided in this Agreement.

7 o. "LWDA" means The State of California Labor and Workforce Development
8 Agency.

9 p. "LWDA Payment" means 75% of the PAGA Settlement Amount which, subject to
10 Court approval, will be paid to the LWDA pursuant to this Agreement.

11 q. "Motion for Final Approval" means Plaintiffs' submission of a written motion,
12 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
13 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
14 to enter a Final Order in this Action.

15 r. "Motion for Preliminary Approval" means Plaintiffs' submission of a written motion,
16 including any evidence as may be required for the Court to grant preliminary approval of the
17 Settlement as required by Rule 3.769 of the California Rules of Court.

18 s. "Net Settlement Amount" means the Gross Settlement Amount, less Court-approved
19 Settlement Administration Costs, Class Counsels' attorneys' fees and costs, Enhancement
20 Payments, and the PAGA Settlement Amount.

21 t. "Notice Packet" means the Notice of Proposed Class and Representative Action
22 Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject
23 to Court approval.

24 u. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
25 codified at California Labor Code §§ 2698 *et seq.*

26 v. "PAGA Fund" means 25% of the PAGA Settlement Amount which, subject to Court
27 approval, will be distributed to PAGA Group Members pursuant to this Agreement.

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1 w. "PAGA Group Members" means all non-exempt surf instructors or equivalent
2 positions who worked for PSS in California at any time during the PAGA Period. Defendants have
3 made the material representation that there are approximately 134 PAGA Group Members.

4 x. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
5 allocated to the resolution of the State of California's and PAGA Group Members' claims arising
6 under PAGA. The PAGA Settlement Amount is Twenty Thousand Dollars and Zero Cents
7 (\$20,000.00), subject to Court approval.

8 y. "PAGA Period" means the period from August 19, 2021, through and including
9 October 4, 2022.

10 z. "Participating Class Member(s)" is defined as a Class Member who does not timely
11 exclude himself or herself from the Settlement and will therefore receive their share of the Net
12 Settlement Amount automatically without the need to return a claim form. Each Participating Class
13 Member will be paid their Individual Settlement Payment.

14 aa. "Plaintiffs" means Caleb Dolloff and Cody James Hicks.

15 bb. "Preliminary Approval Date" means the date the Court preliminarily approves the
16 Settlement embodied in this Agreement.

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

20 dd. "Qualifying Class Workweeks" means the number of Workweeks that Class
21 Members worked for Defendants in California as non-exempt surf instructors or an equivalent
22 position during the Class Period. Defendants have made the material representation that there are
23 approximately 3,174 Qualifying Class Workweeks worked by Class Members during the Class
24 Period.

25 ee. "Qualifying PAGA Pay Periods" means the number of Pay Periods that PAGA Group
26 Members worked for Defendants as non-exempt surf instructors or an equivalent position during the
27 PAGA Period. Defendants make the material representation that there are a total of approximately
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694 Qualifying PAGA Pay Periods worked by PAGA Group Members during the PAGA Period.

ff. “Released Parties” means Defendants and all their current and former officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors, assigns or legal representatives.

gg. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be 45 calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

hh. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

ii. “Workweek” or “Workweeks” means the number of weeks worked by a Class Member as a surf instructor or equivalent position for PSS in California during the Class Period based on PSS’s surf lesson booking data. Any week in which a Class Member taught at least one lesson will be counted as a Workweek.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class and approval of the PAGA settlement with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the Agreement shall be considered null and void and shall be of no force or effect whatsoever and shall not be referred to or utilized for any purpose whatsoever. Defendants do not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if disposition of this Action is not effectuated, any certification of the Class as to Defendants will be

1 vacated and Plaintiffs, Defendants, and the Class will be returned to their positions with respect to
2 the Action as if the Agreement had not been executed. If the Date of Finality does not occur: (a) any
3 Court orders preliminarily or finally approving certification of any class contemplated by this
4 Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person
5 or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendants did
6 not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved
7 the certification of the Class, shall not be used or cited thereafter by any person or entity, in any
8 manner whatsoever, including without limitation any contested proceeding relating to the
9 certification of any class. Defendants expressly reserve the right to challenge the propriety of class
10 certification in the Action for any purpose if the Date of Finality does not occur.

11 The Parties and their respective counsel shall take all steps that may be requested by the
12 Court relating to the approval and implementation of this Agreement and shall otherwise use their
13 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
14 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
15 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
16 resolution, the Parties agree to seek the assistance of mediator Gig Kyriacou to resolve the dispute.

17 Upon full execution of this Agreement, the Parties agree that the Action shall be stayed in its
18 entirety except for the submission of documents needed to obtain approval of this Settlement.
19 Should the Court fail to grant approval of this Settlement, the stay will be lifted five (5) days
20 thereafter, and the Parties will be restored to their positions prior to the Settlement, and the
21 Settlement shall be null and void.

22 ARTICLE III

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

24 The procedure for obtaining Court approval of and implementing this Agreement shall be as
25 follows:

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

27 Plaintiffs will bring a motion before the Court for an order conditionally certifying the Class
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1 to include all claims pled in the Action based on the preliminary approval of this Agreement. The
2 date that the Court grants preliminary approval of this Agreement will be the “Preliminary Approval
3 Date.”

4 **Section 3.02: Settlement Administrator**

5 The Parties have chosen Phoenix Class Action Administration Solutions to administer this
6 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
7 responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs,
8 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
9 Individual Settlement Payment checks and distributing them to Participating Class Members and
10 PAGA Group Members, establishing and maintaining the QSF, and issuing the payment to Class
11 Counsel for attorneys’ fees and costs, the Enhancement Payments to Plaintiffs, and the employer
12 payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly
13 agree to all the terms and conditions of this Agreement.

14 All of the Settlement Administrator’s costs of administering the Settlement, including but
15 not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to
16 Class Members and PAGA Group Members, all costs and fees associated with computing,
17 processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated
18 with the Settlement Administrator preparing any tax returns and any other filings required by any
19 governmental taxing authority or agency, all costs and fees associated with preparing any other
20 checks, notices, reports, or filings to be prepared in the course of administering disbursements from
21 the Net Settlement Amount and PAGA Fund, and any other costs and fees incurred and/or charged
22 by the Settlement Administrator in connection with the execution of its duties under this Agreement
23 (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross
24 Settlement Amount.

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

26 No later than ten (10) business days after the Preliminary Approval Date, Defendants will
27 provide the Settlement Administrator with list based on PSS’s business records that identifies for
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each Class Member and PAGA Group Member: (1) first and last name; (2) last known home address; (3) Social Security number or other taxpayer identification number; (4) dates of employment during the Class Period; (5) Qualifying Class Workweeks; and, if applicable, (5) Qualifying PAGA Pay Periods (the “Group List”). The Group List shall be treated as confidential by the Settlement Administrator and not disclosed to Plaintiffs, Class Counsel, or any other individual or entity. The format and transmittal of the list shall be in Microsoft Excel format.

Within ten (10) business days after receiving the Group List from Defendants, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court-approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate share of the Net Settlement Amount and, if applicable, PAGA Fund. Class Members will have 45 days after the date of mailing in which to postmark objections or requests for exclusion.

Prior to the initial mailing, the Settlement Administrator will check all Class Members’ addresses against the National Change of Address database and shall update any addresses before mailing. If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis or comparable databases and, if another address is identified, shall mail the Notice Packet to the newly identified address. The Settlement Administrator will re-mail all returned, undelivered Notice Packets within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall have 15 calendar days from the re-mailing, or 45 calendar days from the date of the initial mailing, whichever is later, in which to postmark an objection or request for exclusion. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly status report provided to the Parties.

In the event a Class Member’s Notice Packet remains undeliverable sixty (60) calendar days

1 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
2 Member's Individual Settlement Payment. Rather, the Settlement Administrator will hold the Class
3 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
4 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
5 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
6 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
7 procedures set forth in Section 3.07(f) below.

8 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
9 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
10 attesting to completion of the notice process, including any attempts to obtain valid mailing
11 addresses for and re-sending of any returned Notice Packets, as well as the number of valid requests
12 for exclusion and objections that the Settlement Administrator received. Class Members shall not be
13 required to submit claim forms in order to receive their proportional share of the Net Settlement
14 Amount and, if applicable, PAGA Fund.

15 **Section 3.04: Responses to Notice**

16 **a. Class Member Disputes**

17 If any Class Member disagrees with Defendants' records as to their Qualifying Class
18 Workweeks and/or Qualifying PAGA Pay Periods as reflected in their specific Notice Packet, the
19 Class Member shall set forth in writing the Qualifying Class Workweeks and/or Qualifying PAGA
20 Pay Periods that they claim to have worked during the applicable period and submit such writing to
21 the Settlement Administrator by the Response Deadline, along with any supporting documentation.
22 The Notice Packet will also provide a method for the Class Member to challenge the employment
23 data on which their Individual Settlement Payment is based. The Settlement Administrator shall
24 contact the Parties regarding the dispute, and the Parties will work in good faith to resolve it. If the
25 Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the
26 Qualifying Class Workweeks and/or Qualifying PAGA Pay Periods for each Class Member based
27 on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude themselves from the Class Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or their authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or 15 days after the Settlement Administrator re-mails the Notice Packet to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude oneself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment (except for the Individual PAGA Payment to the extent the Class Member is a PAGA Group Member), will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon. PAGA Group Members shall receive an Individual PAGA Payment regardless of their decision to submit a request for exclusion to opt out of the Settlement. The request for exclusion shall not be effective as to the release of claims arising under PAGA.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Participating Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action and by the other rulings in the Action. Participating Class Members' rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

c. Objections to Settlement

For any Class Member to object to this Agreement or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or 15 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written

statement of the grounds of objection, signed by the objecting Class Member or their attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object to the Settlement. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude themselves from this Settlement (opt out) or to object to it.

e. Right of Plaintiffs to Adjust Gross Settlement Amount

Defendants have estimated the number of Class Members as 199 and the number of Qualifying Class Workweeks to be 3,174 during the Class Period. If the total number of Qualifying Class Workweeks during the Class Period is determined to be in excess of 105% of 3,174 (which is more than 3,333) Qualifying Class Workweeks, there will be an automatic pro rata adjustment to the Gross Settlement Amount for each Qualifying Class Workweek above 3,174.

f. Defendants' Option to Withdraw

If more than 5% of the Class Members submit valid and timely exclusion forms pursuant to Section 3.04(b), Defendants at their sole option may withdraw from the Agreement, and Defendants' obligations under prior agreements to settle this Action are entirely void. If Defendants elect to void the Agreement pursuant to this option, they must pay for all Settlement Administration Costs to date and the cost of informing the Class Members that the Agreement was voided.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court to: (1) review this Agreement and determine whether the Court should give it final approval; and (2) consider any objections made and

all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the Gross Settlement Amount in the amount of Four Hundred and Seventeen Thousand Four Hundred Dollars and Zero Cents (\$417,400.00), subject to a pro rata increase under the conditions set forth in Section 3.04(e). Employer's taxes are not to be paid out of the Gross Settlement Amount.

The Gross Settlement Amount shall be paid by Defendants in 25 installments. Defendants will pay all installments of the Gross Settlement Amount into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed:

- Within 65 calendar days after the Date of Finality or by September 19, 2024, whichever date is later, Defendants shall transfer One Hundred and Twenty-Nine Thousand Four Hundred Dollars and Zero Cents (\$129,400.00) of the Gross Settlement Amount (the "Initial Gross Settlement Amount Deposit") plus PSS's share of employer-side payroll taxes.
- As to the balance of the Gross Settlement Amount (totaling \$288,000.00 plus PSS's share of employer-side payroll taxes), beginning on the thirtieth (30th) day after the Initial Gross Settlement Amount Deposit and every same day of the months thereafter, Defendants shall pay Twelve Thousand Dollars and Zero Cents (\$12,000.00) per month for 24 months. In the twenty-fourth month, Defendants shall also pay into the QSF the employer-side payroll taxes for these twenty-four installment payments, the amount of which will be calculated by the Settlement Administrator.

The Settlement Administrator will use the Gross Settlement Amount to fund payment of the

Individual Settlement Payments to Participating Class Members and PAGA Group Members, Class Counsel's attorneys' fees and costs, the Enhancement Payments, the LWDA Payment, the Settlement Administration Costs, and employer-side payroll taxes.

Within ten (10) court days after the Initial Gross Settlement Deposit has been paid, the Settlement Administrator will pay, on a pro-rata basis, a 31% portion of the Individual Settlement Payments to Participating Class Members and PAGA Group Members, 31% of Class Counsel's attorneys' fees and costs, 31% of the LWDA Payment, 31% of the Enhancement Payments, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages arising from the Initial Gross Settlement Deposit. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

Within ten (10) court days after the remainder of the Gross Settlement Amount has been completely paid, the Settlement Administrator will pay the remainder (69%) of the Individual Settlement Payments to Participating Class Members and PAGA Group Members, Class Counsel's attorneys' fees and costs, the LWDA Payment, the Enhancement Payments, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Hundred and Thirty-Nine Thousand One Hundred and Thirty-Three Dollars and Zero Cents (\$139,133.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendants with copies of all documents submitted in support of their application for an award of attorneys' fees

1 and costs.

2 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
3 Gross Settlement Amount and shall not constitute payment to any Participating Class Members or
4 PAGA Group Members. The attorneys' fees and costs for Class Counsel approved by the Court shall
5 encompass all work performed, costs, and expenses related to the investigation, prosecution, and
6 settlement of the Action incurred through the Date of Finality. To the extent that the Court approves
7 less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference
8 between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

9 **c. Payment of Settlement Administration Costs**

10 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
11 shall not constitute payment to any Participating Class Member(s). The Settlement Administration
12 Costs shall not exceed Eleven Thousand and Five Hundred Dollars (\$11,500.00).

13 **d. Enhancement Payments to Plaintiffs**

14 Subject to Court approval, the Plaintiffs shall receive Enhancement Payments of up to a total
15 of Ten Thousand Dollars and Zero Cents (\$10,000.00) to be split evenly between the Plaintiffs
16 (\$5,000.00 each), the request for which Defendants will not object to or oppose. The Enhancement
17 Payments shall be paid out of the Gross Settlement Amount and shall not constitute payment to any
18 Participating Class Members other than Plaintiffs. To the extent that the Court approves less than
19 the amount of Enhancement Payments that Plaintiffs request, the difference between the requested
20 and awarded amounts will be reallocated to the Net Settlement Amount.

21 Because it is the intent of the Parties that the Enhancement Payments represent payment to
22 Plaintiffs for their service to the Class Members and for their general release of claims as set forth
23 in this Agreement, and not wages, the Settlement Administrator will not withhold any taxes from
24 the Enhancement Payments. The Enhancement Payments will be reported on a Form 1099, which
25 the Settlement Administrator will provide to Plaintiffs and to the pertinent taxing authorities as
26 required by law.

27 **e. Payment to the Labor and Workforce Development Agency**

1 In consideration of the settlement of claims made under PAGA, Plaintiffs will request that
2 the Court approve an allocation of the PAGA Settlement Amount (Twenty Thousand Dollars and
3 Zero Cents (\$20,000.00)) of the Gross Settlement Amount to the settlement of claims in the Action
4 under PAGA. Seventy-five percent (75%) of the PAGA Settlement Amount will be paid to the
5 LWDA as the LWDA Payment, and twenty-five percent (25%) of the PAGA Settlement Amount,
6 the PAGA Fund, will be paid pro-rata to PAGA Group Members. Defendants will not oppose this
7 request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The
8 Court's adjustment, if any, of the PAGA Settlement Amount will not invalidate this Agreement. To
9 the extent that the Court approves less than the amount of the PAGA Settlement Amount requested,
10 the difference between the requested and approved amounts will be reallocated to the Net Settlement
11 Amount.

12 **f. Payment of Individual Settlement Payments to Participating Class Members**

13 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
14 Payments, except for PAGA Fund payments, which shall be distributed from the PAGA Settlement
15 Amount. The Parties agree that the Net Settlement Amount shall be divided between all Participating
16 Class Members in proportion to the number of individual Qualifying Class Workweeks for each
17 Class Member. To calculate the minimum amount each Class Member will receive based on their
18 individual Qualifying Class Workweeks, the Net Settlement Amount will be divided by the total
19 number of Qualifying Class Workweeks by all Class Members during the Class Period and then
20 allocated on a pro rata basis. Each Class Member's approximate Individual Settlement Payment
21 amount will be included in their Notice Packet. After final approval by the Court, the Net Settlement
22 Amount will be dispersed to Participating Class Members on a pro rata basis based on the individual
23 Qualifying Class Workweeks worked during the Class Period by each Participating Class Member.

24 The Parties agree that the PAGA Fund shall be divided between all PAGA Group Members
25 in proportion to the number of individual Qualifying PAGA Pay Periods for each PAGA Group
26 Member. To calculate the minimum amount each PAGA Group Member will receive based on their
27 individual Qualifying PAGA Pay Periods, the PAGA Fund will be divided by the total number of

1 Qualifying PAGA Pay Periods by all PAGA Group Members during the PAGA Period and then
2 allocated on a pro rata basis. PAGA Group Members shall receive this portion of their Individual
3 Settlement Payment (the Individual PAGA Payment) regardless of whether they submit a request
4 for exclusion to opt out of the Settlement regarding the class claims.

5 Each Individual Settlement Payment, exclusive of the individual PAGA Fund payments, will
6 represent wages and penalties allocated using the following formula: twenty percent (20%) allocated
7 to wages, and eighty percent (80%) allocated to interest, expenses and penalties. The amounts paid
8 as wages shall be subject to all tax withholdings customarily made from an employee's wages, and
9 all other authorized and required withholdings and shall be reported by W-2 forms. PSS shall pay
10 PSS's employer-side taxes separately from and in addition to the Gross Settlement Amount. The
11 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
12 other than the tax withholdings customarily made from employees' wages and shall be reported by
13 IRS 1099 forms. 100% of the amounts paid to PAGA Group Members from the PAGA Fund shall
14 be allocated as penalties, and not wages, for which the Settlement Administrator will issue to the
15 PAGA Group Member an IRS Form-1099.

16 Timing of the Payments shall be made as set forth in Section 3.06(a) of this Agreement.
17 Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be
18 reduced by the applicable employee's share of tax withholdings, and the Settlement Administrator
19 will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement
20 Administrator will issue a Form 1099 to the extent required by law for the interest and penalty
21 portions of the Individual Settlement Payments. Participating Class Members and PAGA Group
22 Members shall have 180 days from the date their Individual Settlement Payment checks are dated to
23 cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day
24 time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed
25 Property Fund in the name of the Class Member for whom the funds are designated.

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

6 **g. Default on Payment**

7 In the event Defendants make a late payment or do not pay any portion of the Gross
8 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
9 payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel and
10 Defense Counsel within three (3) business days of the missed payment. Thereafter, Defendants will
11 have seven (7) days to cure the default and tender payment to the Settlement Administrator. In the
12 event Defendants fail to cure the default within the times set forth herein, Plaintiffs may elect to
13 enter judgment against Defendants for the balance of the unpaid Gross Settlement Amount to date,
14 and Plaintiffs will be entitled to recover compounding interest at ten percent (10%) per year from
15 the due date for such payment and reasonable attorneys' fees and costs. Each Defendant shall be
16 jointly and severally liable for the payment of the Gross Settlement Amount as approved by the
17 Court.

18 **h. No Credit Toward Benefit Plans**

19 The Individual Settlement Payments made to Participating Class Members and PAGA Group
20 Members under this Agreement, as well as any other payments made pursuant to this Agreement,
21 will not be utilized to calculate any additional benefits under any benefit plans to which any Class
22 Members and PAGA Group Members may be eligible, including, but not limited to profit-sharing
23 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans,
24 and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any
25 rights, contributions, or amounts to which any Class Members and PAGA Group Members may be
26 entitled under any benefit plans.

27 **ARTICLE IV**

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendants dispute the allegations in the Action and take the position that, but for this Settlement, a Class should not have been certified in the Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendants.

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims released through this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify the Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action pled in the Action as part of the Settlement

1 will have no bearing on, and will not be admissible in connection with, the issue of whether the Class
2 should be certified by the Court in a non-settlement context in the Action or any other action, and in
3 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

4 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
5 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

6 **ARTICLE V**

7 **RELEASES**

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

9 Upon the Date of Finality, Plaintiffs and Participating Class Members who do not opt out of
10 the Settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys,
11 agents and assigns, fully and finally release and discharge Released Parties from all claims, rights,
12 demands, liabilities and causes of action of any nature or description arising from the facts pleaded
13 in Plaintiffs' first amended complaint and/or Plaintiffs' letters to the LWDA regarding PAGA claims
14 in the Action, or as reasonably could have been pleaded, including any such claims that were litigated
15 in the Action against Defendants or could reasonably have been litigated in the Action against
16 Defendants based on the facts pleaded in Plaintiffs' first amended complaint in the Action and/or
17 Plaintiffs' letters to the LWDA. The claims released under this paragraph ("Released Claims") shall
18 include, but are not necessarily limited to, claims for unpaid minimum wages, unpaid overtime
19 wages, failure to timely pay all earned wages, meal and rest break violations and/or failure to timely
20 pay meal and/or rest premiums, off the clock work, reporting time pay, split shift premium pay,
21 noncompliant itemized wage statements, record keeping violations, failure to reimburse business
22 expenses, failure to timely pay all wages owed during employment and upon termination, unfair
23 competition, as well as any and all damages, restitution, disgorgement, civil penalties, statutory
24 penalties, taxes, interest or attorneys' fees resulting therefrom for all times in which Participating
25 Class Members worked for PSS in California as non-exempt surf instructors or equivalent positions
26 during the Class Period. Released Claims do not include claims for workers' compensation benefits,
27 unemployment insurance benefits, claims arising outside of the Class Period, or any other claim or

right that as a matter of law cannot be waived or released.

Section 5.02: Released PAGA Claims

Upon the Date of Finality, the State of California and PAGA Group Members release the Released Parties from all claims exhausted in Plaintiffs' notice(s) sent to the LWDA and alleged in the Plaintiffs' first amended complaint in the Action, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement.

Section 5.03: Plaintiffs' Release of Unknown Claims

Upon the Date of Finality, Plaintiffs each release the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, or violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof, to the maximum extent permitted by law. This release excludes any current and/or future claims that are not waivable as a matter of law and workers' compensation claims.

Plaintiffs stipulate and agree that as to the Released Parties, Plaintiffs expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, including Labor Code section 2802. Section 1542 of the California Civil Code provides as follows:

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

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01: Amendments or Modification

1 The terms and provisions of this Agreement may be amended or modified only by an express
2 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel
3 and approved by the Court.

4 **Section 6.02: Assignment**

5 None of the rights, commitments, or obligations recognized under this Agreement may be
6 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
7 written consent of each other Party and their respective counsel. The representations, warranties,
8 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
9 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
10 person.

11 **Section 6.03: Governing Law**

12 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
13 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
14 of laws.

15 **Section 6.04: Entire Agreement**

16 This Agreement, including the Notice Packet attached as Exhibit A, which is an integral part
17 hereof, contains the entire understanding of the Parties with respect to the subject matter contained
18 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
19 text contained in Exhibit A to this Agreement, the former (*i.e.*, Articles I through VI) shall be
20 controlling, unless Exhibit A is changed by or in response to a Court order. There are no restrictions,
21 promises, representations, warranties, covenants, or undertakings governing the subject matter of
22 this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes
23 all prior agreements and understandings among the Parties with respect to the settlement of the
24 Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior
25 agreements or proposals.

26 **Section 6.05: Waiver of Compliance**

27 Any failure of any Party, Defense Counsel, or Class Counsel to comply with any obligation,
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1 covenant, agreement, or condition set forth in this Agreement may only be waived expressly in
2 writing, to the extent permitted under applicable law, by the Party or Parties and their respective
3 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
4 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
5 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

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

7 This Agreement and any amendments to this Agreement may be executed in any number of
8 counterparts, and any Party and/or their respective counsel may execute any such counterpart, each
9 of which when executed and delivered shall be deemed to be an original. All counterparts taken
10 together shall constitute one instrument. A fax, electronic, or PDF signature on this Agreement shall
11 be as valid as an original signature.

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

13 Should any dispute arise among the Parties or their respective counsel regarding the
14 implementation or interpretation of this Agreement, a representative of Class Counsel and a
15 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
16 to submitting such disputes to the Court.

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

18 This Agreement will be binding upon and inure to the benefit of the successors in interest of
19 each of the Parties.

20 **Section 6.09: Cooperation in Drafting**

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

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

25 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement
26 of the Action and have arrived at this Agreement through arm's-length negotiation and in the context
27 of adversarial litigation, taking into account all relevant factors including, but not limited to, the
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1 strength of each Party's claims and defenses and Defendants' financial condition, current and
2 potential. The Parties further believe that the Settlement is and is consistent with public policy, and
3 fully complies with applicable law.

4 **Section 6.11: Headings**

5 The descriptive heading of any section or paragraph of this Agreement is inserted for
6 convenience of reference only and does not constitute a part of this Agreement and shall not be
7 considered in interpreting this Agreement.

8 **Section 6.12: Notice**

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

11 *To Plaintiffs and the Class:*

12 London D. Meservy (SBN 216654)
13 **MESERVY LAW, P.C.**
14 5060 Shoreham Place, Suite 300
15 San Diego, California 92122
16 Telephone: (858) 779-1276
Facsimile: (866) 231-8132
Email: london@meservylaw.pc.com

17 Matthew S. Dente (SBN 241547)
18 **DENTE LAW, P.C.**
19 5060 Shoreham Place, Suite 300
20 San Diego, CA 92122
21 Telephone: (619) 550-3475
Facsimile: (619) 342-9668
Email: Matt@dentelaw.com

22 *To Defendants:*

23 Lisa Hird Chung (SBN 246766)
24 Annie M. Ellis (SBN 273107)
25 **SCHOR VOGELZANG & CHUNG LLP**
26 2170 Fourth Avenue
27 San Diego, California 92101
Telephone: 619.906.2400
Facsimile: 619.906.2401
Email: Lisa@svclegal.com
Annie@svclegal.com

1 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Agreement shall be enforceable by
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
4 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
8 extent to enforce and effectuate the terms and intent of this Agreement. If one or more of the Parties
9 institutes any legal action or other proceeding against any other Party or Parties to enforce the
10 provisions of this Settlement, the successful Party or Parties will be entitled to recover from the
11 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees
12 incurred in connection with any enforcement actions.

13 **Section 6.14: Mutual Full Cooperation**

14 The Parties agree fully to cooperate with each other to accomplish the terms of this
15 Agreement, including but not limited to the execution of such documents, and the taking of such
16 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
17 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
18 terms. In the event the Parties are unable to reach agreement on the form or content of any document
19 needed to implement the Settlement, or on any supplemental provisions that may become necessary
20 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

21 **Section 6.15: Authorization to Act**

22 Class Counsel warrants and represents that they are authorized by Plaintiffs, and Defense
23 Counsel warrants that they are authorized by Defendants, to take all appropriate action required to
24 effectuate the terms of this Agreement, except for signing documents, including but not limited to
25 this Agreement, that are required to be signed by the Parties themselves. Defendants represent and
26 warrant that the individual executing this Agreement on its behalf has the full right, power, and
27 authority to enter into this Agreement and to carry out the transactions contemplated herein.

1 **Section 6.16: No Reliance on Representations**

2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
4 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
5 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
6 rights, or with regard to the advisability of entering into and executing this Agreement, or with
7 respect to any other matters. No representations, warranties, or inducements, except as expressly set
8 forth herein, have been made to any party concerning this Agreement. However, the Parties
9 acknowledge that Defendants made numerous representations during the course of the litigation and
10 mediation of this Action that were relied upon in reaching this Agreement. These representations
11 specifically include:

- 12 (a) Representations concerning Defendants' financial conditions, revenues, expenses,
13 and assets. To the extent the Court requires submissions concerning these
14 representations the Parties agree that information and documents concerning those
15 representations will be submitted to the Court for review under seal.
- 16 (b) Representations about changes in policies and practices of Defendant as a result of
17 this litigation. Defendants specifically and materially represented the following
18 changes were made to its wage and hour policies and procedures on or before October
19 4, 2022, as a direct result of the litigation filed by Plaintiffs: (1) updates to written
20 policies and procedures; (2) implementation of a new time and payroll system,
21 including an electronic timekeeping system to record actual start and stop times of all
22 hours worked; (3) meal/rest period compliance system; (4) expense reimbursement
23 policies and procedures; and (5) arbitration agreements with class action waivers.

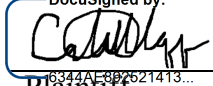
24 **Section 6.16: Confidentiality Preceding Preliminary Approval**

25 The Parties and their counsel agree that they shall not issue any press releases, initiate any
26 contact with the press, respond to any press inquiry, or have any communication with the press about
27 the fact, amount or terms of the Settlement.

I HAVE READ THE FOREGOING JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

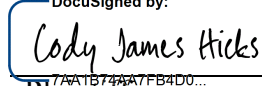
Dated: 1/2/2024

CALEB DOLLOFF

By: 
Plaintiff

Dated: 1/2/2024

CODY JAMES HICKS

By: 
Plaintiff

Dated: 12 / 26 / 2023

PACIFIC SURF SCHOOL, INC.

By: 
Emiliano Abate, Authorized Representative

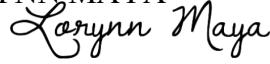
Dated: 12 / 26 / 2023

EMILIANO ABATE

By: 
Defendant

Dated: 12 / 26 / 2023

LORYNN MAYA

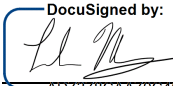
By: 
Defendant

APPROVED AS TO FORM ONLY:

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Dated: 1/2/2024

MESERVY LAW, P.C. and DENTE LAW, P.C.

By: 
London D. Meservy
Matthew S. Dente

Attorneys for Plaintiffs and Members of the Class
and Subclasses

Dated: 12 / 22 / 2023

SCHOR VOGELZANG & CHUNG LLP

By: *Annie Ellis*
Lisa Hird Chung
Annie M. Ellis

Attorneys for Defendants

EXHIBIT A

Dolloff et al. v. Pacific Surf School, Inc. et al., No. 37-2022-00033860-CU-OE-CTL
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO
NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All individuals who were employed by defendant Pacific Surf School, Inc. (“PSS”) as non-exempt surf instructors or equivalent positions and who worked in California at any time between August 19, 2018, through and including October 4, 2022 (“Class Members”).

and

All individuals who were employed by PSS as non-exempt surf instructors or equivalent positions and who worked in California at any time between August 19, 2021, through and including October 4, 2022 (“PAGA Group Members”).

On [REDACTED], the Honorable Katherine Bacal of the San Diego County Superior Court (the “Court”) granted preliminary approval of this class and representative action settlement and ordered the litigants to notify all Class Members and PAGA Group Members of the settlement. **You have received this notice because PSS’s records indicate that you are a Class Member and/or PAGA Group Member, and therefore entitled to a payment from the Settlement.**

Unless you choose to opt out of the Settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund. All PAGA Group Members will receive payments from the Settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED]:00 [REDACTED].m. on [REDACTED], 2024, in Department 69 of the San Diego County Superior Court located at 330 West Broadway, San Diego, California 92101.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit the Court’s website for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and/or PAGA Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims and PAGA penalty claims against Defendants and the other Released Parties based on the facts alleged in the Action during the applicable Class Period and PAGA Period.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the class settlement by sending the Settlement Administrator a written request for exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.
The Opt-out Deadline is [DATE]	You cannot opt-out of the PAGA portion of the proposed Settlement. If the Settlement is approved, PAGA Group Members will receive a payment from the PAGA Fund and will give up their rights to pursue PAGA penalty claims against Defendants based on the facts alleged in the Action during the PAGA Period.

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed class settlement, but not the PAGA settlement.
You Can Participate in the [DATE] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [DATE] in Department 69 of the San Diego County Superior Court located at 330 West Broadway, San Diego, California 92101. You don’t have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement.

Under the terms of the Settlement, the Parties estimate your individual settlement payment will be **\$[INSERT TOTAL PAYMENT AMOUNT—CLASS AND PAGA PAYMENTS]**. The process for calculating this estimate is set forth below. The actual amount of your Settlement award could be more or less than this estimated amount, depending on a number of factors, including the number of individuals who choose to opt out of the Settlement, the award of costs and attorneys’ fees associated with the Settlement, and the approved costs associated with administering the Settlement. This notice is to advise you of your rights, how you can participate in this Settlement or how you can request to be excluded from the Settlement, if you so choose. You have a right to participate in this Settlement without fear of retaliation by Defendants.

Summary of the Litigation

On August 19, 2022, Plaintiffs Caleb Dolloff and Cody James Hicks (“Plaintiffs”), on their behalf and on behalf of other current and former non-exempt surf instructors or equivalent positions, filed a complaint against PSS and Emiliano Abate in San Diego County Superior Court, Case No. 37-2022-00033860-CU-OE-CTL, alleging that PSS and Emiliano Abate violated California state labor laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) pay reporting time wages; (4) pay split shift premium wages; (5) provide compliant itemized wage statements; (6) timely pay all wages owed to employees during each pay period and upon termination of their employment; (7) reimburse business expenses; and (8) unfair and unlawful business practices (the “Action”). On or about November 10, 2022, Plaintiffs filed an amended complaint in the Action alleging an additional cause of action for civil penalties based on the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”). On or about September 15, 2022, Plaintiffs filed the operative First Amended Complaint in this Action (“Complaint”). In August 2022 and January 2023, Plaintiffs submitted letters to the California Labor and Workforce Development Agency (“LWDA”) alleging violations by PSS, Emiliano Abate and Lorynn Maya (“Defendants”) of the PAGA. Plaintiffs also sought derivative statutory penalties, interest, and attorneys’ fees and costs based on these alleged violations.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On September 19, 2023, the parties participated in a mediation with Gig Kyriacou, an experienced and well-respected class action mediator. With Mr. Kyriacou’s guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Counsel for Plaintiffs, who are the attorneys appointed by the Court to represent the class, Meservy Law, P.C. and Dente Law, P.C. (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this Action have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Despite agreeing to and supporting the Settlement, Defendants deny any liability or wrongdoing of any kind whatsoever associated with Plaintiffs’ allegations and claims brought in the Action or that could have been brought based on the facts alleged. Defendants assert that they have valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the Action or that the Action can or should proceed as a class or PAGA action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs. The Court has not ruled on who should win. Rather, the Parties have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Settlement Agreement, in order to avoid the burden, expense, and uncertainty associated with litigating Plaintiffs’ claims.

Summary of the Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the alleged class and PAGA claims in the Action in exchange for a Gross Settlement Amount of \$417,400.00. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of up to \$5,000 each to Caleb Dolloff and Cody James Hicks for their services on behalf of the class; (3) up to \$139,133.33 in attorneys’ fees and up to \$25,000 in litigation costs and expenses; (4) a \$20,000.00 settlement of claims under the PAGA, inclusive of a \$15,000 payment to the LWDA in connection with the PAGA, and a \$5,000.00 payment (“PAGA Fund”) to all PAGA Group Members; and (5) reasonable Settlement Administrator’s fees and expenses of up to \$11,500.00. After deducting the above payments, a total of approximately \$211,766.67 will be allocated to Class Members who do not opt out of the Class Settlement (“Net Settlement Fund”). Additionally, all PAGA Group Members will receive a proportional share of the \$5,000.00 PAGA Fund, regardless of whether they opt out of the Class Settlement.

Payments from Net Settlement Fund. Defendants will calculate the total number of workweeks worked by each Class Member as a non-exempt surf instructor or equivalent position from August 19, 2018, through and including October 4, 2022 (“Class Period”), and the aggregate total number of qualifying workweeks worked by all Class Members during the Class Period. Workweeks means the number of weeks worked by a Class Member as a surf instructor or equivalent position for PSS in California during the Class Period based on PSS’s surf lesson booking data. Any week in which a Class Member taught at least one surf lesson will be counted as a qualifying workweek. To determine each Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of qualifying workweeks, resulting in the “Qualifying Class Workweeks” value. Each Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of workweeks during the Class Period by the Qualifying Class Workweeks value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely requests for exclusion from the Settlement, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Qualifying Class Workweeks worked, so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Fund.

According to PSS’s records, you worked a total of [REDACTED] workweeks during the Class Period as a non-exempt surf instructor or equivalent position . Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ [REDACTED].

Payments from PAGA Fund. Defendants will calculate the total number of pay periods worked by each PAGA Group Member as a non-exempt employee from August 19, 2021, through and including October 4, 2022 (“Qualifying PAGA Periods”), and the aggregate total number of Qualifying PAGA Pay Periods worked by all PAGA Group Members during the PAGA Period. Qualifying PAGA Pay Periods means the number of pay periods worked by a PAGA Group Member

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

as a surf instructor or equivalent position for PSS in California during the PAGA Period based on PSS's surf lesson booking data. Any pay period in which a PAGA Group Member taught at least one surf lesson during the PAGA Period will be counted as a Qualifying PAGA Pay Period. To determine each PAGA Group Member's estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Qualifying PAGA Pay Periods of all PAGA Group Members, resulting in the "PAGA Pay Period" value. Each PAGA Group Member's share of the PAGA Fund will be calculated by multiplying each individual PAGA Group Member's total number of Qualifying PAGA Pay Periods by the PAGA Pay Period value. A request for exclusion from the Settlement does not exclude a PAGA Group Member from the Released PAGA Claims, and the PAGA Group Member will receive their portion of the PAGA Fund even if they submit a valid request for exclusion as to the Class Settlement.

According to Defendants' records, you worked during the PAGA Period as a non-exempt surf instructor or equivalent position for a total of [REDACTED] pay periods. Accordingly, your estimated payment from the PAGA Fund is approximately \$ [REDACTED].

Your Estimated Payment and Timing of Payment: Based on the above, your estimated payment from the Settlement is approximately \$ [REDACTED]. If you believe the workweek or pay period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o [REDACTED]
Fax No. [REDACTED]

If you dispute the information stated above, PSS's records will control unless you are able to provide documentation that establishes otherwise.

Settlement payments, if approved by the Court, will be paid in two installments. Specifically, checks to Participating Class Members and PAGA Group Members for 31% of their Individual Settlement Payments will be distributed in or about September 2024, and checks to Participating Class Members and PAGA Group Members for the remainder of their Individual Settlement Payments will be distributed in or about September 2026. Class Counsels' attorneys' fees and costs, the Enhancement Payments to Plaintiffs, and payment to the LWDA in connection with the PAGA will be distributed on the same basis.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to Participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the Settlement. Each Individual Settlement Payment, exclusive of the individual PAGA Fund payments, will represent wages and penalties allocated using the following formula: 20% of each Settlement payment to Participating Class Members will be allocated as wages, for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. All payments to PAGA Group Members from the PAGA Fund will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. Class Members and PAGA Group Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. Settlement payment checks to Class Members and PAGA Group Members returned as undeliverable or remaining uncashed for more than one hundred and eighty (180) calendar days after issuance will be paid by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member or PAGA Group Member for whom the funds are designated.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

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If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your Settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed two separate checks for your share of the Settlement's funds in the installments discussed above. In addition, as to Defendants and all of their current and former officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors, assigns or legal representatives ("Released Parties"), you will be deemed to have released the Released Class Claims during the Class Period and will be barred from collecting PAGA civil penalties on behalf of yourself and the LWDA for any of the Released PAGA Claims during the PAGA Period:

Released Class Claims: All claims, rights, demands, liabilities and causes of action of any nature or description arising from the facts pleaded in the operative First Amended Complaint in the Action and/or Plaintiffs' letters to the LWDA regarding PAGA claims, or as reasonably could have been pleaded, including any such claims that were litigated in the Action against Defendants or could reasonably have been litigated in the Action against Defendants based on the facts pleaded in the First Amended Complaint in the Action and/or Plaintiffs' letters to the LWDA. The claims released under this paragraph ("Released Claims") shall include, but are not necessarily limited to, claims for claims for unpaid minimum wages, unpaid overtime wages, failure to timely pay all earned wages, meal and rest break violations and/or failure to timely pay meal and/or rest premiums, off the clock work, reporting time pay, split shift premium pay, noncompliant itemized wage statements, record keeping violations, failure to reimburse business expenses, failure to timely pay all wages owed during employment and upon termination, unfair competition, as well as any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees resulting therefrom for all times in which Participating Class Members worked for PSS in California as non-exempt surf instructors or equivalent positions during the Class Period. This release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, claims arising outside of the Class Period, or any other claim or right that as a matter of law cannot be waived or released.

Released PAGA Claims: All claims exhausted in Plaintiffs' notice(s) sent to the LWDA and alleged in the operative First Amended Complaint, which arose during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Class Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class and Representative Action Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement. The written request for exclusion must include your name, signature, address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent to the Settlement Administrator to address below or fax the request for exclusion to the Settlement Administrator at facsimile number below:

Settlement Administrator
c/o [REDACTED]
[REDACTED]

The request for exclusion must be postmarked or faxed no later than [REDACTED]. If you submit a request for exclusion which is not postmarked or faxed by [REDACTED], your request for exclusion will be rejected, and you will be included in the Class Settlement.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.

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- If you are a PAGA Group Member, you will still be barred from collecting PAGA civil penalties for any of the Released PAGA Claims during the PAGA Period, and you will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the Settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the Settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number; (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the Settlement Administrator at [administrator's address] or faxed to the Settlement Administrator at [administrator's facsimile number].

All written objections must be postmarked or faxed to the Settlement Administrator by no later than [redacted]. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the Settlement, you must follow the directions described in Option 2 above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for [redacted], 2024, at [redacted] a.m./p.m. in the Superior Court of the State of California for the County of San Diego, and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the Settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Additional Information

This Notice of Class and Representative Action Settlement is only a summary of the Action and the Settlement. For a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members and PAGA Group Members regarding this Notice and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

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