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13 individually and on behalf of all others similarly
14 situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

17 ALBERT LIZARRAGA, individually, and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 DIGBY SOUTHWEST, INC. an Arizona
22 Corporation; and DOES 1 through 100,
23 inclusive

24 Defendants.

Case No. 19STCV27901

*[Assigned for all purposes to the Honorable
Stuart M. Rice, Dept. 1]*

Complex Class Action

**DECLARATION OF GREG TAYLOR IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE
ACTION SETTLEMENT**

Date: April 20, 2023

Time: 10:30 AM

Dept: 1

Complaint filed: August 9, 2019

Trial date: None set

DECLARATION OF GREG TAYLOR

I, Greg Taylor, declare:

1. I am an attorney licensed to practice before all courts of the State of California and an associate with The Kick Law Firm, APC, counsel of record for Albert Lizarraga in the above-entitled class and representative action case, *Lizarraga v. Digby Southwest, Inc.*, Case No. 19STCV27901. The following is based on my personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. The Kick Law Firm, APC primarily represents plaintiffs in class actions. The class action cases in which this firm has been appointed either as lead counsel, or as co-lead counsel, include the following: *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (class and representative PAGA action, final approval granted November 21, 2022); *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No. 21SMCV00156, assigned to Hon. Helen Zukin, SSC-207 (class and representative PAGA action, final approval granted November 2, 2022); *In Re Southern California Gas Leak Cases*, Judicial Council Coordinated Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1 (co-lead counsel and member of the class action steering committee, final approval granted April 29, 2022); *Samano v. De Leon Transport, Inc.*, Los Angeles County Superior Court, Case No. 19STCV44589, assigned for all purposes to Hon. Elihu M. Berle (class and representative PAGA action; final approval granted January 22, 2022); *Johnson, et al., v. Angel View*, San Bernardino County Superior Court, Case No. CIVDS1935378 (class and representative PAGA action; final approval granted November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County Superior Court, Case No. JCPDS5130 (class and representative PAGA action; final approval granted November 2, 2021); *Metzke v. Thermo Fisher Scientific, Inc.*, San Francisco County Superior Court, Case No. CGC-19-581914 (class and representative PAGA action; final approval granted October 28, 2021); *Story v. SEFCU*, United States District Court for the Northern District of New York, Case No. 1:18-cv-00764 (an overdraft fee class action, final approval granted on February 25, 2021); *Daves, et al. v. Amadeus Waterawys, Inc.*, Los Angeles County Superior Court, Case No. 19STCV25203, assigned for all purposes to Hon. Ann I. Jones (wage & hour class action; final approval granted January 8, 2021); *Smith v. Bank of Hawaii*, United States

1 District Court for the District of Hawaii, Case No. 1:16-cv-00513 (an overdraft fee class action, final
2 approval granted on December 22, 2020); *Coleman-Weathersbee v. Michigan State University Federal*
3 *Credit Union*, United States District Court for the Eastern District of Michigan, Case No. 2:19-cv-11674
4 (an overdraft fee class action, final approval granted on July 29, 2020); *Walker v. People's United Bank*,
5 United States District Court for the District of Connecticut, Case No. 3:17-cv-00304 (an overdraft fee
6 class action, final approval granted on June 29, 2020); *Salls v. Digital Federal Credit Union*, United States
7 District Court for the District of Massachusetts, Case. No. 18-cv-11262-TSH (an overdraft fee class action,
8 final approval granted in January 2020); *Pingston-Poling v. Advia Credit Union*, United States District
9 Court for the Western District of Michigan, Case No. 1:15-CV-1208 (an overdraft fee class action, final
10 approval granted in January 2020); *Lloyd v. Navy Federal Credit Union*, United States District Court for
11 the Southern District of California, Case No. 3:17-cv-01280 (an overdraft fee class action, final approval
12 granted May 18, 2019); *Ketner v. SECU Maryland*, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (an
13 overdraft fee class action, final approval granted January 11, 2018); *Towner v. 1st MidAmerica Credit*
14 *Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in
15 November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an
16 overdraft fee class action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United
17 States District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class
18 action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the
19 Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final approval
20 granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-
21 00008551 (an overdraft fee class action, final approval granted); *Gunter v. United Federal Credit Union*,
22 United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (an
23 overdraft fee class action, final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego
24 County Superior Court, Case No. 37-2013-00053519 (an overdraft fee class action, final approval
25 granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No.
26 BC625500 (an overdraft fee class action, final approval granted in); *Morales v. Kern Schools Federal*
27 *Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (an overdraft fee class action, final
28 approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior

1 Court, Case No. 34-2013-00142667 (an overdraft fee class action, final approval granted); *Casey v.*
2 *Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an
3 overdraft fee class action, final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County
4 Superior Court No. BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura*
5 *Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action,
6 final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court,
7 Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma Federal*
8 *Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-
9 W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest Credit Union*,
10 Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee class action, final
11 approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140
12 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey,
13 Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell & Associates*, Los Angeles County
14 Superior Court Case No. BC365631 (final approval granted); *Alston v. Pacific Bell*, Los Angeles County
15 Superior Court Case No. BC297863 (final approval granted); *Oshaben v. Monster Worldwide, Inc.*, et al.,
16 San Francisco County Superior Court Case No. CGC-06-454538 (final approval granted); *Cole v. T-*
17 *Mobile USA, et al.*, Central District of California Case No. 06-6649 (final approval granted).

18 3. The attorneys at The Kick Law Firm, APC who have worked on this matter include its
19 shareholder, Taras Kick, and several experienced associates. I am informed and believe that Mr. Kick has
20 been a member of the California State Bar since 1989, the year he graduated from the University of
21 Pennsylvania Law School. Prior to that, in 1986, he graduated from Swarthmore College, from which he
22 earned a Bachelor of Arts degree in Economics and Psychology. Mr. Kick served as class counsel in
23 numerous national and California state class actions, including being appointed lead counsel and a member
24 of plaintiffs' executive committees. From 2012 to September 2017, he was a Commissioner of the
25 California Law Revision Commission, an independent state agency created by statute in 1953 to assist the
26 Legislature and Governor by examining California law and recommending needed reforms, having been
27 appointed by Governor Edmund G. Brown Jr. in 2012, and was Chairperson of the Commission from
28 September 2015 through September 2016 (although my role in this case is independent of any aspect of

1 my duties with the Commission and does not reflect one way or the other any positions of the
2 Commission). For over five years Mr. Kick was a member of the national Board of Directors of Public
3 Justice, including its Class Action Preservation Committee. Mr. Kick is or has been a member of numerous
4 other committees pertaining to consumer class actions, including the American Association for Justice
5 Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the
6 American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of
7 California Antitrust and Unfair Competition Litigation section.

8 4. Regarding the other attorneys at The Kick Law Firm, APC (“TKLF”) who worked on this
9 matter, all are also experienced in wage and hour class actions. I am a 2016 graduate of UCLA School of
10 Law, where I was a Dean’s merit scholarship recipient and a member of the *UCLA Entertainment Law*
11 *Review*. I represented plaintiffs in employment actions for approximately five years before joining TKLF
12 in 2022. Further, I was recently selected to the Super Lawyers 2023 Rising Stars List, which states it is
13 limited to 2.5% of attorneys in California. Other attorneys at this law firm who worked on the case include
14 Daniel Bass and Jeffrey C. Bils. Mr. Bass was admitted to the California Bar in 2012 after graduating
15 from Washington University Law School and having served on its *Law Review*, and devoted the majority
16 of his career to assisting plaintiffs in employment and class action cases. Mr. Bils was admitted to the
17 California Bar in 2014 after graduating from UCLA Law School and having served on its *Law Review*
18 there, and after his admission began practicing immediately in California employment class actions and
19 representative PAGA actions and has served as both plaintiffs’ and defense counsel in numerous class
20 actions.

21 5. This is a wage-and-hour class and PAGA action. Plaintiff Albert Lizarraga (“Plaintiff”)
22 brings twelve (12) causes of action on behalf of himself and a class of approximately 1,637 similarly
23 situated commercial truck drivers based in Arizona, who also drive in California. Plaintiff worked for
24 Arizona corporation Digby Southwest, Inc. (“DSW” or “Defendant”) as a commercial truck driver in
25 California during the Class Period.

26 6. The Settlement “Class” is defined as: all current and former drivers, including but not
27 limited to those misclassified as independent contractors or owner-operators, who performed work for
28

1 Defendant in the State of California at any time during the period from August 9, 2015, to November 1,
2 2022 (“Class Period”). Defendant has represented the Settlement Class can be identified from its records.

3 7. On August 9, 2019, Plaintiff filed the initial complaint on behalf of himself and others
4 similarly situated to recover damages and penalties for the Labor Code violations alleged against
5 Defendant (the “Action”). Plaintiff alleges that he and his fellow Class Members and aggrieved employees
6 were deprived of certain rights afforded to them by the Labor Code during their employment with
7 Defendant when they drove into California. For instance, Plaintiff alleges that throughout the Class Period,
8 DSW maintained a policy and practice of failing to reimburse its drivers for necessary business expenses
9 such as truck maintenance and failing to pay its drivers minimum wage for all time worked in California.
10 Plaintiff alleges that Defendant misclassified many of its drivers as independent contractors or non-
11 employees to avoid complying with California labor laws. Plaintiff alleged further that Defendant’s
12 violations constituted breach of contract and the implied covenant of good faith and fair dealing as well
13 as unfair and unlawful business practices under the Unfair Competition Law (“UCL”), Bus. & Prof. Code
14 § 17200, *et seq.* On November 8, 2019, Defendant filed its Answer, denying the allegations.

15 8. On October 4, 2022, pursuant to Labor Code § 2699.3, Plaintiff submitted notice to the
16 Labor and Workforce Development Agency (“LWDA”) and to Defendant, LWDA Case No. LWDA-CM-
17 911842-22, of his intention to litigate various alleged Labor Code violations. A true and correct copy of
18 the PAGA Notice Letter served on the LWDA in connection with this action is attached hereto as
19 **Exhibit 3.**

20 9. Both before and after initiating the Action on behalf of the putative class, Plaintiff and
21 Class Counsel diligently investigated the claims alleged and conducted legal research regarding
22 Defendant’s potential liability and defenses. Based on consistent good faith meet and confer efforts, the
23 parties agreed to proceed to private mediation with a highly regarded, experienced wage-and-hour
24 mediator, David Phillips, Esq. Prior to mediation, the Parties also engaged in informal discovery
25 pertaining to policies and payroll records.

26 10. On August 27, 2020, the Parties participated in a private mediation with mediator David
27 Phillips. At that time, arm’s-length negotiations between the Parties did not result in a settlement.
28 Thereafter, Plaintiff resumed formal discovery efforts. Class Counsel prepared and propounded

1 interrogatories, production demands, and requests for admissions on Defendant. Ultimately, Defendant
2 produced thousands of additional documents, including driver logs, pay statements, employment policies
3 and compensation policies, and contractor agreements containing an arbitration provision. After the
4 parties agreed to engage in a second mediation, Defendant also produced substantial informal discovery,
5 including a sampling of driver trip records.

6 11. Defendant produced, at Plaintiff's request, its financial records showing it lost \$108,000 in
7 2018, lost \$343,500 in 2019, and made a slight profit of \$285,000 in 2020. Defendant also attested to these
8 losses in the concurrently filed Declaration of Defendant's Chief Financial Officer Bob McGill. Further,
9 Class Counsel observed that according to Defendant's 2020 income statement, Defendant's total assets
10 were valued at \$2,207,499. Thus, the gross settlement amount of \$300,000 exceeds Defendant's net
11 income and amounts to more than 13.5% total assets in 2020. Class Counsel considered the impact of
12 Defendant's financial condition at the time of mediation.

13 12. On July 6, 2022, the Parties participated in a second mediation with mediator David
14 Phillips, Esq., which resulted in the Parties' acceptance of a mediator's proposal. This second mediation
15 took place only after substantial additional formal and informal discovery had been conducted. Moreover,
16 negotiations at all times were arm's-length and adverse. Based on the parties' substantial investigation
17 and discovery as well as an understanding of Defendant's financial condition, Class Counsel was able to
18 act intelligently and effectively in negotiating and evaluating the mediator's recommendation. Thereafter,
19 counsel for the Parties negotiated the terms of the long form Settlement, of which Plaintiff now seeks
20 preliminary approval.

21 13. The proposed settlement is embodied in the parties' Class Action and PAGA Settlement
22 Agreement (the "Settlement" or "SA"), attached hereto as **Exhibit 1**. The proposed Notice of Class Action
23 Settlement ("Class Notice") is attached as Exhibit A to the Settlement.

24 14. The investigation and discovery conducted in this matter have been adequate to give
25 Plaintiff and Class counsel a sound understanding of the merits of their position, Defendant's defenses,
26 and to evaluate the reasonable value range of the claims of the Class. The discovery conducted and
27 information exchanged allowed Class counsel to reliably assess the merits of each side's position and
28 compromise the issues on a fair and equitable basis. Based on their own independent investigation,

1 discovery, and evaluation, and considering Defendant's limited financial resources, Class Counsel has
2 determined that the settlement terms and conditions are in the best interests of Plaintiff and the members
3 of the Class.

4 15. The risks of achieving and maintaining class action status include, among others, facing
5 challenges to class certification and liability, the outcome of which is uncertain. Moreover, even though
6 Class Counsel believe evidence exists showing Defendant's limited liability on some claims, the costs of
7 continued discovery, law and motion, and trial preparation would be substantial for all parties.

8 16. Were litigation to proceed, there is a strong likelihood it would be protracted and
9 contentious, as Defendant disputes all aspects of Plaintiff's claims. Plaintiff would have to prepare and
10 file a motion for class certification, which outcome is uncertain based on Defendant's anticipated
11 contentions, *inter alia*, that individual questions of fact predominate, that all drivers whom Defendant
12 classified as independent contractors had signed arbitration agreements containing class action waivers,
13 and that Plaintiff cannot show the "willfulness" requirement for Section 203 penalties. If the motion were
14 granted, Defendant would likely move for decertification, appeal certification, or move for Summary
15 Judgment. Plaintiff believes he would prevail on the question of certification, but the risks to absent Class
16 Members are significant.

17 17. To succeed on the merits, Plaintiff would have to prove Defendant actually engaged in the
18 practices and policies alleged and that those practices and policies violated the law in the limited time that
19 DSW's drivers drove in California. As discussed above, after Plaintiff filed his complaint, Defendant
20 argued that many of Plaintiff's strongest claims – meal and rest break and minimum-wage claims – either
21 went away altogether (meal and rest break claims) or were severely limited (minimum-wage and wage-
22 statement claims). For some claims, Plaintiff may be unable to overcome Defendant's contentions
23 regarding preemption and changes in law. *See Oman, supra*, 9 Cal.5th 762 (2020); *Ward v. United*
24 *Airlines*, 9 Cal.5th 732 (2020). While Class Counsel believe evidence exists showing Defendant's liability
25 on some claims, there remains a risk that the trier of fact might find otherwise. If the case were to proceed
26 to trial, additional discovery would be needed and the Parties would thus incur significant additional
27 expenses, which money could go instead to fund a settlement for the benefit of the Class as a whole.
28 Moreover, discovery disputes would have certainly arisen, which would have cost the Parties additional

1 time and money. Further, regardless of which Party prevailed, appellate practice would no doubt ensue,
2 further delaying any possible recovery by Class Members. In other words, both Parties would likely incur
3 substantial attorneys' fees and costs from continued litigation, likely approaching hundreds of thousands
4 of dollars. Plaintiff also faced a considerable risk of inability to collect due to Defendant's financial
5 condition.

6 18. There were numerous risks to continuing to litigate, including potentially viable defenses
7 that Defendant asserted or could have asserted as outlined below:

8 a. **Risk of Non-Collection.** Plaintiff faced the risk of inability to collect on a trial
9 judgment due to Defendant's limited financial resources. Prior to mediation, Defendant
10 disclosed it suffered from significant financial difficulties in the years prior to reaching
11 the proposed settlement, including a loss of \$108,000 in 2018, a loss of \$343,500 in
12 2019 and a profit of just \$285,000 in 2020, which is less than the gross settlement
13 amount. Defendant also produced documents corroborating its financial condition. In
14 negotiations and evaluating the mediator's proposal, Class Counsel considered the
15 impact of Defendant's financial condition and the realistic risk of non-collection on a
16 judgment.

17 b. **Federal Preemption.** Defendant argues that an interstate carrier, Defendant and its
18 drivers are subject to DOT regulations and therefore Plaintiff's meal and rest break
19 claims are entirely preempted. Defendant points to the FMCSA's 2018 preemption
20 decision (83 Fed. Reg. 67470, 67470 (Dec. 28, 2018)) and the Ninth Circuit's 2021
21 decision in *Int'l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*,
22 986 F.3d 841 (9th Cir. 2021); *see also Valiente v. Swift Transportation Co.*, 54 F.4th
23 581 (2022). Similarly, Defendant argues that California Wage Order 9 provides drivers
24 subject to DOT Hours of Service regulations are exempt from overtime. *See* 8 Cal.
25 Code Regs. § 11090(3)(L)(1).

26 c. **Arbitration Agreements.** Defendant argued that its independent contractors all signed
27 arbitration agreements and that this would not only prevent class certification, but also
28 allow DSW to compel to arbitration any independent contractor who becomes a party

1 to the action under Arizona law. Defendant also argued that under Arizona law, DSW’s
2 independent contractor operating agreements (ICOAs) meet the prima facie elements
3 of Arizona law, which provides a presumption that the driver is not an employee, which
4 the driver has the burden to overcome. *See* A.R.S. § 23-160(B). Plaintiff disputes the
5 enforceability of such arbitration agreements and argues that the Class Members could
6 not be forced to arbitrate their claims because they are “transportation workers” under
7 Section 1 of the Federal Arbitration Act (FAA). *See, e.g., New Prime Inc. v.*
8 *Oliveira* (2019) 139 S.Ct. 532, 537. However, Plaintiff faces the risk that this Court
9 could agree with Defendant’s arguments that the arbitration agreements could preclude
10 certification or substantially reduce the potential recoverable damages.

11 d. **Legality of Defendants’ Compensation Policy.** Defendant argues its “trip pay”
12 compensation formula is lawful under the Supreme Court’s decision in *Oman v. Delta*
13 *Air Lines, Inc.*, (2020) 9 Cal.5th 762, because its drivers are paid by the trip and its pay
14 formula is intended to compensate drivers for all time worked. The *Oman* Court held
15 that “[f]or purposes of evaluating whether an employee has received at least the hourly
16 minimum wage for tasks or periods compensated under the contract, it is generally
17 permissible to translate the contractual compensation—whether it be done by task,
18 work period, or other reasonable basis—into an hourly rate by averaging pay across
19 those tasks or periods.” Plaintiff argues that Defendant’s “trip pay” compensation
20 policy unlawfully fails to pay California minimum wage for all hours worked, such as
21 unproductive time, and results in a minimum wage shortfall. Defendant denies these
22 allegations and asserts that DSW’s drivers are lawfully paid by the trip, based on a
23 formula using mileage, drops, and other factors, which is intended to cover all time
24 worked. DSW strongly asserts that its compensation formula results in at least
25 minimum wage. Plaintiff acknowledges its shortfall argument rests on certain
26 assumptions regarding time worked in California which may be difficult to establish,
27 such as an average of 6-hours worked in state per California-origin or destination trip.
28 Plaintiff’s calculations also assume shifts averaging 11-hours during all multi-day trips

1 within California. Plaintiff faces significant risk that the Court would find Defendant's
2 compensation scheme entirely lawful under *Oman* as well as the Ninth Circuit's
3 decisions in *Bernstein* and *Ayala*. *See Bernstein v. Virgin America, Inc.*, 3 F.4th 1127
4 (9th Cir. 2021) (fact that employer did not attach specific amount of pay to each hour
5 a flight attendant worked did not mean that employer violated requirement for a
6 minimum wage and payment for all hours worked); *see also Ayala v. US Xpress*, 851
7 Fed.Appx. 53 (9th Cir. 2021) (applying the *Oman* decision to compensation of truck
8 drivers on a piece-rate basis).

9 e. **Non-Certification and Liability.** Had the Action not settled, Defendant would have
10 challenged class certification and liability, as Defendant vigorously disputes all of
11 Plaintiff's contentions. Plaintiff also faced the risk Defendant would successfully argue
12 that individualized questions of fact predominate over any common issues, and that
13 such issues would preclude certification. Defendant could argue that the Class is
14 uncertifiable due to hundreds of individual inquiries as to each Class Member's
15 experience with supposedly working off the clock and logging time worked.

16 f. **No Derivative Penalties.** Defendant could also argue Plaintiff's claims for wage
17 statement and waiting time penalties claims are entirely derivative of Plaintiff's rest
18 period and wage claims, and therefore suffered from not only the same litigation risks
19 as the rest break claims, but also additional risks unique to these claims. With respect
20 to Plaintiff's waiting time penalty claim, Plaintiff would also be required to establish
21 Defendant's *willfulness*. However, Defendant denies any willful failure to pay any
22 alleged compensation. (Answer, ¶ 16.) Moreover, "an employer's reasonable, good
23 faith belief that wages are not owed may negate a finding of willfulness." *Choate v.*
24 *Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468. Furthermore, even if willfulness
25 could be established, Defendant contends this claim has been largely gutted by the
26 Ninth Circuit's confirmation that California's meal and rest break laws are preempted
27 by the FMCSA.
28

- 1 g. With respect to Plaintiff's wage statement, wage timing, and records maintenance
2 claims, even if non-certification was not a bar to recovery, Defendant argues Plaintiff
3 and the Class did not principally work in California, and thus, were not entitled to these
4 benefits of California law under the Supreme Court's decisions in *Oman, supra*, 9
5 Cal.5th at 776, and *Ward v. United Airlines*, 9 Cal.5th 732, 760-61 (2020). Though
6 Plaintiff argues Class Members were entitled to these protections at least during
7 California majority pay periods, Defendant contends that, at minimum, the effect of
8 *Oman* and *Ward* significantly reduce recoverable penalties. With respect to Plaintiff's
9 claim for reimbursement of necessary business expenses, Defendant argues that
10 Plaintiff cannot require DSW to reimburse drivers under California law for conduct the
11 parties engaged in Arizona, as DSW argues that the Supreme Court recently held such
12 laws violate the presumption against extraterritoriality of California law. *See Ward*, 9
13 Cal.5th at 749. Defendant contends that based on *Ward*, DSW would be, at most, liable
14 only for those pay periods where the driver spent a majority of his or her time driving
15 in California.
- 16 h. Plaintiff also faced the risk Defendant could rely on *Maldonado, et al. v. Epsilon*
17 *Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37 (April 18, 2018) where the Court reversed
18 an award for penalties for inaccurate wage statements because the Court found that
19 inaccurate wage statements alone based on derivative Labor Code violations do not
20 justify penalties, and that the plaintiff arguably might need to establish injury from the
21 inaccuracy and independent inaccuracies different from underpayments or derivative
22 claims. This defense could call into question whether the Class could recover derivative
23 penalties under Labor Code §§ 201-203 and 226 based on underlying claims. While
24 Plaintiff remains prepared to zealously pursue the claims, he recognizes the risks of
25 losing on the merits.
- 26 i. **Other Risk Factors.** Plaintiff also had to take into account other risks, including, the
27 risks of losing on appeal, the possibility of law changing, and the time value of money,
28 among other things.

j. **Costs.** The Action clearly involves complex legal issues, including class certification. With regard to expected duration, litigating Plaintiff's claims through trial could last two or more years if the proposed settlement is not approved. This would be expensive for all parties and delay or jeopardize what is now a certain recovery for the putative class.

k. **Discretionary PAGA Penalties.** Plaintiff contended Defendant's Labor Code violations could give rise to substantial PAGA penalties, if proven. However, Defendant strongly disputes liability. Moreover, under Labor Code § 2699(e)(2), a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or confiscatory. Courts have exercised their discretion to reduce the amount of PAGA penalties awarded to as little as \$5.00 per pay period. *See e.g., Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

19. In consultation with Plaintiff's experts, Berger Consulting Group, and based on data provided by Defendant, Plaintiff estimated Defendant's maximum possible exposure for damages and penalties, if Plaintiff were to prevail on all liability issues as well as on class certification, without taking into account arbitration agreements, realistic litigation risks and the relative strengths and weaknesses of Plaintiff's claims, as follows:

<i>Figures used for calculations</i>	
Class Period	8/9/2015 - 11/1/2022
Days in Class Period	2,641 days
Days in data set period	1,464 days
Average minimum wage in data set period	\$11.30
Average minimum wage in Class Period	\$11.81
UNPAID COMPENSATION	
Unpaid Minimum Wage for California Origin Only Trips	
Minimum Wage Shortfall in data	\$26,617.23
2641-day class period/1464-day data period	1.804
\$11.81 avg. minimum wage/\$11.30 avg. minimum wage	1.045
Estimated Minimum Wage Shortfall for Partial CA Trips	\$50,183.57
Unpaid Minimum Wage for California Destination Only Trips	
Minimum Wage Shortfall in data	\$69,281.54

2641-day class period/1464-day data period	1.804
\$11.81 avg. minimum wage/\$11.30 avg. minimum wage	1.045
Estimated Minimum Wage Shortfall for CA Only Trips	\$130,621.99
Unpaid Minimum Wage for California Only Trips	
Minimum Wage Shortfall in data	\$339,709.95
2641-day class period/1464-day data period	1.804
\$11.81 avg. minimum wage/\$11.30 avg. minimum wage	1.045
Estimated Minimum Wage Shortfall for CA Only Trips	\$640,414.40
Unpaid Reimbursements and Deductions	
Total workweeks	55,981.00
Unreimbursed expenses per workweek (based on Plaintiff's \$75/month estimate)	\$18.75
Percentage of expenses allocated to CA trips (based on percentage of CA trips in data)	0.31
Total Unpaid Reimbursements	\$323,256.87
Total Unpaid Compensation	\$1,144,476.84
PENALTIES	
Labor Code Section 226(e) Penalties	
"Majority California" workweeks (based on 6% estimate)	3,358.86
Penalty per workweek	\$50.00
Total penalties under 226(e)	\$167,943.00
PAGA Penalties	
PAGA Pay Periods	4,943
PAGA Penalty per violation (Cal. Lab. Code §§ 226(a), 2699(f)(2), 1197.1)	\$100
Max. Est. PAGA Penalties for Minimum Wage Violations	\$494,300
Max. Est. PAGA Penalties for Wage Statement Violations	\$29,658.00
Max. Est. PAGA Penalties for Failure to Maintain Records	\$29,658.00
Max. Est. PAGA Penalties for Failure to Reimburse Business Expenses	\$494,300.00
Total PAGA penalties	\$1,047,916.00
Total Penalties	\$1,215,859.00
Total Liability	\$2,360,335.84

Accordingly, if Plaintiff were to prevail on all liability issues as well as on class certification, Plaintiff estimated a maximum total exposure of \$2,360,335.84, taking into account all possible damages and penalties other than claims preempted by FMCSA and waiting time penalties.¹ However, this maximum exposure calculation fails to account for arbitration agreements and other risks and defenses. Plaintiff believes it is reasonable when assessing the value of the settlement to consider applying the following discounts: 30% discount for the risk of non-certification; 50% for the risk of Defendant prevailing on *Oman* and *Ward* defenses; 20% discount based on Defendant's representation that its independent

¹ Plaintiff's maximum exposure calculation assumes federal preemption would preclude recovery for meal and rest break and overtime claims, and that inability to establish Defendant's willfulness as required under Labor Code § 203 would precludes recovery of waiting penalties.

contractor drivers are all bound by arbitration agreements; 30% discount on penalty claims under *Maldonado*; 50% discount on PAGA claims for the Court's discretion to reduce penalties and underlying risks; and a 50% discount for the risk of inability to collect a judgment. Applying these discounts reduces the maximum possible damages and penalties to \$307,674.67. The negotiated gross settlement amount ("GSA") of **\$300,000.00** thus represents about **97.5%** of the *realistic* maximum value after accounting for real litigation risks, relative strengths and weaknesses of Plaintiff's claims, and other factors. Considering the potential risks and rewards inherent in any case and, in particular, in this matter, Class Counsel believes this Settlement represents a considerable recovery.

20. As discussed above, Class Counsel, The Kick Law Firm, APC, has significant experience in complex litigation, including wage and hour class actions, and has been diligent in representing the putative Settlement Class. Plaintiff Albert Lizarraga, the proposed Class Representative, has participated actively at all stages of the litigation, and his interests are not in conflict with the absent class members. Plaintiff agreed to act as Class Representatives and understand his responsibility to assist Class Counsel in prosecuting the action on behalf of the Class. Plaintiff is a member of the proposed class and was subject to the same employment policies and practices as all other Class members. Indeed, the claims of the Class Members and the named Plaintiff are coextensive and there is no conflict between Plaintiff and his counsel, on the one hand, and any other Class Member. In this case, not only is there no conflict of interest, but Plaintiff's interests are essentially identical, if not entirely identical, to the interests of all the members of the Settlement Class.

21. The Settlement provides a proposed service award of \$10,000 to Plaintiff, which is intended to recognize the time, effort, and risk he undertook in bringing this case and helping to secure the relief obtained for the members of the Class. Plaintiff should be compensated for his significant contributions provided to the Class, the arguable reputational risks he undertook, his time and efforts expended on behalf of the Class, Plaintiff's entering into a broader waiver of claims outside of the scope of the Class claims released by the Class in the Settlement, and the significant accomplishments of this case. Among other things, Plaintiff stepped forward with willingness to serve the Class, provided essential information for the prosecution of this action and in connection with two mediations and settlement, gathered and provided pertinent documents, took time to participate in phone calls with counsel, was

1 available during two mediations, and reviewed the settlement documents. At no time did Plaintiff ever
2 have a guarantee of any personal benefit as a result of this case.

3 22. The parties have selected Simpluris, Inc. to act as the Settlement Administrator. Simpluris
4 has served us as settlement administrator in numerous class actions and has been appointed as
5 administrator by this Court. Of two reputable settlement administrators, Simpluris provided the lower bid.
6 Simpluris' revised bid of \$17,326 is \$1,850 higher than its initial bid stated in the Settlement Agreement
7 in order to account for additional costs such as second-year tax reporting, as explained in the concurrently
8 filed Declaration of Eric Springer on Behalf of Simpluris, Inc. Simpluris' bid in my opinion is fair and
9 reasonable considering the size of the Class, the number of pages to be mailed to Class members, the
10 services provided by the Settlement Administrator including skip tracing and remailing returned mail,
11 handling payroll tax calculations, and other necessary duties that will be carried out. A copy of the
12 settlement administration bid provided by Simpluris is attached as Exhibit C to the concurrently filed
13 Springer Declaration. TKLF has worked with Simpluris in other similar cases. TKLF has no actual or
14 potential conflicts of interest with Simpluris, Inc., and defense counsel Richard Rahm and Defendant's
15 CFO Bob McGill confirmed in their concurrently filed declarations that Defendant and defense counsel
16 similarly have no such conflicts. (*See* Rahm Decl., ¶ 2; McGill Decl., ¶ 2.)

17 23. As the proposed Class Counsel in this matter is limited to attorneys of The Kick Law Firm,
18 no other firm will be sharing or splitting fees. Pursuant to the Settlement, Class Counsel will request, and
19 Defendant will not oppose, attorneys' fees in an amount equal to one-third (1/3) of the GSA, or \$100,000,
20 and reimbursement of litigation costs not to exceed \$30,000. (*See* Ex. 1, SA, ¶ 3.2.2.) The firm's lodestar
21 to date already far exceeds the amount of the one-third fee request.

22 24. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding
23 that the firm would not be compensated for its efforts unless the case was successful. To date, TKLF has
24 not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys
25 has required considerable work that could have, and would have, been spent on other billable matters. As
26 a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up
27 not representing parties in cases it otherwise would have, and which in my opinion likely would have
28 compensated this firm at its hourly rates requested in this matter.

1 25. The second half of the LA Superior Court Checklist (“Checklist”) indicates a number of
2 items that the Settlement should address. (*See* Checklist pp. 4-8.) Class Counsel has gone through all items
3 in the Checklist and confirmed that each exist in the proposed Settlement and Notice, including the Class
4 definition (SA, ¶¶ 1.5, 1.9), Class Period (SA, ¶ 1.12), release terms (SA, ¶¶ 1.41, 5.1-5.5), monetary terms
5 (SA, ¶ 3), notice administration terms (SA, ¶¶ 7.1-7.8), and cy pres terms (SA, ¶ 4.4.3). Moreover, the
6 proposed Settlement and Notice are based on the Model Class Action and PAGA Settlement Agreement
7 and Class Notice (LACIV296), provided by the LA County Superior Court in June 2022. The LASC
8 Model Settlement Agreement was approved by the Court, the Complex litigation judges, and a 2022 Ad
9 Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue.
10 Attached as **Exhibit 2** is a true and correct redlined copy of the Settlement, which shows the changes
11 compared to this Model.

12 26. A Proposed Judgment not including a dismissal pursuant to CRC 3.769 is attached hereto
13 as **Exhibit 4**.

14 27. The Parties propose that the funds represented by any uncashed or undeliverable checks be
15 distributed, subject to approval by the Court, to Public Citizen Foundation as the recipient of any cy pres
16 award. Public Citizen Foundation is a 501(c)(3) consumer advocacy organization that works to protect
17 consumer rights through education and litigation. I believe such distribution is appropriate and fulfills the
18 purposes of this wage and hour class action because Public Citizen is an organization that substantially
19 advocates on behalf of workers and consumers such as those at issue in this case. Neither I nor any other
20 member of this firm, nor the Plaintiff, have any financial interest in Public Citizen, nor involvement in the
21 governance of the organization. Likewise, Defendant and defense counsel attest in their concurrently filed
22 declarations that they have no financial interest or involvement in the governance or work of the proposed
23 cy pres recipient. (*See* Rahm Decl., ¶ 2; McGill Decl., ¶ 2.)

24 28. Class Counsel is not aware of any other pending matter or action asserting claims that will
25 be extinguished or adversely affected by the Settlement. Defendant and defense counsel also attest to this
26 in their concurrently filed declarations. (*See* Rahm Decl., ¶ 3; McGill Decl., ¶ 3.)

27 29. On March 24, 2023, I am submitting the Settlement, Motion for Preliminary Approval of Class
28 and PAGA Action Settlement, and supporting declarations to the California Labor and Workforce

1 Development Agency (“LWDA”) pursuant to the Private Attorneys General Act (“PAGA”). A true
2 and correct copy of proof of submission of the Settlement to the LWDA will be filed after submission.

3 I declare under the penalty of perjury the foregoing things are true and correct to the best of my
4 belief and knowledge.

5 Executed this 28th day of March 2023, in Los Angeles, California.

6
7 /s/ Greg Taylor
Greg Taylor

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Albert Lizarraga (“Plaintiff”) and Defendant Digby Southwest, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Albert Lizarraga v. Digby Southwest Inc., and Does 1-100*, filed on August 9, 2019, and pending in the Superior Court of the State of California, County of Los Angeles, Case No. 19STCV27901.
- 1.2. “Administrator” means Simpluris, 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 of the Settlement.
- 1.4. “Aggrieved Employee” means all Class Members who worked for Defendant during the PAGA Period.
- 1.5. “Class” means “all current and former drivers, including but not limited to those misclassified as independent contractors or owner-operators, who performed work for Defendant in the State of California at any time during the Class Period.”
- 1.6. “Class Counsel” means The Kick Law Firm, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, employee identification number, last-known mailing address, telephone numbers, email addresses, Social Security number, inclusive dates of active employment during the Class Period, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement 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.
- 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 Period” means the period from August 9, 2015 through November 1, 2022 or the date Plaintiff files a motion for preliminary approval of this Settlement, whichever is sooner.
 - 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
 - 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
 - 1.15. “Court” means the Superior Court of California, County of Los Angeles.
 - 1.16. “Defendant” means named Defendant Digby Southwest, Inc.
 - 1.17. “Defense Counsel” means DLA Piper LLP (US).
 - 1.18. “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 events: (i) if no Participating Class Member objects to the Settlement, the day the Court enters judgment; (ii) if one or more Participating Class Members objects to the Settlement, the day after the 180-day time for appeal from the Judgment (with no appeal having been filed); or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
 - 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
 - 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
 - 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
 - 1.22. “Gross Settlement Amount” means \$300,000.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3.1.1 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

- 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 Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, 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 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from one year before the filing of the First Amended Complaint (“FAC”) through the date Plaintiff files a motion for preliminary approval of this Settlement.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiff’s PAGA letter to Defendant 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 (\$10,000), allocated 25% to the Aggrieved Employees (\$2,500) and the 75% to LWDA (\$7,500) 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 from the Settlement.
- 1.36. “Plaintiff” means Albert Lizarraga, the named plaintiff in the Action.

- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraphs 5.3 and 5.4 below.
- 1.41. “Released Parties” means Defendant and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, fiduciaries, principals and heirs, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded, or opt out, from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On August 9, 2019, Plaintiff commenced this Action by filing a Complaint alleging 12 causes of action against Defendant for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure timely to pay all wages at separation; (6) failure to maintain required records; (7) failure to provide accurate itemized wage statements; (8) failure to indemnify for necessary business expenses; (9) unlawful deductions; (10) breach of contract; (11) breach of covenant of good faith and fair dealing; and (12) unlawful and

unfair business practices. The Parties will file a Joint Stipulation and Proposed Order Granting Plaintiff Leave to File a First Amended Complaint (“FAC”) at the same time he files his Motion for Preliminary Approval in which he will add a cause of action under PAGA. The FAC is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On August 27, 2020, the Parties participated in an all-day mediation presided over by experienced wage-and-hour mediator, David Phillips, Esq. of Signature Resolution. The mediation did not result in a settlement. On July 6, 2022, the Parties participated in a second all-day mediation with David Phillips, Esq., which ultimately led to this Agreement to settle the Action.
- 2.4. Prior to mediation, the Parties exchanged informal discovery and engaged in extensive good faith meet and confer efforts. This informal discovery process included Defendant providing a sampling of driver trip logs, time and payroll records, and copies of Defendant’s written policies. Plaintiff’s 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*”).
- 2.5. The Court has not granted class certification, as no motion for certification has been filed to date. The Parties agree to certification of this matter as a class action pursuant to California Code of Civil Procedure § 382 for the purposes of this Agreement and the settlement of this Action only.
- 2.6. 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 3.1.1 below, Defendant promises to pay \$300,000.00 and no more as the Gross Settlement Amount (“GSA”) and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Settlement Administrator shall provide the calculations for employer-side payroll taxes. Defendant has 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 Defendant.

- 3.1.1. Defendant estimates there will be 61,000 workweeks from August 9, 2015 to December 31, 2022. This number was based on the number workweeks from August 9, 2015 to the mediation date, and then extrapolating to the end of the year. In the event that the final number of workweeks is more than 67,100 before the end of the year, then the GSA shall be increased proportionally to the additional number of workweeks.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff 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 a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33-1/3%), which is currently estimated to be \$100,000.00 and a Class Counsel Litigation Expenses Payment currently estimated to be \$30,000.00, as approved by the Court. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Final Approval and 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 Plaintiff's 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.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$16,826 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$16,826, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. 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.

3.2.4.1. 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. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for 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.

3.2.4.2. 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.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500) allocated to the LWDA PAGA Payment and 25% (\$2,500) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) 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.

3.2.5.2. 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 1,600-2,000 Class Members who collectively worked a total of 61,000 Workweeks, and 250 of Aggrieved Employees who worked a total of 4,943 PAGA Pay Periods.

4.2. Class Data. Not later than 45 days after the Court grants Preliminary Approval of the

Settlement, Defendant will simultaneously 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. Defendant has a continuing duty to immediately notify Class Counsel if it discovers 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 Defendant 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 Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds 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. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. 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 date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement 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. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 14 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.

4.4.3. 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 proposed cy pres recipient, subject to Court approval, without further amendment to this Agreement, consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”). The Parties propose that funds represented by any uncashed or undeliverable checks shall be distributed to Public Citizen Foundation, a section 501(c)(3) non-profit organization. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. Participating Class Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant 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.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Defendant will release claims against all Released Parties as follows:

5.1 Mutual Release. With the exception of any of their respective rights and obligations created pursuant to this Agreement, each party to this Agreement mutually releases and discharges the other, its predecessors, successors and assigns and their respective officers, directors, employees, other representatives and shareholders, from any and all known claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or now has, against the other, which relate to or arises out of any agreements, transactions, events or circumstances which are the subject of the Action.

5.2 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released below, pursuant to Civ. Code § 1542. (“Plaintiff's Release.”) Plaintiff's 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 based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.2.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes 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.

- 5.3 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, and assigns, release Released Parties from any and all liabilities against the Released Parties during the Class Period that are or that could have been pled based on the facts alleged in the operative Complaint relating to the payment or non-payment of wages, reimbursements, statutory and civil penalties, based on alleged violations of Industrial Welfare Commission Wage Order No. 9, sections 11 and 12 and California Labor Code sections 200, 201, 202, 203, 204, 218.6, 221, 222.5, 223, 226, 226(e), 226.2, 226.3, 226.7, 400-410, 510, 512, 558, 558.2, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699, 2802, 2802(a), 2802(b), 2802(c), including the failure to pay wages for hours worked, minimum wage claims, meal break violations, rest break violations, failure to pay premiums for missed break violations, failure to pay overtime wages, failure to maintain required records, failure to indemnify employees for necessary expenses incurred in discharge of duties, unlawful deductions from wages, waiting time penalties, wage statement claims, breach of contract, breach of covenant of good faith and fair dealing, Unfair Competition Law violations (California Business & Professions Code section 17200, of seq), California Civil Code, California PAGA penalties under Labor Code § 2699, and any other claims that were alleged in the Case or which arise out of or directly or indirectly relate to such facts alleged in the Complaint (collectively the "Released Claims"). Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.4 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiff agrees to prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 Defendant’s Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendant 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.

6.2 Plaintiff’s Responsibilities. Plaintiff 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/or the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (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)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, 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.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for making best efforts to expeditiously finalize and file the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtain 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.

6.4 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 satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, 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 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. Out of two highly regarded settlement administrators with substantial class action administration experience, the lower bid was provided by Simpluris, Inc., with a "not to exceed" cap of \$16,826. Class Counsel deems the bid to be reasonable considering the Class size, amount of mailing, and services provided, including skip tracing, re-mailing, calculating payroll tax, and other duties.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 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.

7.4 Notice to Class Members.

7.4.1 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.

7.4.2 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.

7.4.3 Not later than 3 business 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.

- 7.4.4 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 60 days otherwise 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.
- 7.4.5 If the Administrator, Defendant or Class Counsel are contacted by or otherwise discover 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, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 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 not later than 60 days after the Administrator mails the Class Notice (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.
- 7.5.2 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.
- 7.5.3 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 Paragraphs 5.3 and 5.4 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 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 5.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (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 must 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 the challenges.

7.7 Objections to Settlement.

7.7.1 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.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) 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 not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 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.

7.8.1 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.

7.8.2 Requests 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 5 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).

7.8.3 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 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 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.

7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is 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.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in 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 15 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.

8. **CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 1,600-2,000 Class Members and 61,000 Total Workweeks during the Class period and (2) there were 250 Aggrieved Employees who worked 4,943 Pay Periods during the PAGA Period.

9. **DEFENDANT'S 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, Defendant may elect, but are not obligated, to withdraw from the Settlement. Should the 5% threshold for opt-outs be exceeded, the Settlement Administrator shall notify lead counsel for all parties via email immediately. The Parties agree that, if Defendant withdraws, 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, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of their election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff 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, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than five days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 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 five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 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 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 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement 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.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the 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.

10.5 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 address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after 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.

11. 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 and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's 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 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's 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).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant 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. Plaintiff, Class Counsel, Defendant 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.
- 12.3 Neutral Employment Reference. If Defendant receives any requests from prospective employers or other persons about Plaintiff's employment, Defendant shall provide only the dates of employment and last position held and any other information required by law. Defendant shall not refer to the Action or this Settlement.
- 12.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees 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.
- 12.5 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.

- 12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties 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.
- 12.7 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.
- 12.8 No 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant 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.
- 12.10 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.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12 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.
- 12.13 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.
- 12.14 Confidentiality. To the extent permitted by law, all agreements made, and orders

entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

- 12.15 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.
- 12.16 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 legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 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 Plaintiff:

The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

To Defendant:

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933

- 12.18 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.
- 12.19 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 that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DocuSigned by:



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Albert Lizarraga

For Plaintiff

DocuSigned by:



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Taras Kick

Counsel for Plaintiff

For Defendant

Counsel for Defendant

entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

- 12.15 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.
- 12.16 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 legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 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 Plaintiff:

The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

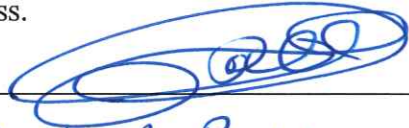
To Defendant:

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933

- 12.18 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.
- 12.19 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 that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

_____ For Plaintiff

_____ Counsel for Plaintiff



Douglas A. Prall For Defendant


Richard Rahm _____ Counsel for Defendant

EXHIBIT A

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

(Lizarraga, et al. v. Digby Southwest Inc., et al., LASC Case No. 19STCV27901)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Digby Southwest, Inc. (hereinafter referred to as “DSW” or “Defendant”) for alleged wage and hour violations. The Action was filed by former DSW employee Albert Lizarraga (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of all current and former drivers (“Class Members”) who worked for DSW in the State of California at any time during the Class Period; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all Class Members who worked for DSW during the PAGA Period (“Aggrieved Employees”). The Class Period is from August 9, 2015 through <<Class Period end date>>. The PAGA Period is from <<PAGA Period start date>> through <<PAGA Period end date>>.

DSW denies the allegations Plaintiff is asserting in this Action and contends that it has properly paid all wages and complied with all applicable laws. The Court has not formed any opinions concerning the merits of the Action, and the Court has not ruled for or against Plaintiff as to the merits of any of his individual or class or PAGA claims. You will not be retaliated against by DSW for electing to participate or not participate in the settlement.

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

Based on DSW’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to DSW’s 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 DSW’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. **Your legal rights are affected whether you act or not act. Read this Notice carefully.** You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires DSW to make payments under the Settlement and requires Class Members and

Aggrieved Employees to give up their rights to assert certain claims against DSW.

If you worked for DSW 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 against DSW.
- (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. You will, however, preserve your right to personally pursue Class Period wage claims against DSW, 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.

DSW 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 DSW that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [RESPONSE DEADLINE]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. DSW must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [RESPONSE DEADLINE]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [RESPONSE DEADLINE]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to DSW’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [RESPONSE DEADLINE]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of DSW. The Action accuses DSW of violating California labor laws by failing to pay minimum wages, overtime wages, timely wages due upon separation, and reimbursable expenses. The Action also accuses DSW of failing to provide meal periods, rest breaks, and accurate itemized wage statements and failing to maintain required records. The Action further accuses DSW of breach of contract, breach of the covenant of good faith and fair dealing, and unlawful and unfair business practices. Based on these claims, Plaintiff also alleges that DSW is liable for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: The Kick Law Firm, APC (“Class Counsel.”)

DSW strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. The Court has not formed any opinions concerning the merits of the Action, and the Court has not ruled for or against Plaintiff as to the merits of any of his

individual or class or PAGA claims. You will not be retaliated against by DSW for electing to participate or not participate in the settlement.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether DSW or Plaintiff is correct on the merits. In the meantime, Plaintiff and DSW hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an amount to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and DSW have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, DSW does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) DSW has agreed to pay a fair, reasonable and adequate amount considering the strength and weaknesses of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. DSW Will Pay \$300,000 as the Gross Settlement Amount (Gross Settlement). DSW has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, DSW will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to one-third (33-1/3%) of the Gross Settlement, which is currently estimated to be \$100,000 to Class Counsel for attorneys’ fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

C. Up to \$16,826 to the Administrator for services administering the Settlement.

D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and DSW are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and DSW have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments 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 irrevocably lost to you because they will be paid to a non-profit organization or foundation ("Cy Pres").

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [RESPONSE DEADLINE], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not

receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against DSW.

6. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against DSW based on the PAGA Period facts alleged in the Action.
7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and DSW have agreed that, in either case, the Settlement will be void: DSW will not pay any money and Class Members will not release any claims against DSW.
8. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and DSW has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against DSW or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

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, and assigns, release Released Parties from any and all liabilities against the Released Parties during the Class Period that are or that could have been pled based on the facts alleged in the operative Complaint relating to the payment or non-payment of wages, reimbursements, statutory and civil penalties, based on alleged violations of Industrial Welfare Commission Wage Order No. 9, sections 11 and 12 and California Labor Code sections 200, 201, 202, 203, 204, 218.6, 221, 222.5, 223, 226, 226(e), 226.2, 226.3, 226.7, 400-410, 510, 512, 558, 558.2, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699, 2802, 2802(a), 2802(b), 2802(c), including the failure to pay wages for hours worked, minimum wage claims, meal break violations, rest break violations, failure to pay premiums for missed break violations, failure to pay overtime wages, failure to maintain required records, failure to indemnify employees for necessary expenses incurred in discharge of duties, unlawful deductions from wages, waiting time penalties, wage statement claims, breach of contract, breach of covenant of good faith and fair dealing, Unfair Competition Law violations (California Business &

Professions Code section 17200, of seq), California Civil Code, California PAGA penalties under Labor Code § 2699, and any other claims that were alleged in the Case or which arise out of or directly or indirectly relate to such facts alleged in the Complaint (collectively the “Released Claims”). Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and DSW has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against DSW, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against DSW or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including wage and hour violations during the Class Period and/or PAGA Period under state or federal law.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in DSW’s records, are stated in the first page of this Notice. You have until **[RESPONSE DEADLINE]** to challenge the number of Workweeks and/or Pay

Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept DSW's calculation of Workweeks and/or Pay Periods based on DSW's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and DSW's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Lizarraga, et al. v. Digby Southwest Inc., et al.*, LASC Case No. 19STCV27901, and include your identifying information (full name, address, telephone number or an e-mail address, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [RESPONSE DEADLINE], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and DSW are asking the Court to approve. At least 16 days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among

other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

(url)

or the Court's website

(url)

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award 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 [RESPONSE DEADLINE].** 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 as *Lizarraga, et al. v. Digby Southwest Inc., et al.*, LASC Case No. 19STCV27901 and include your name, current address, telephone number, and approximate dates of employment for DSW and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on (date) at (time) in Department 1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything DSW and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to

<http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 19STCV27901. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling (213) 310-7000.

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

Class Counsel:

Name of Attorney: Taras Kick

Email Address: taras@kicklawfirm.com

Name of Firm: The Kick Law Firm, APC

Mailing Address: 815 Moraga Drive, Los Angeles, CA 90049

Telephone: (310) 395-2988

Settlement Administrator:

Name of Company: Simpluris, Inc.

Email Address: CaseSupport@Simpluris.com

Mailing Address: P.O. Box 26170 Santa Ana, CA 92799

Telephone: (888) 369-3780

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

~~[MODEL]~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Albert Lizarraga (“Plaintiff”) and Defendant ~~XYZ~~ _____ (“~~XYZ~~”), Digby Southwest, Inc. (“Defendant”). The Agreement refers to Plaintiff and ~~XYZ~~ Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against ~~XYZ~~ Defendant captioned ~~_____~~ initiated Albert Lizarraga v. Digby Southwest Inc., and Does 1-100, filed on August 9, 2019, and pending in the Superior Court of the State of California, County of Los Angeles, Case No. 19STCV27901.
- 1.2. “Administrator” means ~~_____~~ Simpluris, 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 of the Settlement.
- 1.4. “Aggrieved Employee” means ~~{e.g., a person employed by XYZ in California and classified as a _____}~~ all Class Members who worked for ~~XYZ~~ Defendant during the PAGA Period~~_____~~.
- 1.5. “Class” means ~~{define class e.g., “all persons employed by XYZ in California current and classified~~ former drivers, including but not limited to those misclassified as independent contractors or owner-operators, who worked performed work for XYZ Defendant in the State of California at any time during the Class Period~~_____~~.”
- 1.6. “Class Counsel” means The Kick Law Firm, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in ~~XYZ’s~~ Defendant’s possession including the Class Member’s name, employee identification number, last-known mailing address, telephone numbers, email addresses, Social Security number, inclusive dates of active employment during the Class Period, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement 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.
- 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 ~~[with a Spanish translation, if applicable]~~ in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from _____ ~~to~~ August 9, 2015 through November 1, 2022 or the date Plaintiff files a motion for preliminary approval of this Settlement, whichever is sooner.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “~~XYZ~~ Defendant” means named Defendant Digby Southwest, Inc.
- 1.17. “Defense Counsel” means _____ DLA Piper LLP (US).
- 1.18. “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) events:~~ (i) if no Participating Class Member objects to the Settlement, the day the Court enters judgment; (b) ~~ii~~ if one or more Participating Class Members objects to the Settlement, the day after the ~~deadline~~ 180-day time for ~~filing a notice of~~ appeal from the Judgment; (with no appeal having been filed); or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means \$300,000.00, which is the total amount ~~XYZ~~Defendant agrees to pay under the Settlement except as provided in Paragraph 93.1.1 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 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 Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, 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 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ~~XYZ~~Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from _____ to _____, one year before the filing of the First Amended Complaint (“FAC”) through the date Plaintiff files a motion for preliminary approval of this Settlement.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiff’s PAGA letter to ~~XYZ~~Defendant and the LWDA ~~[and Plaintiff’s _____ letter to XYZ 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, ~~(\$10,000)~~, allocated 25% to the Aggrieved Employees ~~(~~(\$2,500) and the 75% to LWDA ~~(~~(\$7,500) 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 from the Settlement.
- 1.36. "Plaintiff" means Albert Lizarraga, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. ~~"Preliminary Approval Order"~~ means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph ~~6.2~~5.3 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in ~~Paragraph 6.2~~Paragraphs 5.3 and 5.4 below.
- ~~1.41. "Released Parties" means: XYZ and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].~~
- 1.41. "Released Parties" means Defendant and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, principals and heirs, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.
- ~~1.43.~~1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded, or opt out, from the Class Settlement signed by the Class Member.
- ~~1.44.~~1.43. ~~"Response Deadline"~~ means ~~[e.g., 60]~~ days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- ~~1.45.~~1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

~~1.46.~~1.45. “Workweek” means any week during which a Class Member worked for ~~XYZ~~Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On August 9, 2019, Plaintiff commenced this Action by filing a Complaint alleging 12 causes of action against ~~XYZ~~Defendant for _____.
~~{(1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure timely to pay all wages at separation; (6) failure to maintain required records; (7) failure to provide accurate itemized wage statements; (8) failure to indemnify for necessary business expenses; (9) unlawful deductions; (10) breach of contract; (11) breach of covenant of good faith and fair dealing; and (12) unlawful and unfair business practices. The Complaint is the operative complaint in the Action (the “Operative Complaint.”)}~~[On _____, Parties will file a Joint Stipulation and Proposed Order Granting Plaintiff filed Leave to File a {e.g., First Amended Complaint} alleging causes (“FAC”) at the same time he files his Motion for Preliminary Approval in which he will add a cause of action against XYZ for _____ under PAGA. The {e.g., First Amended} Complaint FAC is the operative complaint in the Action (the “Operative Complaint.”) XYZ. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to ~~XYZ~~Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On _____ (type in additional dates) _____, ~~{August 27, 2020, the Parties~~Parties participated in an all-day mediation presided over by _____ which experienced wage-and-hour mediator, David Phillips, Esq. of Signature Resolution. The mediation did not result in a settlement. On July 6, 2022, the Parties participated in a second all-day mediation with David Phillips, Esq., which ultimately led to this Agreement to settle the Action (describe alternative means of negotiation). _____ (describe alternative means of negotiation) _____.
- 2.4. Prior to ~~mediation negotiating~~, the ~~Settlement, Plaintiff obtained, through formal~~
 ~~Parties exchanged~~ informal discovery, ~~(documents, testimony and information obtained) engaged in extensive good faith meet and confer efforts. This informal discovery process included Defendant providing a sampling of driver trip logs, time and payroll records, and copies of Defendant’s written policies.~~ Plaintiff’s 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*”).

~~2.5. _____ The Court has has not granted class certification.~~

~~2.6.~~2.5. (insert details, as needed) no motion for certification has been filed to date. The Parties agree to certification of this matter as a class action pursuant to California Code

of Civil Procedure § 382 for the purposes of this Agreement and the settlement of this Action only.

~~2.7.2.6.~~ 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~~3.1.1 below, ~~XYZ~~Defendant promises to pay \$~~300,000.00~~ and no more as the Gross Settlement Amount ~~{“GSA”}~~ and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. ~~XYZ. The Settlement Administrator shall provide the calculations for employer-side payroll taxes. Defendant~~ has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph ~~6-14.3~~ 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 ~~XYZ~~Defendant.

3.1.1. Defendant estimates there will be 61,000 workweeks from August 9, 2015 to December 31, 2022. This number was based on the number workweeks from August 9, 2015 to the mediation date, and then extrapolating to the end of the year. In the event that the final number of workweeks is more than 67,100 before the end of the year, then the GSA shall be increased proportionally to the additional number of workweeks.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment ~~{and any Individual PAGA Payment}~~ the Class Representative is entitled to receive as a Participating Class Member). ~~XYZ~~Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff 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 a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than ~~—%~~one-third (33-1/3%), which is currently estimated to be \$100,000.00 and a Class Counsel

Litigation Expenses Payment ~~of not more than \$____. XYZ~~ currently estimated to be \$30,000.00, as approved by the Court. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Final Approval and 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 Plaintiff's 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 XYZ harmless, and indemnifies XYZ, from any dispute or controversy regarding any division or sharing of any of these Payments.~~

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$____ \$16,826 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$16,826, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. 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.

3.2.4.1. 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. The ~~%_____~~ 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~[e.g., 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.

3.2.4.2. 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.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500) allocated to the LWDA PAGA Payment and 25% (\$2,500) allocated to the Individual PAGA Payments.

~~(\$) allocated to the LWDA PAGA Payment and 25% (\$) allocated to the Individual PAGA Payments.~~

~~3.2.5.3.~~ 3.2.5.1. ——— The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$ () (\$2,500) 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.

~~3.2.5.4.~~ 3.2.5.2. 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, ~~XYZ~~ Defendant estimates there are 1,600-2,000 Class Members who collectively worked a total of 61,000 Workweeks, and 250 of Aggrieved Employees who worked a total of 4,943 PAGA Pay Periods.

4.2. Class Data. Not later than ~~[e.g., 15]~~ 45 days after the Court grants Preliminary Approval of the Settlement, ~~XYZ~~ Defendant will simultaneously 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. ~~XYZ~~ Defendant has a continuing duty to immediately notify Class Counsel if it discovers 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 ~~XYZ~~ Defendant 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 Gross Settlement Amount. ~~XYZ~~ Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay ~~XYZ's~~ Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than ~~[14]~~ 30 days after the Effective Date.

- 4.4. Payments from the Gross Settlement Amount. Within ~~[14]~~ days after ~~XYZ~~ Defendant funds 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. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. 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 date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement 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. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. 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]~~14 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.
- 4.4.3. 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"~~proposed cy pres recipient, subject to ~~the requirements of California Code of Civil Procedure Section 384, subd. (b).]~~~~[or to a Court-approved nonprofit organization or foundation~~ approval, without further amendment to this Agreement, consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient")~~_____].~~). The Parties propose that funds represented by any uncashed or undeliverable checks shall be distributed to Public Citizen Foundation, a section 501(c)(3) non-profit organization. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. Participating Class

Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate ~~XYZ~~Defendant 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.

5. **RELEASES OF CLAIMS.** Effective on the date when ~~XYZ~~Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and ~~Class Counsel~~Defendant will release claims against all Released Parties as follows:

5.1 Mutual Release. With the exception of any of their respective rights and obligations created pursuant to this Agreement, each party to this Agreement mutually releases and discharges the other, its predecessors, successors and assigns and their respective officers, directors, employees, other representatives and shareholders, from any and all known claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or now has, against the other, which relate to or arises out of any agreements, transactions, events or circumstances which are the subject of the Action.

~~5.1.1~~5.2 **Plaintiff's Release.** Plaintiff and his ~~or her~~ respective former and present spouses, representatives, agents, attorneys, heirs, administrators, ~~successors, and assigns generally,~~ release and discharge Released Parties from all claims, transactions, or occurrences ~~[that occurred during the Class Period],~~ including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, ~~for~~ ascertained during the Action and released ~~under 6.2, below,~~ pursuant to Civ. Code § 1542. ("Plaintiff's Release.") Plaintiff's 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 based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

~~5.1.1~~5.2.1 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes 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.

~~5.25.3~~ Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6.3~~ any and all liabilities against the Released Parties during the Class Period that are or that could have been pled based on the facts alleged in the operative Complaint relating to the payment or non-payment of wages, reimbursements, statutory and civil penalties, based on alleged violations of Industrial Welfare Commission Wage Order No. 9, sections 11 and 12 and California Labor Code sections 200, 201, 202, 203, 204, 218.6, 221, 222.5, 223, 226, 226(e), 226.2, 226.3, 226.7, 400-410, 510, 512, 558, 558.2, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699, 2802, 2802(a), 2802(b), 2802(c), including the failure to pay wages for hours worked, minimum wage claims, meal break violations, rest break violations, failure to pay premiums for missed break violations, failure to pay overtime wages, failure to maintain required records, failure to indemnify employees for necessary expenses incurred in discharge of duties, unlawful deductions from wages, waiting time penalties, wage statement claims, breach of contract, breach of covenant of good faith and fair dealing, Unfair Competition Law violations (California Business & Professions Code section 17200, of seq), California Civil Code, California PAGA penalties under Labor Code § 2699, and any other claims that were alleged in the Case or which arise out of or directly or indirectly relate to such facts alleged in the Complaint (collectively the “Released Claims”). Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

~~5.35.4~~ Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint ~~[,] [and] the PAGA Notice [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~

6. MOTION FOR PRELIMINARY APPROVAL. ~~The Parties agree~~ Plaintiff agrees to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 ~~—XYZ’s~~ Defendant’s Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, ~~XYZ~~ Defendant will prepare and deliver to Class Counsel a signed Declaration from ~~XYZ~~ Defendant and Defense Counsel disclosing all

facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and ~~XYZ~~Defendant 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.

6.2 Plaintiff's Responsibilities. Plaintiff 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/or the proposed Cy Pres~~; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from ~~Plaintiff 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 [and/or the proposed Cy Pres];~~ (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)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, ~~Plaintiff and~~ Class Counsel ~~Declaration~~ 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.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for making best efforts to expeditiously ~~finalizing~~finalize and ~~filing~~file the Motion for Preliminary Approval no later than ~~[30]~~45 days after the full execution of this Agreement; ~~obtaining~~obtain 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.

6.4 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 satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, 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 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. Out of two highly regarded settlement administrators with substantial class action administration experience, the lower bid was provided by Simpluris, Inc., with a "not to exceed" cap of \$16,826. Class Counsel deems the bid to be reasonable considering the Class size, amount of mailing, and services provided, including skip tracing, re-mailing, calculating payroll tax, and other duties.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 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.

7.4 Notice to Class Members.

7.4.1 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.

7.4.2 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 ~~{with Spanish translation, if applicable}~~ 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.

7.4.3 Not later than ~~{3}~~ business 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.

- 7.4.4 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 ~~{60}~~ days otherwise 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.
- 7.4.5 If the Administrator, ~~XYZ~~Defendant or Class Counsel ~~is~~are contacted by or otherwise ~~discovers~~discover 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, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 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 not later than ~~{60}~~ days after the Administrator mails the Class Notice (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.
- 7.5.2 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.
- 7.5.3 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 Paragraphs ~~6-25.3~~ and

~~6.3~~5.4 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 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 ~~6.5~~5.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have ~~{60}~~ days after the Administrator mails the Class Notice (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 must 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 the challenges.

7.7 Objections to Settlement.

7.7.1 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.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) 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 not later than ~~{60}~~ days after the Administrator's mailing of the Class Notice (plus an additional ~~{14}~~ days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 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.

- 7.8.1 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.
- 7.8.2 Requests 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 ~~5~~ 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).
- 7.8.3 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 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 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.
- 7.8.5 Administrator’s Declaration. Not later than ~~14~~ days before the date by which Plaintiff is 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.

- 7.8.6 Final Report by Settlement Administrator. Within ~~{10}~~ days after the Administrator disburses all funds in 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 ~~{15}~~ 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~~ Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES** ~~and ESCALATOR CLAUSE~~. Based on its records, XYZDefendant estimates that, as of the date of this Settlement Agreement, (1) there are ~~Class~~ 1,600-2,000 ~~Class~~ Members and 61,000 Total Workweeks during the Class period and (2) there were 250 Aggrieved Employees who worked 4,943 Pay Periods during the PAGA Period.
9. **XYZ'S DEFENDANT'S 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, XYZDefendant may elect, but ~~is~~ are not obligated, ~~elect~~ to withdraw from the Settlement. Should the 5% threshold for opt-outs be exceeded, the Settlement Administrator shall notify lead counsel for all parties via email immediately. The Parties agree that, if XYZDefendant withdraws, 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, XYZDefendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZDefendant must notify Class Counsel and the Court of ~~its~~ their election to withdraw not later than ~~{seven}~~ five days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL**. Not later than ~~{16}~~ court days before the calendared Final Approval Hearing, Plaintiff 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, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than ~~{seven}~~ five days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 10.1 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 ~~{five}~~ court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 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 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 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement 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.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the 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.

10.5 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 address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after 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.

11. 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 and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 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 ~~XYZ~~Defendant that any of the allegations in the Operative Complaint have merit or that ~~XYZ~~Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ~~XYZ's~~Defendant's 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 grant Preliminary Approval, Final Approval or enter Judgment, ~~XYZ~~Defendant reserves the right to contest certification of any class for any reasons, and ~~XYZ~~Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ~~XYZ's~~Defendant's defenses. The Settlement, this Agreement and ~~Parties'~~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).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ~~XYZ~~Defendant 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. Plaintiff, Class Counsel, ~~XYZ~~Defendant 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.

- 12.3 Neutral Employment Reference. If Defendant receives any requests from prospective employers or other persons about Plaintiff's employment, Defendant shall provide only the dates of employment and last position held and any other information required by law. Defendant shall not refer to the Action or this Settlement.

- ~~12.3~~12.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees 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.

~~12.4~~12.5 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.

~~12.5~~12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ~~XYZ~~Defendant, 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.

~~12.6~~12.7 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.

~~12.7~~12.8 No 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

~~12.8~~12.9 No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZ~~Defendant 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.

~~12.9~~12.10 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.

~~12.10~~12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

~~12.11~~12.12 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.

~~12.12~~12.13 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.

~~12.13~~ 12.14 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

~~12.14~~ 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 XYZ 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, Plaintiff shall destroy, all paper and electronic versions of Class Data received from XYZ unless, prior to the Court's discharge of the Administrator's obligation, XYZ makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

~~12.16~~ 12.15 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.

~~12.17~~ 12.16 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 legal holiday, such date or deadline shall be on the first business day thereafter.

~~12.18~~ 12.17 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 Plaintiff:

The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

To ~~XYZ~~ Defendant:

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933

~~12.19~~ 12.18 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.

~~12.20~~12.19 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 that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

_____	_____
_____	_____
_____ For Plaintiff	_____ For XYZ <u>Defendant</u>
_____	_____
_____	_____
_____ Counsel for Plaintiff	_____ Counsel for XYZ <u>Defendant</u>

EXHIBIT A

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

(case name and number)

(Lizarraga, et al. v. Digby Southwest Inc., et al., LASC Case No. 19STCV27901)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against _____ (abbreviate name; “XYZ” is used herein Defendant Digby Southwest, Inc. (hereinafter referred to as a placeholder) “DSW” or “Defendant”) for alleged wage and hour violations. The Action was filed by a[n] former XYZ DSW employee Albert Lizarraga (“Plaintiff”) and seeks payment of (1) back wages [and other relief] for a class of [e.g., hourly] employees all current and former drivers (“Class Members”) who worked for XYZ DSW in the State of California at any time during the Class Period (____ to _____); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all [e.g., hourly] employees Class Members who worked for XYZ DSW during the PAGA Period (____ to _____) (“Aggrieved Employees”). The Class Period is from August 9, 2015 through <<Class Period end date>>. The PAGA Period is from <<PAGA Period start date>> through <<PAGA Period end date>>.

DSW denies the allegations Plaintiff is asserting in this Action and contends that it has properly paid all wages and complied with all applicable laws. The Court has not formed any opinions concerning the merits of the Action, and the Court has not ruled for or against Plaintiff as to the merits of any of his individual or class or PAGA claims. You will not be retaliated against by DSW for electing to participate or not participate in the settlement.

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

Based on XYZ’s DSW’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [] (less withholding) and your 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 XYZ’s DSW’s 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 XYZ’s DSW’s records showing that **you worked [] workweeks** during the Class Period and **you worked [] workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. **Your legal rights are affected whether you act or not act. Read this Notice carefully.** You will be deemed to have

carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires ~~XYZ~~DSW to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against ~~XYZ~~DSW.

If you worked for ~~XYZ~~DSW 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 against ~~XYZ~~DSW.
- (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. You will, however, preserve your right to personally pursue Class Period wage claims against ~~XYZ~~DSW, 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.

~~XYZ~~DSW 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 XYZ DSW that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <u>RESPONSE DEADLINE</u>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. XYZDSW must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <u>[RESPONSE DEADLINE]</u>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by <u>[RESPONSE DEADLINE]</u>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ’s DSW’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____ <u>[RESPONSE DEADLINE]</u>. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a ~~[n] former~~ XYZ employee of DSW. The Action accuses XYZ DSW of violating California labor laws by failing to pay ~~[e.g., minimum wages,~~ overtime wages, ~~minimum wages, timely~~ wages due upon ~~termination~~ separation, and reimbursable expenses] ~~and~~. The Action also accuses DSW of failing to provide ~~[e.g., meal periods, rest breaks,~~ and accurate itemized wage statements], ~~and failing to maintain required records.~~ The Action further accuses DSW of breach of contract, breach of the covenant of good faith and fair dealing, and unlawful and unfair business practices. Based on ~~the same~~ these claims, Plaintiff ~~has~~ also ~~asserted a claim~~ alleges that DSW is liable for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: The Kick Law Firm, APC (“Class Counsel.”)

(“Class Counsel.”)

XYZ

DSW strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. The Court has not formed any opinions concerning the merits of the Action, and the Court has not ruled for or against Plaintiff as to the merits of any of his individual or class or PAGA claims. You will not be retaliated against by DSW for electing to participate or not participate in the settlement.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether ~~XYZ~~DSW or Plaintiff is correct on the merits. In the meantime, Plaintiff and ~~XYZ~~DSW hired ~~an~~ an experienced, neutral mediator ~~a~~
~~retired judge~~

~~an~~ (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an amount to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ~~XYZ~~DSW have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ~~XYZ~~DSW does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ~~XYZ~~DSW has agreed to pay a fair, reasonable and adequate amount considering the strength and weaknesses of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. ~~XYZ~~DSW Will Pay \$300,000 as the Gross Settlement Amount (Gross Settlement). ~~XYZ~~DSW has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, ~~XYZ~~DSW will fund the Gross Settlement not more than ~~14~~30 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final

Approval Hearing:

- A. Up to \$ (one-third (33-1/3%)) of the Gross Settlement², which is currently estimated to be \$100,000 to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$16,826 to the Administrator for services administering the Settlement.
- D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and XYZDSW are asking the Court to approve an allocation of % 20% of each Individual Class Payment to taxable wages ("Wage Portion") and % 80% to ~~[e.g., interest, etc.]~~ and penalties ("Non-Wage Portion~~.)~~"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ~~[Option 1: (XYZ will separately pay employer payroll taxes it owes on the Wage Portion.)]~~ The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and XYZDSW have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- ~~5.~~ Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies

~~☐ will be deposited with the California Controller's Unclaimed Property Fund in your name.~~

~~7.5.~~ will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).

~~If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.~~

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, **[RESPONSE DEADLINE]**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against ~~XYZ~~DSW.

~~8.6.~~ You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against ~~XYZ~~DSW based on the PAGA Period facts alleged in the Action.

~~9.7.~~ The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and ~~XYZ~~DSW have agreed that, in either case, the Settlement will be void: ~~XYZ~~DSW will not pay any money and Class Members will not release any claims against ~~XYZ~~DSW.

~~10.8.~~ Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

~~11.9.~~ Participating Class Members’ Release. After the Judgment is final and ~~XYZ~~DSW has fully funded the Gross Settlement ~~{Option 1: (and separately paid all employer payroll taxes)}~~, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ~~XYZ~~DSW or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

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, and assigns, release Released Parties from ~~(i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~ Except as set forth in Section 6.3 of the Settlement any and all liabilities against the Released Parties during the Class Period that are or that could have been pled based on the facts alleged in the operative Complaint relating to the payment or non-payment of wages, reimbursements, statutory and civil penalties, based on alleged violations of Industrial Welfare Commission Wage Order No. 9, sections 11 and 12 and California Labor Code sections 200, 201, 202, 203, 204, 218.6, 221, 222.5, 223, 226, 226(e), 226.2, 226.3, 226.7, 400-410, 510, 512, 558, 558.2, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699, 2802, 2802(a), 2802(b), 2802(c), including the failure to pay wages for hours worked, minimum wage claims, meal break violations, rest break violations, failure to pay premiums for missed break violations, failure to pay overtime wages, failure to maintain required records, failure to indemnify employees for necessary expenses incurred in discharge of duties, unlawful deductions from wages, waiting time penalties, wage statement claims, breach of contract, breach of covenant of good faith and fair dealing, Unfair Competition Law violations (California Business & Professions Code section 17200, of seq), California Civil Code, California PAGA penalties under Labor Code § 2699, and any other claims that were alleged in the Case or which arise out of or directly or indirectly relate to such facts alleged in the Complaint (collectively the “Released Claims”). Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period~~;~~.

~~12.10.~~ Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and ~~XYZ~~DSW has paid the Gross Settlement ~~(and separately paid the employer-side payroll taxes);~~, all Aggrieved Employees will be barred from asserting PAGA claims against ~~XYZ~~DSW, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against ~~XYZ~~DSW or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint~~;~~ ~~[and]~~, the PAGA Notice~~;~~ and

ascertained in the course of the Action~~], including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.],~~ and hour violations during the Class Period and/or PAGA Period under state or federal law.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in XYZ's DSW's records, are stated in the first page of this Notice. You have until [RESPONSE DEADLINE] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ's DSW's calculation of Workweeks and/or Pay Periods based on XYZ's DSW's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's DSW's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your

address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Lizarraga, et al. v. Digby Southwest Inc., et al.*, LASC Case No. 19STCV27901, and include your identifying information (full name, address, telephone number or an e-mail address, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, RESPONSE DEADLINE, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ~~XYZ~~DSW are asking the Court to approve. At least 16 days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award 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 _____, RESPONSE DEADLINE.** 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 as *Lizarraga, et al. v. Digby Southwest Inc., et al.*, LASC Case No. 19STCV27901 and include your name, current address, telephone number, and approximate dates of employment for ~~XYZ~~DSW and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ (date) at _____ (time) in Department ~~7~~1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ~~XYZ~~DSW and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity)'s the Administrator's website at _____ (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to ~~http://www.lacourt.org/casesummary/ui/index.aspx~~ and entering the Case Number for the Action, Case No. 19STCV27901. You can also make an appointment to personally review court documents in the Clerk's Office at the ~~Stanley Mosk~~Spring Street Courthouse by calling (213) ~~830-0800~~310-7000.

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

Class Counsel:

Name of Attorney: Taras Kick

Email Address: taras@kicklawfirm.com

Name of Firm: The Kick Law Firm, APC

Mailing Address: 815 Moraga Drive, Los Angeles, CA 90049

Telephone: (310) 395-2988

Settlement Administrator:

Name of Company: Simpluris, Inc.

Email Address: CaseSupport@Simpluris.com

Mailing Address: P.O. Box 26170 Santa Ana, CA 92799

Telephone: (888) 369-3780

~~Fax Number:~~

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void ~~you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds~~ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

~~ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex-litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

~~ⁱⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)~~

~~ⁱⁱⁱ See endnote ii above.~~

~~^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.~~

~~^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.~~

~~^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)~~

~~^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.~~

~~^{viii} Releases in Notice should track the releases in the Settlement Agreement.~~

EXHIBIT 3

The Kick Law Firm

A Professional Corporation
815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax 310 395 2088

October 4, 2022

Via Online Submission

Department of Industrial Relations
Accounting Unit
Attn. PAGA Administrator
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

**Via Certified U.S. Mail – Return
Receipt Requested**

Digby Southwest, Inc.
c/o Richard Rahm, Esq.
333 Bush Street, 34th Floor
San Francisco, CA 94104

Re: Notice Pursuant to California Labor Code § 2699.3
Employee: Albert Lizarraga
Employers: Digby Southwest, Inc., and related entities

To Whom It May Concern:

This office represents Albert Lizarraga (“Mr. Lizarraga”), who was employed by Digby Southwest, Inc., and related entities (collectively, “Employers”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001, which Mr. Lizarraga alleges Employers have violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employers in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers. Enclosed please find a draft of Mr. Lizarraga’s proposed complaint, which is incorporated by reference into this notice. Our office, with submission of this notice, has also paid the \$75.00 to the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice of Mr. Lizarraga’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Lizarraga’s employment and potential claims must be preserved, even without a court order.

Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential class and representative action on behalf of Employers’ current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and

512 and Wage Order No. 9-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 9-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5; failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a); failure to provide suitable seating in violation of Labor Code § 1198; unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 222.5, 223; and willful misclassification of employees in violation of Labor Code § 226.8.

The allegations made by Mr. Lizarraga on behalf of himself and all other similarly-situated current and former non-exempt employees of Employers in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Employers' failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Employers' unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Lizarraga and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11. Employers failed to provide their employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Lizarraga's and other aggrieved employees' meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Employers consistently failed to provide Mr. Lizarraga and other aggrieved employees meal breaks because Mr. Lizarraga and other aggrieved employees were given too much work to perform to take meal breaks.

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001 by failing to compensate Mr. Lizarraga and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 9-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Lizarraga and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 9-2001. Employers failed to authorize and permit their employees to take required rest periods. Specifically, Employers maintained a policy or practice of not authorizing and permitting Mr. Lizarraga and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Employers consistently failed to authorize and permit Mr. Lizarraga and other similarly-situated individuals to take rest breaks because Mr. Lizarraga and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. Lizarraga and other aggrieved employees were able to take rest breaks, Employers failed to authorize and permit Mr. Lizarraga and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001, § 12 by failing to pay Mr. Lizarraga and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Lizarraga and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197. Employers failed to pay Mr. Lizarraga and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Lizarraga and other similarly-situated individuals to work off-the-clock; requiring, suffering or permitting Mr. Lizarraga and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Lizarraga and other aggrieved employees; failing to properly maintain Mr. Lizarraga's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Lizarraga and other aggrieved employees for each pay period; and other methods to be discovered. Employers' conduct violates Labor Code §§ 1194 and 1197.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the

seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Lizarraga and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 9-2001. Employers failed to compensate Mr. Lizarraga and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194; requiring, suffering or permitting Mr. Lizarraga and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Lizarraga and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Lizarraga and other aggrieved employees; failing to properly maintain Mr. Lizarraga's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Lizarraga and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Employers have refused to perform their obligations to compensate Mr. Lizarraga and other aggrieved employees for all wages earned and all hours worked. Employers' conduct violates Labor Code §§ 510 and 1194.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Employers failed to pay Mr. Lizarraga and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Employers required Mr. Lizarraga and other aggrieved employees to work off-the-clock without compensation and required Mr. Lizarraga and other aggrieved employees to work through required meal breaks without compensation. Additionally, Employers failed to pay Mr. Lizarraga and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Employers also failed to pay Mr. Lizarraga and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Employers knew they were required to pay overtime wages, yet on many occasions failed to pay Mr. Lizarraga and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee

provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Employers willfully failed to pay accrued wages and other compensation to Mr. Lizarraga and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Employers required Mr. Lizarraga and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. Lizarraga and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Employers failed and continue to fail to pay the full earned and unpaid wages due to Mr. Lizarraga and other aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Employers failed to provide Mr. Lizarraga and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Lizarraga and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. Similarly, Employers did not include the mileage-based pay on Mr. Lizarraga's and other aggrieved employee's wage statements, instead stating that they worked at hourly rates of less than the minimum wage. As a result, Mr. Lizarraga and other aggrieved employees lost wages. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the wage statements. As a result, Mr. Lizarraga and other aggrieved employees lost wages. Employers also did not properly calculate the regular rate of pay of Mr. Lizarraga and other aggrieved employees. As a result, Mr. Lizarraga's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Failure to Maintain Required Records

Employers failed to maintain records as required under Labor Code §§ 226 and 1174, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, Unlawful Deductions, and Compulsion and Coercion to Patronize Employer and/or Other Persons

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Employers failed to indemnify Mr. Lizarraga and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employers, including but not limited to expenses for cell phones, equipment, fees, fines, travel-related expenses, and other employment-related expenses, in violation of Labor Code § 2802.

Moreover, Labor Code §§ 221, 222.5, and 223 makes it unlawful to deduct or withhold from employees' wages outside of circumstances specified in Labor Code § 224. Employers, however, made such deductions directly from Mr. Lizarraga and other aggrieved employees' compensation in violation of Labor Code §§ 221, 222.5, and 223. Specifically, such deductions included, but were not limited to deductions for maintenance items, fuel, and communication devices.

This notice is hereby given to Employers and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employers, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

October 4, 2022

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If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049. Additionally, please advise us if the Agency or Employers require additional information regarding Mr. Lizarraga's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

The Kick Law Firm, APC

A handwritten signature in black ink, appearing to read "A. J. Taylor", written over the printed name "Greg Taylor".

Greg Taylor
Taras Kick

Enclosed: Draft of Mr. Lizarraga's proposed complaint

EXHIBIT 4

1 Taras Kick (SBN 143379)
2 Taras@kicklawfirm.com
3 Greg Taylor (SBN 315128)
4 Greg@kicklawfirm.com
5 Ryan Tish (SBN 274284)
6 Ryan@kicklawfirm.com
7 **THE KICK LAW FIRM, APC**
8 815 Moraga Drive
9 Los Angeles, CA 90049
10 Tel: (310) 395-2988
11 Fax: (310) 395-2088

12 Attorneys for Plaintiff ALBERT LIZARRAGA,
13 individually and on behalf of all others similarly
14 situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

17 ALBERT LIZARRAGA, individually, and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 DIGBY SOUTHWEST, INC. an Arizona
22 Corporation; and DOES 1 through 100, inclusive,

23 Defendants.

Case No. 19STCV27901

*[Assigned for all purposes to the Honorable
Stuart M. Rice, Dept. 17]*

[PROPOSED] FINAL JUDGMENT

Complaint filed: August 9, 2019
Trial date: None set

1 **[PROPOSED] FINAL JUDGMENT**

2 In keeping with this Court's [FINAL APPROVAL HEARING DATE] Final Order Granting
3 Motion for Final Approval of Class and PAGA Representative Action Settlement ("Final Approval
4 Order") this Court hereby **ADJUDGES** and **DECREES** as follows:

5 1. Pursuant to the Code of Civil Procedure section 382, Rule 3.769 of the California Rules of
6 Court and Labor Code §§ 2698, *et seq.* ("PAGA"), this Court now enters this Judgment under which
7 Albert Lizarraga ("Plaintiff"), Participating Class Members and the State of California, California Labor
8 and Workforce Development Agency ("LWDA"), shall take nothing from Defendant Digby Southwest,
9 Inc. ("Defendant"), except as expressly set forth in the Final Approval Order.

10 2. Pursuant to the California Rules of Court, Rule 3.771(a), this Final Judgment, hence, binds
11 the following Class:

12 All current and former drivers, including but not limited to those misclassified as independent
13 contractors or owner-operators, who performed work for Defendant in the State of California
14 at any time during the period from August 9, 2015, to November 1, 2022 ("Class Period").

15 and finally binds the State of California as to the following PAGA Members:

16 All current and former drivers, including but not limited to those misclassified as independent
17 contractors or owner-operators, who performed work for Defendant in the State of California
18 at any time during the period from October 4, 2021, to November 1, 2022 ("PAGA Period").

19 3. Pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court,
20 Rule 3.769(h), this Court shall retain jurisdiction over the Plaintiff, Participating Class Members,
21 Defendant, and the LWDA with respect to enforcement of this Judgment including, but not limited to, all
22 matters related to the interpretation, administration and consummation of the Settlement. Pursuant to the
23 California Rules of Court, Rule 3.771(b), the Settlement Administrator's posting of an electronic copy of
24 the Judgment on the Settlement Administrator's website shall be deemed due and sufficient notice of entry
25 of this Judgment.

26 **IT IS SO ADJUDICATED.**

27 DATED: _____

28 _____
THE HONORABLE STUART M. RICE
JUDGE OF THE SUPERIOR COURT