

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) and defendants Western Buyers LLC; US LBM Holdings, LLC; ACS – US LBM, LLC; American Construction Source - US LBM, Inc.; American Construction Source, LLC; California Building Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker's Building Supply – US LBM, LLC (“Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

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

- 1.1 “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *Lapreal Vincent vs. Western Buyers LLC, et al*, Case No. 23CV00757, initiated on January 23, 2023 and pending in Superior Court of the State of California, County of Siskiyou, with a First Amended Class and Representative Action PAGA Complaint filed on February 1, 2024, and a Second Amended Class and Representative Action PAGA Complaint to be filed as directed in this Agreement.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendants), and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from January 23, 2019 through the earlier of preliminary approval or June 16, 2024.
- 1.14. “Class Representative(s)” means the named Plaintiffs in the Operative Complaint (defined in Paragraph 2.8) in the Action seeking Court approval to serve as Class Representatives.
- 1.15. “Class Representative Service Payment(s)” means the service payment(s) made to the Plaintiffs as Class Representatives to compensate them for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendants’ expenses, and for the general release of all claims by the Plaintiffs.

- 1.16. “Court” means the Superior Court of California, County of Siskiyou.
- 1.17. “Defendants” mean Western Buyers, LLC; US LBM Holdings, LLC; ACS – US LBM, LLC; American Construction Source – US LBM, Inc.; American Construction Source, LLC; California Building Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker’s Building Supply – US LBM, LLC.
- 1.18. “Defense Counsel” means Michele Haydel Gehrke and Lauren A. Ziegler at Reed Smith LLP.
- 1.19. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Nine Hundred Thousand Dollars (\$1,900,000) which is the total amount to be paid by Defendants as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendants, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendants.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled to civil penalties under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from October 26, 2021 to the earlier of preliminary approval or June 16, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff Vincent’s October 26, 2022 letters to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$71,250) and the 75% to LWDA (\$23,750) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiffs” means Lapreal Vincent and Charlene Kearney, the named plaintiffs in the Action.

- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means all claims, rights, demands, liabilities and causes of action that were alleged, or reasonably could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative Complaint which occurred during the Class Period while employed by one or more Defendant(s) in a non-exempt position in California. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims not implicated by the Class Action Complaint, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or Class claims based on facts occurring outside the Class Period.
- 1.39. “Released PAGA Claims” means all claims, rights, demands, liabilities and causes of action for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period while employed by one or more Defendant(s) in a non-exempt position in California. Released PAGA Claims include PAGA claims for civil penalties predicated upon failure to provide meal and/or rest periods, failure to pay meal and/or rest period premiums at the regular rate, failure to properly calculate the regular rate, failure to pay minimum wage, failure to pay overtime, failure to provide accurate wages statements, failure to pay all wages owed, failure to pay reporting time pay, failure to reimburse business expenses, failure to timely pay wages when due, failure to provide paid sick leave, and failure to provide proper seating. The Released PAGA Claims do not include other PAGA claims not implicated by the PAGA Complaint or PAGA Notice, underlying wage and hour claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, discrimination, worker’s compensation, and PAGA claims outside of the PAGA Period.
- 1.40. “Released Parties” means: Defendants and each of their former and present owners, investors, operating companies, affiliates, divisions, corporations in common control, predecessors, successors, assigns, parent companies subsidiaries and d/b/a’s, and each of its and their former and present directors, officers, employees, shareholders, partners, owners, attorneys, insurers, and any other successor, assigns, or legal representatives as of the date of Final Approval Hearing.
- 1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. “Response Deadline” means sixty (60) calendar days after the Administrator mails a Class Notice Packet to Class Members and Aggrieved Employees and shall be the last

date on which Class Members may: (a) submit a Request for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline..

1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.

1.44. “Workweek” means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day.

2. RECITALS

The Class Action

2.1. On January 23, 2023, Plaintiff Vincent commenced this Action by filing a Class Action Complaint against Defendants in the Superior Court of the State of California, County of Siskiyou (the “Class Action”). Plaintiff Vincent’s Class Action Complaint asserted claims that Defendants:

- (a) Violated California Business and Professions Code § 17200 et seq.;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1.
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
- (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and
- (i) Failed to pay sick pay wages in violation of California Labor Code §§ 201-204, 233, and 246.

2.2. On June 23, 2023, Defendants each filed an Answer to Plaintiff Vincent’s Class Action Complaint.

The PAGA Action

2.3. On February 3, 2023, Plaintiff Vincent filed a separate Representative Action Complaint against Defendants (the “PAGA Action”). Plaintiff Vincent’s Representative Action Complaint asserted one cause of action against Defendants for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

2.4. June 23, 2023, Defendants each filed an Answer to Plaintiff Vincent’s PAGA Action Complaint.

Stipulation To Consolidate And Further Pleading Amendment

2.5. On August 3, 2023, the Parties filed a Stipulation And [Proposed] Order To Stay Action Pending December 5, 2023 Mediation And To Consolidate Action With Plaintiff’s Pending PAGA Action If Mediation Is Unsuccessful, which the Court granted on August 15, 2023.

2.6. On February 1, 2023, Plaintiff Vincent filed a First Amended Class And Representative Action Complaint (“FAC”) that added the parties and claims from the PAGA Action into the Class Action, and subsequently dismissed the separate PAGA Action without prejudice.

2.7. As part of this Agreement, the Parties stipulated to Plaintiffs filing a Second Amended Class and Representative Action Complaint (“SAC”) in the Class Action that merely adds Charlene Kearney as an additional class representative:

2.8. The Second Amended Complaint will be the operative complaint in the Action (the “Operative Complaint”).

2.9. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged.

Mediation and Settlement

2.10. On December 5, 2023, the Parties participated in an all-day mediation presided over by David A. Rotman, Esq. The Action did not settle on December 5, 2023, but the Parties agreed to attend a second half-day mediation with Mr. Rotman on February 6, 2024. Following the second mediation, the Parties agreed to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding, dated March 26, 2024. This Agreement replaces and supersedes the

Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

- 2.11. Prior to mediation, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.12. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiffs or the Class have merit or that Defendants bear any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserve all available defenses to the claims in the Action.
- 2.13. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$1,900,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated as wages which shall be separately paid by Defendants to the Administrator. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.
- (a) To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$15,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs' requests for Class

Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$633,333, and a Class Counsel Litigation Expenses Payment of not more than \$40,000. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$14,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less, or the Court approves payment less than \$14,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$95,000 to be paid from the Gross Settlement Amount, with 75% (\$71,250) allocated to the LWDA PAGA Payment and 25% (\$23,750) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$23,750) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume

full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest, and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendants have represented that, as of March 12, 2024, the Class consists of 1,004 Class Members who collectively worked a total of 94,944 Workweeks, and 873 Aggrieved Employees who worked a total of 38,622 PAGA Pay Periods.
- 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any

extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator

shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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

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

6. RELEASE OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA, the claims against all Released Parties will be released and extinguished as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, beneficiaries, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and forever discharge Released Parties from all claims, transactions, omissions or occurrences, known or unknown, that occurred from the beginning of time through the end of the Class Period, including, but not limited to: (a) all claims, rights, demands, liabilities and causes of action that were or reasonably could have been alleged based on the facts, Labor Code and/or IWC Wage Order sections contained in the Operative Complaint; (b) all PAGA claims that were or reasonably could have been alleged based on facts, Labor Code and/or IWC Wage Order sections contained in the Operative Complaint and/or Plaintiffs' PAGA Notice; and (c) any and all claims that Plaintiffs could now bring or could have brought against any of the Released Parties under any local, state or federal law, ordinance or regulation ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or claims that cannot be released by law. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

(a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and assigns, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and assigns, the Released Parties from the Released PAGA Claims.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s procedures and instructions.

7.1. Defendants’ Responsibilities. Within 14 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. In this Declaration, Defendants shall also aver as to the updated Class Members and Workweeks count for the Class through the end of the Class Period.

7.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations

(Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise try to satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports to the state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - (d) The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
 - (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator

will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator should encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court at their own expense) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so no later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

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

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative

Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include providing the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel

and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

- 9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** Based on its records, Defendants provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, once the Class Period end date is confirmed, Defendants are providing a declaration as set forth in paragraph 7.1 above that verifies the updated Class Member and Workweek count through the end of the Class Period, which will be used for purposes of the settlement allocation. Should the number of Workweeks set forth in paragraph 4.1 above increase by more than 10% from March 12, 2024 through the end of the Class Period, Defendants shall have the option to increase the Gross Settlement Amount proportionally by 1% for every 1% increase in workweeks over the 10% threshold or cut off the end date of the Class Period so that the workweeks do not exceed 10% over the threshold of the estimate of 96,944.
- 10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Administration Expenses incurred as of the date Defendants make this election to withdraw. Defendants must notify Class Counsel and the Court of its election to withdraw no later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.
- 11. MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, no later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel no later than 10 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court

no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to try to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the scope of the releases applicable to Plaintiffs, the Class and Released Parties, Class Counsel Fees Payment, and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to try to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted as Defendants deny any and all liability; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the

Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity a portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during this Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendants.
- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendants:

Michele Haydel Gehrke
Lauren A. Ziegler
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659
Tel.: (415) 543-8700
Fax: (415) 391-8269
E-Mails: mgehrke@reedsmith.com
lziegler@reedsmith.com

13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement and pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for a period of not less than one (1) year starting from the date of the signing of the Memorandum of Understanding by all parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Apr 17, 2024

LaPreal Vincent
LaPreal Vincent (Apr 17, 2024 12:10 PDT)

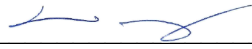
Plaintiff LaPreal Vincent

Dated: Apr 19, 2024

Charlene Kearney
Charlene Kearney (Apr 19, 2024 10:04 PDT)

Plaintiff Charlene Kearney

Dated: 4/19/2024



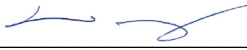
Manish Shanbhag [name]
For Defendant Western Buyers, LLC

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant US LBM Holdings, LLC

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant ACS – US LBM, LLC

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant American Construction Source – US LBM, Inc.;

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant American Construction Source, LLC

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant California Building Supply – US LBM, LLC

Dated: 4/19/2024



Manish Shanbhag [name]
For Defendant Desert Lumber – US LBM, LLC

Dated: 4/19/2024



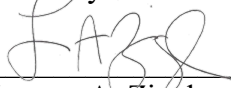
Manish Shanbhag [name]
For Defendant Parker's Building Supply – US LBM, LLC

Dated: 4/19/24



Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: 4/19/24



Lauren A. Ziegler
Reed Smith LLP
Attorney for Defendants

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

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

*Vincent vs. Western Buyers LLC, et al., Superior Court of the State of California,
County of Siskiyou, Case No. 23CV00757*

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from a consolidated employee class action lawsuit (“Action”) against Defendants Western Buyers LLC; US LBM Holdings, LLC; ACS – US LBM, LLC; American Construction Source - US LBM, Inc.; American Construction Source, LLC; California Building Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker's Building Supply – US LBM, LLC (“Defendants”) for alleged wage and hour violations. The Action is brought by Plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) and seeks payment of (1) wages and other relief for a Class of all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period (January 23, 2019 through _____, 2024) (“Class Members”), and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period (October 26, 2021 to _____, 2024) (“Aggrieved Employees”).

The proposed Settlement includes the following: (1) a Class Settlement requiring Defendants to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring the payment of PAGA Penalties to be allocated to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$ _____>> (less withholding) and your share of the PAGA Penalties (“Individual PAGA Payment”) is estimated to <<be \$ _____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked << _____>> Pay Periods during the Class Period and you worked << _____>> PAGA Pay Periods.** If you believe that you worked more pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal

rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

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

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims (if any) against Defendants as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is ____.	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are also an Aggrieved Employee and exclude

	yourself, you will still be paid your Individual PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a Request for Exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____, 2024 at _____ a.m., at the Siskiyou County Superior Court, located at 411 Fourth Street, Yreka, CA 96097, in Courtroom 2 before Judge _____. This hearing may change as explained below in Section 9. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice
You Can Challenge the Calculation of Your Pay Periods / PAGA Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and your Individual PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Pay Periods during the Class Period and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Siskiyou (the “Court”), has been reached between Plaintiffs and Defendants and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Notice because you have been identified as a member of the Class, which is defined as:

All individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period.

The Class Period is January 23, 2019 to [REDACTED].

2. What is this class action lawsuit about?

On January 23, 2023, plaintiff Vincent filed a complaint against Defendants in the Superior Court of the State of California, County of Siskiyou, Case No. 23CV00757 (“Action”). The Action asserted class claims for unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods and unpaid premiums, failure to provide required rest periods and unpaid premiums, failure to provide accurate itemized wage statements, failure to provide wages when due, and failure to pay sick wages.

On February 3, 2023, Plaintiff Vincent filed a separate Representative Action Complaint against Defendants (the “PAGA Action”). Plaintiff Vincent’s Representative Action Complaint asserted one cause of action against Defendants for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* (“PAGA”).

On February 1, 2023, Plaintiff Vincent filed a First Amended Class And Representative Action Complaint that added the parties and claims from the PAGA Action into the Action, and subsequently dismissed the separate PAGA Action without prejudice. As part of this Settlement, the Parties stipulated to Plaintiffs filing a Second Amended Class and Representative Action Complaint in the Action to add Charlene Kearney as an additional class representative. On [REDACTED], 2024, Plaintiffs filed a Second Amended Class and Representative Action Complaint, which is referred to as the “Operative Complaint”.

Defendants deny that they have done anything wrong and dispute all the claims in the Action. For example, Defendants contends that Plaintiffs and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiffs and the Class Members were provided with meal and rest periods in compliance with California law; that Defendants did not fail to pay to Plaintiffs or any Class Members any wages allegedly due during employment and at the time of their termination; that Defendants complied with California wage statement and record requirements; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; that Defendants are not liable for any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action. Defendants have agreed to settle the Action to avoid further litigation and uncertainty.

The Court granted preliminary approval of the Settlement on <<[REDACTED] APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendants, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Notice. The Settlement was reached after mediation and arm's-length negotiations between the Parties. The Plaintiffs and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, who expressly deny all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) (the "Gross Settlement Amount") to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments to Participating Class Members, the Administration Expenses Payment, the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants. Within fourteen (14) days of the Effective Date, Defendants will fund the Gross Settlement Amount by depositing the money with the Administrator. The "Effective Date" means the date the Judgment is entered unless there are objections, in which case the "Effective Date" means when the Judgment is no longer subject to appeal. Fourteen (14) days after the Settlement is funded, the Administrator will mail checks for the Individual Class Payments to Participating Class Members.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Administrator, estimated not to exceed \$14,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing Request for Exclusions, and distributing settlement checks and tax forms.
- **Attorneys' Fees and Costs.** Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$633,333, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$40,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.

- Class Representative Service Payments. Class Representative Service Payments in an amount not more than \$15,000 each to the two (2) named Plaintiffs as service awards, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook. The amounts stated are what Plaintiffs will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$95,000 relating to Plaintiff's claim under PAGA, 75% (\$71,250) of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining 25% (\$23,750) will be distributed to the Aggrieved Employees. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$23,750) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period. The PAGA Period is October 26, 2021 to _____, 2024.

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

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payments, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount," shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ _____. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day. The number of Workweeks worked will be based on Defendants' records, however, Class Members may challenge the number of Workweeks worked as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty Percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty Percent (80%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged claims for non-wages, expense reimbursement, interest and penalties due to employees

(collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants’ Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor (at their own expense) concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment are conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member where the funds may be claimed.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendants, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and assigns, release the Released Parties from the Released Class Claims. “Released Class Claims” are all claims, rights, demands, liabilities and causes of action that were alleged, or reasonably could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative Complaint which occurred during the Class Period while employed by one or more Defendant(s) in a non-exempt position in California. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims not implicated by the Operative Complaint, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or Class claims based on facts occurring outside the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants and any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Action will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendants, all Aggrieved Employees and the LWDA are deemed to release, on

behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and assigns, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are all claims, rights, demands, liabilities and causes of action for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period while employed by one or more Defendant(s) in a non-exempt position in California. Released PAGA Claims include PAGA claims for civil penalties predicated upon failure to provide meal and/or rest periods, failure to pay meal and/or rest period premiums at the regular rate, failure to properly calculate the regular rate, failure to pay minimum wage, failure to pay overtime, failure to provide accurate wages statements, failure to pay all wages owed, failure to pay reporting time pay, failure to reimburse business expenses, failure to timely pay wages when due, failure to provide paid sick leave, and failure to provide proper seating. The Released PAGA Claims do not include other PAGA claims not implicated by the Operative Complaint or PAGA Notice, underlying wage and hour claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, discrimination, worker’s compensation, and PAGA claims outside of the PAGA Period.

Released Parties. The Released Parties collectively mean: Defendants and each of their former and present owners, investors, operating companies, affiliates, divisions, corporations in common control, predecessors, successors, assigns, parent companies, subsidiaries and d/b/a’s, and each of its and their former and present directors, officers, employees, shareholders, partners, owners, attorneys, insurers, and any other successor, assigns, or legal representatives as of the date of Final Approval Hearing.

5. How much will my payment be?

Defendants’ records reflect that you worked << _____ >> Workweeks during the Class Period (January 23, 2019 through _____).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is << _____ >>.

[Defendants’ records reflect that you worked << _____ >> PAGA Pay Periods during the during the PAGA Period (October 26, 2021 to _____, 2024). Based on this information your estimated Individual PAGA Payment is << _____ >>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline which is _____ [sixty (60) days after the mailing of the Class Notice or 74 days in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than _____ [sixty (60) days after the date of the mailing of the Class Notice or 74 days after in the case of re-mailing]. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: _____ (800) _____.

The Court will hold a Final Approval Hearing on _____, 2024 at _____ a.m. to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiffs. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately four months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendants for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their Individual PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether they submit a request for exclusion. Your Individual PAGA Payment, if any, is set forth in Section 5 above.

To opt out of the class portion of the settlement, you must submit to the Administrator a written, signed and dated request for exclusion ("opt-out") postmarked no later than the Response Deadline which is _____ [sixty (60) days after the date of the Notice or 74 days after the Notice in the case of re-mailing]. You may also fax your request to opt out to _____ or email to _____ by no later than _____ [sixty (60) days after the date of the mailing of the Class Notice or 74 days after in the case of re-mailing]. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Vincent vs. Western Buyers LLC* lawsuit. The request to opt-out should state the Class Member's full name, address, and telephone number or email address. Please include the name and number of the case, which is *Vincent vs. Western Buyers LLC*, Case No. 23CV00757. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, 2024, Class Counsel and Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and a request

stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amounts Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Vincent vs. Western Buyers LLC*.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and for Fees, Litigation Expenses and Service Payments may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or 74 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email to _____ by no later than _____ [sixty (60) days after the date of the mailing of the Class Notice or 74 days after in the case of re-mailing]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Vincent vs. Western Buyers LLC*, Case No. 23CV00757, and include your name, current address, telephone number, email address, and approximate dates of employment for Defendants and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing in person or remotely through Zoom - <https://www.siskiyou.courts.ca.gov/remote-court-appearances>. If you need assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANTS:

Michele Haydel Gehrke
Lauren A. Ziegler
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ a.m. (Pacific Standard Time) on _____, 2024, in Courtroom 2 of the Superior Court of California, County of Siskiyou, located at 411 Fourth Street, Yreka, CA 96097, before Judge _____. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. Check the Court's website for the most current information concerning remote appearances and procedures at the Court - <https://www.siskiyou.courts.ca.gov/remote-court-appearances>.

It's possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Vincent vs. Western Buyers LLC*. In addition, hearing dates are posted on the Internet via the Case Information page for the California Superior Court for the County of Siskiyou (<https://www.siskiyou.courts.ca.gov/>) and entering the Case No. 23CV00757.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Vincent vs. Western Buyers LLC* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Vincent vs. Western Buyers LLC*. You may also get more details by examining the Court's file on the Internet via the Case Information page for the California Superior Court for the County of Siskiyou (<https://www.siskiyou.courts.ca.gov/>) and entering the Case No. 23CV00757. If you wish to view the Court files in person, you must go to the Clerk's Office at the Superior Court located at 411 Fourth Street, Yreka, CA 96097.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

- **What if You Fail To Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Administrator shall pay all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SISKIYOU

LAPREAL VINCENT, CHARLENE
KEARNEY, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

WESTERN BUYERS LLC, a Limited
Liability Company; US LBM HOLDINGS,
LLC, a Limited Liability Company; ACS-US
LBM, LLC, a Limited Liability Company;
AMERICAN CONSTRUCTION SOURCE-
US LBM, INC., a Corporation; AMERICAN
CONSTRUCTION SOURCE LLC, a Limited
Liability Company; CALIFORNIA
BUILDING SUPPLY- US LBM, LLC, a
Limited Liability Company; DESERT
LUMBER- US LBM, LLC, a Limited Liability
Company; PARKER's BUILDING SUPPLY -
US LBM, LLC, a Limited Liability Company
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 23CV00757

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge:
Courtroom:

Action Filed: January 23, 2023
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable _____ of the Superior Court of
2 the State of California, in and for the County Siskiyou, on _____[DATE], for the motion by
3 Plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) for preliminary approval of the
4 class settlement with Defendants Western Buyers, LLC; US LBM Holdings, LLC; ACS – US
5 LBM, LLC; American Construction Source - US LBM, Inc.; American Construction Source,
6 LLC; California Building Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker's
7 Building Supply – US LBM, LLC (“Defendants”). The Court, having considered the briefs,
8 argument of counsel and all matters presented to the Court and good cause appearing, hereby
9 GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.
10

11 **IT IS HEREBY ORDERED:**

12 1. The Court preliminarily approves the Class Action and PAGA Settlement
13 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
14 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based
15 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
16 possible final approval, pursuant to the provisions of section 382 of the California Code of Civil
17 Procedure and California Rules of Court, rule 3.769.

18 2. This Order incorporates by reference the definitions in the Agreement, and all
19 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

20 3. The Gross Settlement Amount is One Million Nine Hundred Thousand Dollars
21 (\$1,900,000). It appears to the Court on a preliminary basis that the settlement amount and terms
22 are fair, adequate and reasonable as to all potential Class Members when balanced against the
23 probable outcome of further litigation and the significant risks relating to certification, liability and
24 damages issues. It further appears that investigation and research have been conducted such that
25 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
26 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
27 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
28 It further appears that the Agreement has been reached as the result of serious and non-collusive,

PRELIMINARY APPROVAL ORDER

1 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
2 adequate, and reasonable when balanced against the probable outcome of further litigation and the
3 significant risks relating to certification, liability, and damages issues.

4 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$40,000, and
6 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
7 \$15,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
8 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
9 evidence supporting these requests prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the following Class: "all individuals who were
14 employed by Defendants in California and classified as a non-exempt employee at any time during
15 the Class Period." The Class Period is from January 23, 2019 to [REDACTED].

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class;
22 (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a
23 class action is superior to other available methods for the efficient resolution of this controversy;
24 and (f) Plaintiffs' counsel is qualified to act as Class Counsel and the Plaintiffs are adequate
25 representatives of the Class.

26 7. The Court provisionally appoints Plaintiffs Lapreal Vincent and Charlene Kearney
27 as the representatives of the Class. The Court provisionally appoints Norman B. Blumenthal, Kyle
28

1 R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and
2 Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the
3 Class.

4 8. The Court hereby approves, as to form and content, the Court Approved Notice of
5 Proposed Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”),
6 as revised and submitted as Exhibit A to the Agreement. The Court finds that the Class Notice
7 appears to fully and accurately inform the Class of all material elements of the proposed
8 Settlement, of the Class Members’ right to be excluded from the Class by submitting a written opt-
9 out request, and of each Class Member’s right and opportunity to object to the Settlement. The
10 Court further finds that the distribution of the Class Notice substantially in the manner and form
11 set forth in the Agreement and this Order meets the requirements of due process, is the best notice
12 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
13 entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to
14 the terms set forth in the Agreement. If a Class Notice Packet is returned because of an incorrect
15 address, the Administrator will promptly search for a more current address for the Class Member
16 and re-mail the Class Notice Packet to the Class Member no later than seven (7) business days
17 after the receipt of the undelivered Class Notice.

18 9. The Court hereby appoints ILYM Group, Inc. as Administrator. No later than
19 twenty-one (21) calendar days after issuance of this Order, Defendants shall provide the
20 Administrator with the Class Data in an electronic spreadsheet. This information will otherwise
21 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
22 authorities, to carry out the procedures in the Agreement, or pursuant to Defendants’ express
23 written authorization or by order of the Court. The Administrator will perform address updates
24 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
25 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
26 Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

1 10. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
3 from the Class as provided in the Class Notice by following the instructions set forth in the Class
4 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
5 than the Response Deadline, which is sixty (60) calendar days after the Administrator initially
6 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
7 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
8 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
9 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
10 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
11 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
12 Members who have not requested exclusion shall be bound by all determinations of the Court, the
13 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
14 the request for exclusion, and any attempt to effectuate an opt-out on behalf of any other
15 individual or individuals (including a group, class, or subclass of individuals) is not permitted and
16 will be deemed invalid.

17 11. Any Class Member who has not opted-out may appear at the Final Approval
18 Hearing and may object or express the Member's views regarding the Settlement and may present
19 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
20 and determined by the Court as provided in the Class Notice. Class Members will have until the
21 Response Deadline set forth in the Class Notice to submit their written objections to the
22 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
23 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
24 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
25 objection.

26 12. A Final Approval Hearing shall be held before this Court on _____
27 _____ at _____ in Courtroom 2 of the Siskiyou County Superior Court to
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PRELIMINARY APPROVAL ORDER

1 determine all necessary matters concerning the Settlement, including: whether the proposed
2 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
3 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
4 Order and Judgment should be entered herein; whether the plan of allocation contained in the
5 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
6 finally approve attorneys' fees and costs, the service awards, and the expenses of the
7 Administrator. The motion for final approval and for attorneys' fees, costs and service awards
8 shall be filed with the Court and served on all counsel no later than sixteen (16) court days before
9 the hearing and shall be heard at the Final Approval Hearing.

10 13. Neither the Settlement nor any exhibit, document, or instrument delivered
11 thereunder shall be construed as a concession or admission by Defendants in any way that the
12 claims asserted have any merit or that this Action was properly brought as a class or representative
13 action, and shall not be used as evidence of, or used against Defendants as, an admission or
14 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
15 omission by Defendants or with respect to the truth of any allegation asserted by any person.
16 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
17 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
18 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
19 received as or deemed to be evidence for any purpose adverse to the Defendants, including, but
20 not limited to, evidence of a presumption, concession, indication or admission by Defendants of
21 any liability, fault, wrongdoing, omission, concession or damage.

22 14. In the event the Settlement does not become effective in accordance with the terms
23 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
24 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
25 and the Parties shall revert to their respective positions as of before entering into the Agreement,
26 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
27 including all available defenses and affirmative defenses, and arguments that any claim in the
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1 Action could not be certified as a class action and/or managed as a representative action. In such
2 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
3 referred to in litigation for any purpose.

4 15. The Court reserves the right to adjourn or continue the date of the Final Approval
5 Hearing and all dates provided for in the Agreement without further notice to Class Members and
6 retains jurisdiction to consider all further applications arising out of or connected with the
7 proposed Settlement.

8 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
9 further orders of the Court at the Final Approval Hearing.

10 **IT IS SO ORDERED.**

11
12 Dated: _____

HON.
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SISKIYOU

LAPREAL VINCENT, CHARLENE
KEARNEY, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

WESTERN BUYERS LLC, a Limited
Liability Company; US LBM HOLDINGS,
LLC, a Limited Liability Company; ACS-US
LBM, LLC, a Limited Liability Company;
AMERICAN CONSTRUCTION SOURCE-
US LBM, INC., a Corporation; AMERICAN
CONSTRUCTION SOURCE LLC, a Limited
Liability Company; CALIFORNIA
BUILDING SUPPLY- US LBM, LLC, a
Limited Liability Company; DESERT
LUMBER- US LBM, LLC, a Limited Liability
Company; PARKER's BUILDING SUPPLY -
US LBM, LLC, a Limited Liability Company
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 23CV00757

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date:
Hearing Time:

Judge: Hon.
Courtroom:

Action Filed: January 23, 2023
Trial Date: None Set

FINAL APPROVAL ORDER AND JUDGMENT

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1 The motion of Plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) for an order
2 finally approving the Class Action and PAGA Settlement Agreement (“Agreement”) with
3 Defendants Western Buyers, LLC; US LBM Holdings, LLC; ACS – US LBM, LLC; American
4 Construction Source - US LBM, Inc.; American Construction Source, LLC; California Building
5 Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker's Building Supply – US LBM,
6 LLC (“Defendants”), attorneys’ fees and costs, service payments, and the expenses of the
7 Administrator duly came on for hearing on _____ before the Honorable
8 _____.

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

- 13 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 14 2. This Court has jurisdiction over the subject matter of this litigation pending before
15 the California Superior Court for the County of Siskiyou, and over all Parties to this litigation,
16 including the Class.
- 17 3. Based on a review of the papers submitted by Plaintiffs and a review of the
18 applicable law, the Court finds that the Gross Settlement Amount of One Million Nine Hundred
19 Thousand Dollars (\$1,900,000) and the terms set forth in the Agreement are fair, reasonable, and
20 adequate.
- 21 4. The Court further finds that the Settlement was the result of arm’s length
22 negotiations conducted after Class Counsel had adequately investigated the claims and became
23 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
24 Settlement, the significant risks relating to certification, liability, and damages issues, and the
25 assistance of an experienced mediator in the settlement process, among other factors, support the
26 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

27 **Preliminary Approval of the Settlement**

1 5. On _____, the Court granted preliminary approval of the Settlement. At
2 this same time, the Court approved conditional certification of the Class for settlement purposes
3 only.

4 **Notice to the Class**

5 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
6 by first class mail to members of the Class at their last known addresses on or about
7 _____. Mailing of the Class Notice to their last known addresses was the best notice
8 option under the circumstances and was reasonably calculated to communicate actual notice of the
9 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
10 fully and accurately informed the Class Members of all material elements of the proposed
11 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
12 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
13 laws of the State of California, the United States Constitution, due process and other applicable
14 law. The Class Notice fairly and adequately described the Settlement and provided Class
15 Members adequate instructions and a variety of means to obtain additional information.

16 7. The Response Deadline for opting out of the Class or submitting written objections
17 to the Settlement was _____, which was extended by 14 days for re-mailed Class
18 Notices. There was an adequate interval between mailing of the Class Notice and the response
19 deadline to permit Class Members to choose what to do and act on their decision. A full
20 opportunity has been afforded to the Participating Class Members to participate in this hearing,
21 and all Participating Class Members and other persons wishing to be heard have been heard. Class
22 Members also have had a full and fair opportunity to exclude themselves from the proposed
23 Settlement and Class. Accordingly, the Court determines that all Class Members who did not
24 timely and properly submit a request for exclusion are bound by the Settlement and this Final
25 Approval Order and Judgment.

26 **Fairness Of Settlement**

27 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
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1 48 Cal.App.4th 1794, 1801 (1996).

2 a. The settlement was reached through arm's-length bargaining between the
3 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
4 wage and hour representative and class actions. There has been no collusion between the Parties
5 in reaching the proposed settlement.

6 b. Plaintiffs' investigation and discovery have been sufficient to allow the
7 Court and counsel to act intelligently.

8 c. Counsel for both parties are experienced in similar employment class action
9 litigation. All counsel recommended approval of the Agreement.

10 d. The percentage of objectors and requests for exclusion is small. ____
11 objections were received. _____ requests for exclusion were received.

12 e. The participation rate was high. _____ Class Members will be mailed a
13 settlement payment, representing _____% of the overall Class.

14 9. The consideration to be given to the Class Members under the terms of the
15 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
16 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
17 Members' claims, given the uncertainties and significant risks of the litigation and the delays
18 which would ensue from continued prosecution of the Action.

19 10. The Agreement is approved as fair, adequate and reasonable and in the best
20 interests of the Class Members.

21 **Attorneys' Fees and Costs**

22 11. An award of \$_____ for attorneys' fees, representing one-third (1/3) of
23 the Gross Settlement Amount, and \$_____ for litigation costs and expenses, is
24 reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class
25 Counsel, and the results achieved by Class Counsel. The requested awards have been supported
26 by Class Counsel's lodestar and billing statement.

27 **Class Representative Service Payments**

1 12. The Agreement provides for a Class Representative Service Payment of not more
2 than \$15,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
3 Representative Service Payment in the amount of \$_____ each to the Plaintiffs is reasonable in
4 light of the risks and burdens undertaken by the Plaintiffs in the litigation, for their time and effort
5 in bringing and prosecuting this matter on behalf of the Class, and for their execution of a general
6 release.

7 **Administration Expenses Payment**

8 13. The Administrator shall calculate and administer the payment to be made to the
9 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
10 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
11 Penalties, generate and issue any required tax reporting forms, calculate withholdings and perform
12 the other remaining duties set forth in the Agreement. The Administrator has documented
13 \$_____ in fees and expenses, and this amount is reasonable in light of the work performed by
14 the Administrator.

15 **PAGA Penalties**

16 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
17 Amount of \$95,000, which shall be allocated \$71,250 to the LWDA as the LWDA's 75% share of
18 the settlement of civil penalties paid pursuant to the PAGA and \$23,750 to be distributed to the
19 Aggrieved Employees based on their respective pay periods worked during the PAGA Period,
20 which is October 26, 2021 to _____, 2024. The Aggrieved Employees are all individuals
21 who were employed by Defendants in California and classified as a non-exempt employee at any
22 time during the PAGA Period. The Court finds the PAGA Penalties to be reasonable. All
23 Aggrieved Employees will be sent their share of the PAGA Penalties and will be subject to the
24 release of the Released PAGA Claims as set forth below, whether or not they opt out of the Class.

25 **II.**

26 **ORDERS**

27 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
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1 15. The certification of the Class for the purposes of settlement (only) is confirmed.
2 The Class is defined as follows:

3 All individuals who were employed by Defendants in California and classified as a
4 non-exempt employee at any time during the Class Period.

5 The Class Period is January 23, 2019 to [REDACTED].

6 16. All persons who meet the foregoing definition are members of the Class or Class
7 Members, except for those individuals who submitted a valid request for exclusion (“opt out”)
8 from the Class. [INSERT REFERENCE TO IDENTIFY ANY OPT OUTS].

9 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class. Defendants shall fully fund the Gross Settlement Amount and also fund
11 the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to
12 the Administrator no later than fourteen (14) days after the Effective Date.

13 18. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
14 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
15 compensation or reimbursement from Defendants, Plaintiffs or members of the Class.

16 19. The payment of the Class Representative Service Payments in the amount of \$
17 _____ each to the Plaintiffs is approved.

18 20. The payment of \$_____ to the Administrator for their fees and expenses
19 is approved.

20 21. The PAGA Penalties of \$95,000 is approved and shall be allocated in accordance
21 with the Agreement.

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

9 23. Notice of entry of this Final Approval Order and Judgment shall be given to all
10 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
11 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
12 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
13 to individual Class Members. Plaintiffs shall serve this Final Approval Order and Judgment on
14 the LWDA.

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

22
23 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

24 25. Except as set forth in the Agreement and this Final Approval Order and Judgment,
25 Plaintiffs, and all members of the Class, shall take nothing in the Action.

26 26. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
27 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
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1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 27. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 28. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 29. As of the Effective Date and upon full funding of the Gross Settlement Amount by
9 Defendants, all Participating Class Members, on behalf of themselves and their respective former
10 and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and
11 assigns, release the Released Parties from the Released Class Claims. "Released Class Claims"
12 are all claims, rights, demands, liabilities and causes of action that were alleged, or reasonably
13 could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated
14 in the Operative Complaint which occurred during the Class Period while employed by one or
15 more Defendant(s) in a non-exempt position in California. Except as expressly set forth in this
16 Agreement, Participating Class Members do not release any other claims not implicated by the
17 Operative Complaint, including claims for vested benefits, wrongful termination, violation of the
18 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
19 compensation, or Class claims based on facts occurring outside the Class Period.

20 30. As of the Effective Date and upon full funding of the Gross Settlement Amount by
21 Defendants, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
22 themselves and their respective former and present representatives, agents, attorneys, heirs,
23 administrators, successors, beneficiaries and assigns, release the Released Parties from the
24 Released PAGA Claims. The "Released PAGA Claims" are all claims, rights, demands, liabilities
25 and causes of action for PAGA penalties that were alleged, or reasonably could have been alleged,
26 based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative
27 Complaint and the PAGA Notice, which occurred during the PAGA Period while employed by
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1 one or more Defendant(s) in a non-exempt position in California Released PAGA Claims include
2 PAGA claims for civil penalties predicated upon failure to provide meal and/or rest periods,
3 failure to pay meal and/or rest period premiums at the regular rate, failure to properly calculate the
4 regular rate, failure to pay minimum wage, failure to pay overtime, failure to provide accurate
5 wages statements, failure to pay all wages owed, failure to pay reporting time pay, failure to
6 reimburse business expenses, failure to timely pay wages when due, failure to provide paid sick
7 leave, and failure to provide proper seating. The Released PAGA Claims do not include other
8 PAGA claims not implicated by the Operative Complaint or PAGA Notice, underlying wage and
9 hour claims, claims for vested benefits, wrongful termination, violation of the Fair Employment
10 and Housing Act, unemployment insurance, disability, social security, discrimination, worker's
11 compensation, and PAGA claims outside of the PAGA Period.

12 31. The Released Parties collectively mean: Defendants and each of their former and
13 present owners, investors, operating companies, affiliates, divisions, corporations in common
14 control, predecessors, successors, assigns, parent companies, subsidiaries and d/b/a's, and each of
15 its and their former and present directors, officers, employees, shareholders, partners, owners,
16 attorneys, insurers, and any other successor, assigns, or legal representatives as of the date of Final
17 Approval Hearing.

18 32. As of the Effective Date, Plaintiffs generally release and discharge Defendants and
19 the Released Parties as set forth fully in the Agreement.

20 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

21
22 Dated: _____

23 _____
24 HON.
25 JUDGE, SUPERIOR COURT OF CALIFORNIA
26
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