

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANTHONY VARGAS, individually, and
KENNETH SLINGLUFF, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

ELEMENTIS SPECIALTIES, INC., a
Delaware Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2224689

*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: March 12, 2024

Time: 8:30 a.m.

Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiffs in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 22
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California’s history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
28 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17

employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendant (collectively, the “Parties”) reached a global settlement and eventually entered into a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$290,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees employed by Defendant in California at any time during the Class Period of November 3, 2018, through December 25, 2023. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$5,450, PAGA Penalties of \$30,000 of which \$22,500 will be paid to the LWDA and the remaining \$7,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to each Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$117,883.33 will be available to pay individual settlement amounts to approximately 52 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 290,000.00
Attorneys’ Fees (1/3)	\$ 96,666.67
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 5,450.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 117,883.33

1 8. Assuming 52 Class Members, the average payment to each Class Member will
2 be approximately \$2,266.99 (\$117,883.33 / 52). However, the actual payment will be
3 calculated on a pro-rata basis according to the number of Weeks Worked by each Class
4 Member during the Class Period, with each Work Week having a value of approximately
5 \$16.76 (\$117,883.33 / 7,035 estimated Work Weeks).

6 9. Each Class Member will receive the Class Notice, explaining the nature of the
7 case, and the process for participating, objecting and opting-out, and advising of his/her
8 estimated settlement payment and the number of Work Weeks that he/she is credited with
9 working during the Class Period.

10 **PROCEDURAL BACKGROUND**

11 10. My office has performed considerable work and diligently investigated and
12 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
13 significant settlement fund for the benefit of the Class. We efficiently communicated and
14 exchanged information informally with Defense counsel which enabled the parties to
15 successfully settle the case. Because of the risks involved in litigating the case and the contested
16 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

17 11. After being retained by Plaintiff Anthony Vargas, we submitted on November 3,
18 2022, a letter to the California Labor Workforce Development Agency (the “LWDA”) for civil
19 penalties under the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent
20 a letter to Defendant requesting the production of Plaintiff’s personnel and timekeeping records
21 to further evaluate the wage and hour claims. The LWDA ultimately declined to assert
22 jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

23 12. Also on November 3, 2022, Plaintiff Vargas filed a putative class action in the
24 San Bernardino County Superior Court. After the LWDA declined to assert jurisdiction over the
25 PAGA Claims, on March 20, 2023, Plaintiff Vargas filed a first amended complaint that added
26 representative PAGA Claims. The first amended complaint alleges the following: (a) failure to
27 pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)
28 failure to provide rest breaks, (e) failure to timely pay final wages, (f) failure to provide accurate

1 itemized wage statements; (g) unfair and unlawful competition, and (h) related PAGA claims.

2 13. Shortly thereafter, in January 2023, another employee (Kenneth Slingluff)
3 retained Plaintiff's counsel to obtain his employment records from Defendant and evaluate his
4 potential claims. However, Mr. Slingluff was not immediately added as a Plaintiff to the existing
5 case.

6 14. Defendant retained counsel and immediately began to defend the case. Then,
7 after early discussions among counsel, the Parties agreed to attend private mediation.

8 15. In preparation for the mediation, the Parties informally exchanged documents and
9 information that allowed both sides to calculate the potential damages and evaluate potential risk,
10 including policies and procedures pertaining to each claim alleged, and statistics relating to the
11 number of current and former employees, pay periods worked and other things. Defendant also
12 provided their written policies and practices and a robust sampling of payroll and timekeeping
13 records for Class Members. This information enabled both parties to take a deep dive into the
14 claims. Additionally, during this process, Plaintiffs and their counsel analyzed, researched, and
15 investigated the potential issues, including matters related to the calculation of damages, trial,
16 and appellate issues and risks.

17 16. On October 25, 2023, Plaintiffs and Defendant participated in mediation before
18 Glenn Lerman, Esq., a well-respected wage-and-hour mediator. The matter resolved at
19 mediation, and the Parties entered into the Settlement Agreement submitted herewith, which also
20 included a provision to file an amended complaint adding Kenneth Slingluff as a named plaintiff
21 (who had previously retained Plaintiff's counsel and had been assisting in preparation for
22 mediation). On January 12, 2024, the Parties filed a stipulation to the filing of the second
23 amended complaint to add Kenneth Slingluff as a named plaintiff. The Parties now seek the
24 Court's preliminary approval of the Settlement.

25 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

26 17. The settlement was the product of extensive arm's length negotiations, facilitated
27 by an experienced mediator. Though cordial and professional, the settlement negotiations were
28 adversarial and non-collusive in nature. The settlement reached is the product of substantial

1 effort by the parties and their counsel. Although we believed that there was a possibility of
2 certifying the claims, we recognized the potential risk, expense, and complexity posed by
3 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
4 on the damages awarded, and/or on an appeal that can take several more years to litigate.

5 18. The settlement will result in a fair payment to each class member based on the
6 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and my
7 office have diligently investigated the claims and defenses on behalf of the Class Members and
8 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
9 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
10 further litigation described above and weighing them against the benefits of a known
11 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
12 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
13 reasonable resolution of the claims alleged.

14 19. My office brought to bear a great deal of experience in negotiating the settlement
15 of this case. As detailed herein, we engaged in the necessary discovery and investigation, making
16 it possible to exercise informed judgment throughout the settlement process, including
17 significant document review (*e.g.*, documents pertaining to Defendant's policies and procedures,
18 personnel documents, among others), and conducted an extensive analysis of the detailed class-
19 wide data provided by Defendant.

20 20. Based on my experience in other cases, including wage and hour matters, I
21 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
22 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
23 settlement at this time is in the best interests of the class. The settlement provides each class
24 member with compensation for the alleged violations when viewed in relation to the costs and
25 risks inherent in obtaining class certification and proceeding to trial.

26 21. My office, as well as Defense counsel, fully endorse the terms and conditions of
27 the settlement as set forth in the abovementioned Settlement Agreement.
28

1 22. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendants.

5 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENT**

6 23. Plaintiffs seek an enhancement payment of \$10,000 each for their services to the
7 Class, which I believe is fair and warranted. Mr. Vargas and Mr. Slingluff came forward in an
8 effort to effectuate a policy and practice change that benefitted all other Class Members, and to
9 recover unpaid wages. They assumed significant risk in bringing this litigation—namely, had
10 they lost, she would have been ordered to pay Defendant's costs.

11 24. Plaintiffs provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendant's policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
15 settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal
16 benefit. At final approval, Plaintiffs will submit a comprehensive declaration setting forth all of
17 the reasons why they believe that the service award should be approved.

18 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
19 **REQUESTED FEES AND COSTS**

20 25. As set forth above, I have handled well over 250 class and representative actions,
21 have been appointed as class counsel and have successfully resolved over half of those cases, and
22 many others remain pending and will successfully resolve in the future.

23 26. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
26 and mediation costs. There was never a guarantee that we would recoup those expenditures.

27 27. It is my experience that attorney fee awards of one-third of a common fund
28 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third

1 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
2 fee is further warranted because it is within the range of reasonableness typically awarded in
3 class actions. The litigation costs are reasonably capped at \$20,000 and will be based on the
4 actual amount of costs incurred at the time of final approval.

5 SETTLEMENT ADMINISTRATOR

6 28. The parties request that the Court appoint ILYM Group to serve as the Settlement
7 Administrator. ILYM is experienced in administering class action settlements, and has provided
8 a proposal to administer this settlement for a total of \$5,450, which is attached hereto as **Exhibit**
9 **4.**

10 SUBMISSION TO THE LWDA

11 29. Plaintiffs have concurrently submitted the Motion, Settlement Agreement and
12 exhibits to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of submission is
13 attached hereto as **Exhibit 5.**

14 EXHIBITS AND CONCLUSION

15 30. A true and correct copy of the partially signed Settlement Agreement is attached
16 as **Exhibit 1.**

17 31. The proposed Class Notice is attached as **Exhibit 2.**

18 32. A true and correct copy of the notice letter we submitted to the LWDA is attached
19 as **Exhibit 3.**

20 33. ILYM's proposal to administer the Settlement is attached hereto as **Exhibit 4.**

21 34. The LWDA's confirmation of receipt of this Motion and Declarations is attached
22 hereto as **Exhibit 5.**

23 35. For the foregoing reasons, it is respectfully requested that the Court grant
24 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
25 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
26 payment to the Class Representative.
27
28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on February 15, 2024, at Riverside, California.

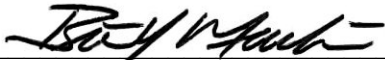
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EXHIBIT “1”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

Ryan J. Krueger, Esq. [CSB No. 293994]
rkrueger@sheppardmullin.com
Dimiana Saad, Esq. [CSB No. 347094]
dsaad@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
Tel: 213-620-1780 | Fax: 213-620-1398

Attorneys for Defendant, Elementis Specialties, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANTHONY VARGAS and KENNETH
SLINGLUFF, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

ELEMENTIS SPECIALTIES, INC., a
Delaware Corporation, and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2224689
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and between Plaintiffs Anthony Vargas and Kenneth Slingluff, individually and on behalf of all others similarly situated, and on behalf of the State of California, and Defendant Elementis Specialties, Inc., and is approved by their respective counsel of record, subject to the terms and

conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Anthony Vargas et al. v. Elementis Specialties, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2224689, which was commenced on November 3, 2022.

2. "Administrator" means and refers to ILYM Group, the third-party class action settlement administrator agreed to by the Parties, and approved by the Court, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

3. "Administration Costs" 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.

4. "Aggrieved Employee(s)" means all current and former nonexempt employees employed by Defendant Elementis Specialties, Inc., in California at any time during the PAGA Period.

5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class Action and PAGA Settlement Agreement and Release of Claims.

6. "Class" means all current and former nonexempt employees employed by Defendant Elementis Specialties, Inc., in California at any time during the Class Period.

7. "Class Member(s)" refers to individual members of the Class.

8. "Class Counsel" refers to Brian Mankin and Kristina Carlson of Lauby, Mankin & Lauby LLP.

9. "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.

10. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security

number, and number of Class Period Workweeks and PAGA Pay Periods.

11. “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).

12. “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.

13. “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, attached as Exhibit A and incorporated by reference into this Agreement.

14. “Class Period” is the period from November 3, 2018, through December 25, 2023.

15. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Anthony Vargas and Kenneth Slingluff.

16. “Complaint” refers to the operative second amended class and PAGA representative action complaint.

17. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

18. “Defendant” refers to Defendant Elementis Specialties, Inc.

19. “Defendant’s Counsel” or “Defense Counsel” means and refers to Sheppard, Mullin, Richter & Hampton LLP.

20. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1 21. “Employee Paid Taxes” means taxes paid by an individual employee, including
2 but not limited to Federal Insurance Contributions Act, federal income tax, state disability
3 insurance, and state income tax payments.

4 22. “Employer Paid Taxes” means taxes paid by the employer, including Federal
5 Unemployment Tax Act, Federal Insurance Contributions Act, state unemployment insurance,
6 and Employee Training Tax payments.

7 23. “Escalator Clause:” Based on Defendant’s records, as of October 25, 2023,
8 Defendant represents there were approximately 52 Class Members who collectively worked
9 approximately 7,035 Work Weeks in California during the Class Period. If the actual number of
10 Work Weeks worked by Class Members through the date October 25, 2023 as calculated by the
11 Administrator is ten percent (10%) greater than 7,035, then, Plaintiffs have the option to nullify
12 this Agreement. Plaintiffs shall provide ten (10) business days’ notice of such intent to nullify
13 prior to taking any action with the court. During this 10 day nullification notice period,
14 Defendant at its exclusive discretion may agree to increase the Gross Settlement Amount
15 proportionately for any excess increase in the total number Work Weeks worked by Class
16 Members through the date October 25, 2023. For example, if the total number of Work Weeks
17 worked by Class Members through the date October 25, 2023 increases by 13%, the Gross
18 Settlement Amount will increase by 3% (actual increase minus the 10% tolerated increase). In
19 the alternative, Defendant shall have the exclusive option to modify the applicable Class Period
20 to a date prior to December 25, 2023 (but no earlier than October 25, 2023 – the date of
21 mediation) to avoid incurring the pro rata increase.

22 24. “Final Approval” refers to the order of the Court granting final approval of this
23 Settlement Agreement and entering a judgment approving this Agreement on substantially the
24 terms provided herein or as may be modified by subsequent agreement of the Parties.

25 25. “Gross Settlement Amount” is \$290,000.00, which is the total gross amount
26 Defendant agrees to pay under the Settlement except for the Employer Paid Taxes and as
27 provided in Paragraph 23. The Gross Settlement Amount will be used to pay Individual Class
28 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees

1 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments,
2 the Administrator Expenses Payment, all interest payments, and all applicable Employee Paid
3 Taxes.

4 26. “Individual Class Payment” means the Participating Class Member’s pro rata
5 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
6 during the Class Period.

7 27. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
8 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked
9 during the PAGA Period.

10 28. “Judgment” means the judgment entered by the Court based upon the Final
11 Approval.

12 29. “LWDA” means the California Labor and Workforce Development Agency.

13 30. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
14 LWDA under Labor Code section 2699, subd. (i).

15 31. “Net Settlement Amount” means the Gross Settlement Amount, less the following
16 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
17 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to
19 Participating Class Members as Individual Class Payments, including all Employee Paid Taxes.

20 32. “Non-Participating Class Member” means any Class Member who opts out of the
21 Settlement by sending the Administrator a valid and timely Request for Exclusion.

22 33. “Notice” means the notice of proposed class settlement that will be sent to the
23 Class Members and which will advise each Class Member of the settlement and his or her
24 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
25 setting of a Final Approval Hearing. The Notices shall be mailed in English and Spanish.

26 34. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
27 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
28 below.

1 35. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

2 36. “PAGA Notice” means Plaintiff Anthony Vargas’ November 3, 2022 letter to
3 Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

4 37. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid
5 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500.00) and
6 the 75% to LWDA (\$22,500.00) in settlement of PAGA claims.

7 38. “PAGA Period” is the period from November 3, 2021, through December 25,
8 2023.

9 39.

10 40. “Participating Class Member” means any and all Class Members who do not opt-
11 out by submitting timely valid Requests for Exclusion.

12 41. “Parties” or “Settling Parties” mean Plaintiffs and Defendant, collectively.

13 42. “Preliminary Approval Date” means the date the Court approves the Settlement
14 Agreement and enters the Preliminary Approval Order.

15 43. “Preliminary Approval Order” means the judicial Order to be entered by the
16 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
17 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
18 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
19 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
20 and costs.

21 44. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
22 benefit of the Participating Class Members and Aggrieved Employees, and from which the
23 settlement payments shall be made.

24 45. “Released Class Claims” or “Class Claims” by the Participating Class Members
25 upon Final Approval of the Settlement will include all claims that were alleged, or reasonably
26 could have been alleged, based on the facts stated in the Complaint, including failure to pay
27 minimum wages, straight time compensation, overtime compensation, double-time
28 compensation, and interest thereon; failure to timely pay regular and final wages; the calculation

of the regular rate of pay; wages lost from time rounding and timekeeping; non-compliant (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide meal periods; failure to authorize and permit rest periods; the calculation and payment of meal period and rest period premiums; payment for all hours worked, including off-the-clock work and uncompensated work time; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to pay sick pay wages; failure to properly calculate sick pay wages; failure to keep accurate records; unfair business practices; recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; interest for claims for unpaid wages; and attorneys' fees and costs; claims under the California Labor Code including sections 200, 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 221-223, 224, 226, 226.3, 226.7, 233, 246, 246.5, 248.5, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2699, and 2802); the Wage Orders of the California Industrial Welfare Commission; and California Business and Professions Code section 17200, et seq. This release excludes the release of claims not permitted by law. Upon entry of Judgment, Participating Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Wage And Hour Class Claims, which are extinguished and precluded pursuant to *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). The 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. The Class Members' Released Class Claims shall be limited to the Class Period.

46. "Released PAGA Claims" or "PAGA Claims" means any and all PAGA claims that Plaintiffs alleged against the Released Parties, on behalf of the Aggrieved Employees and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the LWDA and the State of California, including all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice, including claims for unpaid wages, including failure to pay

1 minimum wages, straight time compensation, overtime compensation, double-time
2 compensation, and interest; the calculation of the regular rate of pay; non-compliant (e.g.,
3 missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide meal
4 periods; failure to authorize and permit rest periods; the calculation and payment of meal period
5 and rest period premiums; payment for all hours worked, including off-the-clock work and
6 rounded time; wage statements; failure to keep accurate records; unlawful deductions and/or
7 withholdings from wages; failure to timely pay wages; and failure to timely pay final wages.
8 The Released PAGA Claims include claims for violation of the Wage Orders of the California
9 Industrial Welfare Commission and the following California Labor Code sections: 200, 201, 202,
10 203, 204, 206, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2,
11 1197, 1197.1, 1198, 1199, 2802, as well as 2698 et seq., and 2699 et seq. in relation to the claims
12 alleged in the Complaint and PAGA Notice. Aggrieved Employees' Released PAGA Claims are
13 limited to the PAGA Period.

14 47. "Released Parties" means Defendant and each of its past, present and future
15 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
16 stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related
17 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors,
18 insurers, consultants, joint venturers, joint employers, temporary staffing agencies, affiliates,
19 alter-egos, vendors, and affiliated organizations, and all of its respective past, present and future
20 employees, directors, officers, agents, representatives, payroll agencies, attorneys, stockholders,
21 fiduciaries, parents, subsidiaries, and assigns.

22 48. "Request for Exclusion" means a Class Member's submission of a written request
23 to be excluded from the Class Settlement signed by the Class Member.

24 49. "Response Deadline" means 30 days after the Administrator mails the Class
25 Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
26 Members may mail Requests for Exclusion from the Settlement, or mail his or her Objection to
27 the Settlement. Class Members to whom the Class Notice is resent after having been returned
28 undeliverable to the Administrator shall have the Response Deadline extended by an additional

1 14 calendar days.

2 50. “Service Payment” or “Service Award” means, in exchange for the execution of a
3 stand-alone general release of all claims, the payments to each Class Representative for initiating
4 the Action and providing services in support of the Action, in addition to their Individual Class
5 Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved
6 Employee.

7 51. “Work Weeks” or “Weeks Worked” means any week during which a Class
8 Member or Aggrieved Employee worked for Defendant for at least one day during the Class
9 Period or PAGA Period.

10 **B. General Terms**

11 52. On November 3, 2022, Plaintiff Anthony Vargas filed a putative class and
12 representative PAGA action in the San Bernardino County Superior Court. On the same day,
13 Plaintiff Vargas submitted a letter to the LWDA setting for the alleged violations under PAGA.
14 The LWDA declined to assert jurisdiction over the PAGA Claims, so on March 20, 2023,
15 Plaintiff Vargas filed the operative first amended complaint that added representative PAGA
16 Claims. The first amended complaint alleges the following claims: (a) failure to pay minimum
17 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
18 provide rest breaks, (e) failure to timely pay final wages, (f) failure to provide accurate itemized
19 wage statements; (g) unfair and unlawful competition, and (h) related PAGA claims. On January
20 12, 2024, the Parties filed a stipulation to the filing of the second amended complaint to add
21 Kenneth Slingluff as a named plaintiff.

22 53. Defendant denies Plaintiffs’ claims and allegations and contends that the Action is
23 not suitable for class certification.

24 54. The Class Representatives believe they can proceed with the representative and
25 class claims, that the Action is meritorious, and that class certification is appropriate.

26 55. The Parties have conducted a thorough investigation into the facts of the Action.
27 This includes conducting an extensive exchange of informal discovery, including Defendant’s
28 written policies and practices and confirmation regarding the payroll and timekeeping practices

1 for Class Members. Class Counsel is both knowledgeable about and has done extensive research
2 with respect to the applicable law and potential defenses to the claims of the Class. Class
3 Counsel has diligently pursued an investigation of the Class Members' claims against Defendant.
4 Based on the foregoing data and on their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the settlement with Defendant for the consideration and on the
6 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
7 interest of the Class Members in light of all known facts and circumstances, including the risk of
8 significant delay and uncertainty associated with litigation, various defenses asserted by
9 Defendant, and numerous potential appellate issues.

10 56. On October 25, 2023, Plaintiffs and Defendant participated in a full-day
11 mediation with Glenn Lerman, a well-respected wage-and-hour mediator. At the conclusion of
12 mediation, Mr. Lerman issued a mediator's proposal, which the Parties accepted and reached the
13 Settlement detailed herein. Further, the Parties agreed to add Kenneth Slingluff as a named
14 Plaintiff and Class Representative in a proposed second amended complaint.

15 57. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
16 to be performed or judgment to be entered pursuant to the terms of the Settlement and
17 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
18 any statute or law or liability on the claims or allegations in the Action.

19 58. Stipulation for Class Certification. For settlement purposes only, Defendant will
20 stipulate that the Class Members described herein who do not Request Exclusion from the Class
21 may be conditionally certified as a Class. This stipulation to certification is in no way an
22 admission that class action certification is proper and shall not be admissible in this or in any
23 other action except for the sole purposes of enforcing this Agreement. Should, for whatever
24 reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part
25 of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
26 be admissible in connection with, the issue of whether certification would be appropriate in a
27 non-settlement context. Defendant expressly reserves its rights and declares that it would
28 continue to oppose class certification and the substantive merits of the case should the Court fail

1 to issue Final Approval. Plaintiffs expressly reserve their rights and declare that they will
2 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

3 **C. Terms of Settlement**

4 59. The financial terms of the Settlement are as follows:

5 (a) Gross Settlement Amount: The Parties agree to settle this Action for the
6 Gross Settlement Amount, subject to the Escalator Clause and Defendant's obligation to
7 separately pay Employer Paid Taxes, which is the maximum amount that will be paid by
8 Defendant and includes Individual Class Payments, the Class Counsel Fees Payment, the Class
9 Counsel Litigation Expenses Payment, the Service Payment to the Class Representatives,
10 Administration Costs, and PAGA Penalties.

11 (b) The Individual Class Payment for each Class Member will be calculated
12 by the Administrator using the Class Data provided by Defendant as follows. Compensable
13 workweeks will be all Weeks Worked by the Class Members during the Class Period. The
14 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
15 Class Members into the Net Settlement Amount to determine a per work week value
16 ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks
17 Worked by a Participating Class Member during the Class Period to determine the distribution
18 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
19 Administrator shall proportionately increase the Individual Class Payments for each Participating
20 Class Member so that the amount actually distributed to Participating Class Members equals
21 100% of the Net Settlement Amount.

22 (c) Allocation of Individual Class Payments: The Individual Class Payments
23 to Participating Class Members will be allocated as follows: one-third (33.33%) will be allocated
24 as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds
25 (66.67%) will be allocated for interest and statutory penalties from which no taxes will be
26 withheld. The Administrator will issue to each Participating Class Member an Internal Revenue
27 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
28 1099 with respect to the penalties and interest allocations. Participating Class Members assume

1 full responsibility and liability for any Employee Paid Taxes owed on their Individual Class
2 Payment.

3 (d) Service Payment to Class Representatives: The amount, if any, awarded
4 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
5 exceed \$10,000 each to Anthony Vargas and Kenneth Slingluff, in exchange for the service that
6 they performed on behalf of the Class. Defendant agrees not to oppose this request. The Service
7 Payment to Plaintiffs will be paid out of the Gross Settlement Amount. The Class
8 Representatives will be issued an IRS Form 1099 in connection with this payment. Plaintiffs
9 shall be solely and legally responsible to pay all applicable taxes on this payment. The Parties
10 agree that any amount awarded as the Service Payment to Plaintiffs less than the requested
11 amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the
12 Court approve a lesser amount for the Service Payment, the difference shall be added to the Net
13 Settlement Amount to be distributed to the Participating Class Members. The Service Payment
14 to Class Representatives is conditioned on the Plaintiffs' Release, which is a general release of
15 all claims, as set forth below.

16 (e) Class Counsel Fees Payment and Expenses Payment: Defendant agrees to
17 not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of
18 the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$20,000. The Class
19 Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be paid from the
20 Gross Settlement Amount, and, except for these payments, Defendant shall have no further
21 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
22 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
23 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
24 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
25 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
26 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and expenses awarded by the
27 Court. Class Counsel assumes full responsibility and liability for taxes owed on the Class
28 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment.

1 (f) Administration Costs: The fees and other charges of the Administrator
2 will be paid from the Gross Settlement Amount, not to exceed \$5,450, unless (1) the Escalator
3 Clause is triggered (whereby any reasonable increase in Settlement Administration Costs shall be
4 paid from the increased Gross Settlement Amount, subject to Court approval), or (2) as otherwise
5 approved by all Parties and the Court. To the extent the Administration Costs are less or the
6 Court approves payment less than \$5,450, the Administrator will retain the remainder in the Net
7 Settlement Amount.

8 (g) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
9 Penalties, and is to be paid from the Gross Settlement Amount, subject to Court approval. Of
10 this amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
11 PAGA and \$7,500 (25%) will form the Individual PAGA Payments to the Aggrieved
12 Employees, which shall be calculated and allocated pro-rata on a Work Week basis, which will
13 be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099.
14 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
15 Individual PAGA Payment. Class Counsel shall give proper notice to the LWDA of the
16 Settlement.

17 (h) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make
18 no representations as to the tax treatment or legal effect of settlement amounts called for
19 hereunder, and Plaintiffs and the Class Members are not relying on any statement or
20 representation by Class Counsel or Defendant in this regard. Plaintiffs, Participating Class
21 Members, and Aggrieved Employees understand and agree that they will be solely responsible
22 for the payment of any taxes and penalties assessed on their respective Individual Class
23 Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in
24 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
25 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
26 changed after the date of this Agreement, the processes set forth in this Section may be modified
27 in a manner to bring Defendant into compliance with any such changes. Plaintiffs, Participating
28 Class Members, and Aggrieved Employees understand and agree that they will be solely

1 responsible for the payment of any taxes and penalties assessed on their respective payments
2 described herein.

3 (i) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
4 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
5 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
6 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
7 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
8 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
9 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
11 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
12 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
13 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
14 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
15 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
16 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
17 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
18 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
19 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
20 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
21 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
22 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
23 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
24 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
25 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
26 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

27 (j) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
28 Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant.

1 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
2 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
3 Individual Class Payment or Individual PAGA Payments will be made directly to each
4 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
5 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
6 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
7 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

8 (k) Class Counsel and Plaintiffs believe that the Settlement is fair and
9 reasonable and will so represent same to the Court.

10 **D. Release by the Participating Class Members**

11 60. Upon entry of the Final Approval Order and Defendant's funding of the Gross
12 Settlement Amount and the required Employer Paid Taxes, and except as to such rights or claims
13 as may be created by this Agreement, Plaintiffs and the Participating Class Members will forever
14 completely release and discharge the Released Parties from the Released Class Claims for the
15 Class Period.

16 61. Each Participating Class Member will be deemed to have made the foregoing
17 Release as if by manually signing it.

18 62. Class Representatives, on behalf of themselves and the Class, acknowledge and
19 agree that the claims for unpaid wages and untimely payment of wages in the Action are
20 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
21 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
22 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
23 in pertinent part as follows: "An employer shall not require the execution of any release of any
24 claim or right on account of wages due, or to become due, or made as an advance on wages to be
25 earned, unless payment of those wages has been made."

26 **E. Release of PAGA Claims**

27 63. Upon entry of the Final Approval Order and Defendant's funding of the Gross
28 Settlement Amount and the required Employer Paid Taxes, Plaintiffs, the LWDA, the State of

1 California, and Aggrieved Employees shall completely release and discharge the Released
2 Parties from the Released PAGA Claims for the PAGA Period.

3 64. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
4 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
5 releasing the Released PAGA Claims. Under *Robinson v. Southern Counties Oil Co.*, 53
6 Cal.App.5th 476 (2020), the Released PAGA Claims apply to all Aggrieved Employees,
7 regardless of whether they request exclusion from the class.

8 65. It is the intent of the Parties that the Final Approval Order shall have full
9 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

10 **F. Release by Plaintiffs and Class Representatives**

11 66. As a condition of receiving any portion of the Class Representative Service
12 Payments, Plaintiffs and each of their respective former and present spouses, representatives,
13 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
14 the Released Parties from all known and unknown claims, transactions, or occurrences under
15 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of
16 law, including but not limited to claims arising from or related to their respective employments
17 with Defendant and their compensation while so employed (“Plaintiffs’ Release”). Plaintiffs’
18 Release includes all claims asserted in the Action and/or arising from or related to the facts and
19 claims alleged in the Action or the PAGA Notice, or that could have been raised in the Action or
20 the PAGA Notice based on the facts and claims alleged. Plaintiffs’ Release includes, but is not
21 limited to, all claims for unpaid wages, including, but not limited to, failure to pay minimum
22 wages, straight time compensation, overtime compensation, double-time compensation, and
23 interest; the calculation of the regular rate of pay; failure to pay wages at least twice each
24 calendar month; failure to timely pay wages; failure to timely pay final wages; non-compliant
25 (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide
26 meal periods; failure to authorize and permit rest periods; the calculation and payment of meal
27 period and rest period premiums; failure to reimburse business expenses; payment for all hours
28 worked, including off-the-clock work and rounded time; wage statements; deductions; failure to

1 keep accurate records; unlawful deductions and/or withholdings from wages; unfair business
2 practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and
3 payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys'
4 fees and costs. Plaintiffs' Release includes all claims arising under the California Labor Code
5 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
6 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7,
7 226.8, 227.3, 246, 247.5, 248.5, 256, 450, 510, 511, 512, 515, 516, 550, 551, 552, 558, 1174,
8 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1198.5, 2698 *et seq.*,
9 2699 *et seq.*, 2802, and 2804); all claims arising under: the Wage Orders of the California
10 Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA);
11 California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to
12 include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of
13 Civil Procedure § 1021.5; the California common law of contract; the Fair Labor Standards Act,
14 29 U.S.C. §§ 201, *et seq.*; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the
15 Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.* (ERISA). Plaintiffs'
16 Release also includes all claims for lost wages and benefits, emotional distress, retaliation,
17 punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for
18 discrimination, harassment, retaliation, and wrongful termination, such as, by way of example
19 only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans
20 with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the
21 California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This
22 release excludes the release of claims not permitted by law. Plaintiffs' Release does not extend
23 to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
24 unemployment benefits, disability benefits, social security benefits, workers' compensation
25 benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs
26 acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts
27 or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs'
28 Release shall be and remain effective in all respects, notwithstanding such different or additional

1 facts or Plaintiffs' discovery of them. The specific terms of each respective Plaintiff's Release
2 will be detailed in stand-alone individual settlement agreements.

3 67. Plaintiffs' Waivers of Rights Under California Civil Code Section 1542. For
4 purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
5 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

10 **G. Interim Stay of Proceedings**

11 68. Pending completion of all of the prerequisites necessary to effectuate this
12 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
13 except such as is necessary to effectuate the Settlement.

14 **H. Notice Process**

15 69. Appointment of Administrator. The Parties have agreed to the appointment of the
16 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
17 using standard devices to obtain forwarding addresses, independently reviewing and verifying
18 documentation associated with any claims or opt-out requests, resolving any disputes regarding
19 the calculation or application of the formula for determining the Individual Class Payment and
20 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
21 Members and Aggrieved Employees, issuing all necessary tax forms, preparing declarations and
22 reports for the Parties and the Court, and performing such other tasks as set forth herein or as the
23 Parties mutually agree or that the Court orders.

24 70. Disputes Regarding Administration. Any and all disputes relating to
25 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
26 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
27 and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all
28 payments and obligations contemplated by this Agreement have been fully carried out. Prior to

1 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
2 dispute without the necessity of Court intervention. The Administrator shall also be responsible
3 for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class
4 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
5 Agreement.

6 71. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
7 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
8 check of the Class Members' addresses against those on file with the U.S. Postal Service's
9 National Change of Address List. The Class Data provided to the Administrator will remain
10 confidential and will not be used or disclosed to anyone, except as required by applicable tax
11 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
12 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
13 Counsel from communicating with Class Members regarding the Action and Settlement.

14 72. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
15 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
16 calculation of all payments to be paid from the Gross Settlement Amount, including the
17 estimated Individual Class Payments to each Class Member and Individual PAGA Payments to
18 each Aggrieved Employee (a person's name shall be redacted and a control number used in place
19 of the name). In the event that the total Workweeks worked by all Class Members triggers the
20 Escalator Clause, the Settlement Administrator shall notify the Parties of the increased Gross
21 Settlement Amount, and related increased payments from the Gross Settlement Amount,
22 including increased Class Counsel Fees Payment and any increased Settlement Administration
23 Costs, all of which shall be subject to Court approval.

24 73. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
25 to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days
26 following the Administrator's receipt of the Class Data. The Administrator shall use standard
27 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
28 envelopes are returned.

1 74. Returned Notice Packets. The Administrator will take steps to ensure that the
2 Notice is received by all Class Members, including utilization of the National Change of Address
3 Database maintained by the United States Postal Service to review the accuracy of and, if
4 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
5 updated address is located within five (5) calendar days following both the Administrator
6 learning of the failed mailing and its receipt of the updated address. Class Members to whom the
7 Class Notice is resent after having been returned undeliverable to the Administrator shall have
8 the Response Deadline extended by an additional 14 calendar days.

9 75. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
10 if an envelope has not been returned to Administrator by the Response Deadline that the Class
11 Member received the Notice.

12 76. Disputes Regarding Class Data. Class Members are deemed to participate in the
13 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
14 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
15 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
16 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
17 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
18 in California than Defendant's records show by timely submitting evidence to the Administrator.
19 Defendant's records will be presumed determinative absent reliable evidence to rebut
20 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
21 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
22 meet and confer in good faith about the evidence to determine the Class Member's actual
23 number of Work Weeks, estimated Individual Class Payment, and Individual PAGA Payment. If
24 Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
25 Court to render a final decision. Class Members and Aggrieved Employees will have until the
26 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

27 77. Declaration of Due Diligence. The Administrator shall provide counsel for the
28 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due

1 diligence and proof of mailing with regard to the mailing of the Notice.

2 78. Class Members' Rights. Each Class Member will be fully advised of the
3 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
4 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
5 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
6 in accordance with the following guidelines:

7 (a) Requests for Exclusion from Class. Any Class Member, other than
8 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to
9 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
10 should state:

11 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
12 ELEMENTIS SPECIALTIES LAWSUIT. I UNDERSTAND
13 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
14 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
15 PAYMENT FROM THIS LAWSUIT."

16 To be valid, any Request for Exclusion must include the full name, address, telephone
17 number, last four digits of the social security number or date of birth, and signature of the Class
18 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
19 Administrator at the specified address set forth in the Notice. Any such Request must be made in
20 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
21 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
22 Member who timely requests exclusion in compliance with these requirements: (i) will not have
23 any rights under this Agreement, including the right to object, appeal or comment on the
24 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
25 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
26 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
27 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
28 Payment. All Parties and their counsel, including Defendant's respective members, member

managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections, directly or indirectly, through any means.

(b) Binding Effect on Participating Class Members. All Participating Class Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement. Any Class Member, other than Plaintiffs, who does not submit a valid and timely Request for Exclusion may object to the terms of this Agreement. To object, a Class Member shall inform the Administrator, in writing by mail, of his or her objection which must be postmarked by the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed). Such objection shall include the Objecting Class Member's full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Class Member is represented by counsel, the name and address of his or her counsel. The Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Administrator shall attach the same to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. An Objecting Class Member remains eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his or her counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

1 (d) Failure to Object. Any Class Member who does not timely and properly
2 become a party of record by intervening or filing a motion to vacate the judgment waives any
3 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
4 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
5 under California Code of Civil Procedure section 473, and extraordinary writs.

6 (e) Responses to Objections. Counsel for the Parties may file a response to
7 any objections submitted by an Objecting Class Member at least five (5) court days before the
8 date of the Final Approval Hearing.

9 (f) The Administrator shall disclose jointly to Class Counsel and Defense
10 Counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and
11 upon the request of Class Counsel or Defense Counsel.

12 79. Funding of the Settlement Amount. Defendant shall deposit the Gross Settlement
13 Amount, plus Defendant's Employer Paid Taxes owed on Individual Class Payments, with the
14 Administrator within fifteen (15) days after the Effective Date.

15 80. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
16 Gross Settlement Amount by Defendant, the Administrator shall mail the Individual Class
17 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
18 Employees, the Class Counsel Fees Payment and Class Counsel Litigation Expense Payment to
19 Class Counsel, any Service Payments to the Class Representatives, the payment to the LWDA
20 for PAGA Penalties, and will pay itself the Administration Costs.

21 81. Deadline for Cashing Settlement Checks. Participating Class Members and
22 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
23 their settlement checks. The release will be binding upon all Participating Class Members who
24 do not cash their checks within the 180-day period. In the event that any settlement check is
25 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
26 business days of receipt of the returned settlement check, perform a skip trace to locate the
27 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
28 located by these means, the Administrator will have ten (10) business days to re-issue the check.

Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

(b) If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

I. Duties of the Parties Prior to the Court's Approval

82. Promptly after execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this

Settlement should be finally approved as fair, reasonable and adequate.

J. Duties of the Parties Following Court's Final Approval

83. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, the Service Payment to the Class Representatives, and the payment to the Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

84. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

85. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

86. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

L. Other Terms

87. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

88. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

1 89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
2 accomplish the terms of this Agreement, including but not limited to, execution of such
3 documents and to take such other action as may reasonably be necessary to implement the terms
4 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
5 contemplated by this Agreement and any other efforts that may become necessary by order of the
6 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
7 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
8 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
9 preliminary and final approval of the settlement, and the final entry of judgment.

10 90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
11 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
13 cause of action or rights released and discharged by this Agreement.

14 91. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
15 Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that
16 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
17 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
18 and the inconvenience and distraction of protracted and burdensome litigation. Defendant has
19 taken into account the uncertainty and risks inherent in litigation, and without conceding any
20 infirmity in the defenses that they have asserted or could assert against Plaintiffs, has determined
21 that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the
22 terms and conditions set forth in this Agreement.

23 92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
24 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
25 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
26 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
27 Agreement with the intention of avoiding further disputes and litigation with the attendant
28 inconvenience and expenses. This Agreement is a settlement document, and it, along with all

1 related documents such as the notices, and motions for preliminary and final approval, shall,
2 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
3 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
4 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
5 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
6 approved, the stipulation will be of no force or effect.

7 93. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel,
8 Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary
9 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
10 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
11 terms of the Agreement directly or indirectly, specifically or generally, to any person,
12 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
13 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)
14 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
15 authorities; (4) to the extent necessary to obtain a "not to exceed" bid and a declaration from the
16 Administrator; (5) in response to a court order or subpoena; or (6) in response to an inquiry or
17 subpoena issued by a state or federal government agency. Each Party agrees to immediately
18 notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such
19 information. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree not to,
20 directly or indirectly, initiate any conversation or other communication, before the filing of the
21 Motion for Preliminary Approval, with any third party regarding this Agreement or the matters
22 giving rise to this Agreement except to respond only that "the matter was resolved," or words to
23 that effect. This paragraph does not restrict Class Counsel's communications with Class
24 Members in accordance with Class Counsel's ethical obligations owed to Class Members.

25 94. No Solicitation. The Parties separately agree that they and their respective
26 counsel and employees will not solicit any Class Member to opt out of or object to the
27 Settlement, or appeal from the Judgment. Class Counsel shall not at any time list or publicize
28 the action or settlement on its website or any advertising material. 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.

95. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class:

Brian J. Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Ryan J. Krueger
rkrueger@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
Tel: 213-620-1780 | Fax: 213-620-1398

96. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

97. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

1 98. Modification. This Agreement may not be changed, altered, or modified, except
2 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
3 Agreement may not be discharged except by performance in accordance with its terms or by a
4 writing signed by all of the Parties hereto.

5 99. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
6 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
7 provide written notice to the other Party and allow an opportunity to cure the alleged
8 deficiencies, and Plaintiffs and Defendant may agree to seek the help of the Mediator to resolve
9 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
10 own attorneys' fees and costs. This provision shall not apply to any legal action or other
11 proceeding instituted by any person or entity other than Plaintiffs or Defendant.

12 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
13 enforced and administered in accordance with the laws of the State of California, without regard
14 to its conflicts-of-law rules.

15 101. Integration Clause. This Settlement Agreement contains the entire agreement
16 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
17 or contemporaneous agreements, understandings, representations, and statements, whether oral
18 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
19 hereunder may be waived except in writing.

20 102. Binding On Assigns. This Agreement shall be binding upon and inure to the
21 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
22 successors and assigns.

23 103. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
24 because the members of the Class are numerous, it is impossible or impractical to have each
25 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
26 nature of the release provided herein and such shall have the same force and effect as if this
27 Agreement were executed by each Class Member.
28

104. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: 2-2, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:


Anthony vargas (Feb 2, 2024 12:39 PST)

Anthony Vargas

Dated: _____, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Kenneth Slingluff

Dated: _____, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

Dated: _____, 2024

DEFENDANT ELEMENTIS SPECIALTIES, INC.

By: _____ (name)
_____ (title)

Dated: _____, 2024

COUNSEL FOR DEFENDANT
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ryan J. Krueger, Esq.
Attorneys for Defendant

END OF DOCUMENT

104. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: _____, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Anthony Vargas

Dated: Feb. 3, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Kenneth slingluff
Kenneth slingluff (Feb 3, 2024 10:45 CST)

Kenneth Slingluff

Dated: Feb 5, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin

Brian J. Mankin
Attorneys for Plaintiff

Dated: _____, 2024

DEFENDANT ELEMENTIS SPECIALTIES, INC.

By: _____ (name)
_____ (title)

Dated: _____, 2024

COUNSEL FOR DEFENDANT
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ryan J. Krueger, Esq.
Attorneys for Defendant

END OF DOCUMENT

104. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: January __, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Anthony Vargas

Dated: January __, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Kenneth Slingluff

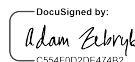
Dated: January __, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

Dated: January 30, 2024

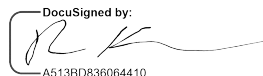
DEFENDANT ELEMENTIS SPECIALTIES, INC.

DocuSigned by:

C554E0D2D3E474B2

By: Adam Zebryk (name)
Associate General Counsel, Americas (title)

Dated: January 31, 2024

COUNSEL FOR DEFENDANT
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

DocuSigned by:

A513BD836064410...

Ryan J. Krueger, Esq.
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Vargas v. Elementis Specialties, Inc.

(San Bernardino County Superior Court, Case No. CIVSB2224689)

***The San Bernardino County Superior Court 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 a class action lawsuit (“Action”) against Elementis Specialties, Inc., (“Defendant” or “Elementis”) for alleged unpaid wage claims.

The Action was filed by former employees of Defendant, and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members” defined as all current and former nonexempt employees employed by Elementis Specialties, Inc., in California at any time during the Class Period (which is November 3, 2018, through December 25, 2023). The Action also seeks penalties under the California Private Attorney General Act (“PAGA”) for all “Aggrieved Employees” defined as all current and former nonexempt employees employed by Elementis Specialties, Inc., in California at any time during the PAGA Period (which is November 3, 2021, through December 25, 2023).

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

[CLASS MEMBER NAME] / [ID/CONTROL NUMBER]

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your estimated Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive could be adjusted depending on several factors. (If no amount is stated for your Individual PAGA Payment, then you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.)

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). 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 Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to approve the settlement where Defendant makes payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Elementis during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Individual PAGA Payments will be sent to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs and Class Representatives, Anthony Vargas and Kenneth Slingluff, are former employees of Defendant Elementis. The Action accuses Defendant of violating California labor laws due to the alleged: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay final wages, (f) failure to provide accurate itemized wage statements; and (g) unfair and unlawful competition. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendant strongly denies violating any laws or failing to pay any wages and contends that it complied with all applicable laws.

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating 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, Plaintiffs and Defendant 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, Defendant does not admit any violations or concede the merits of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength 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. Defendant Will Pay \$290,000 as the Settlement Amount. Defendant has agreed to pay \$290,000 (the “Settlement Amount”) into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement not more than 15 days after the Court’s grants Final Approval, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

2. Court Approved Deductions from Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (\$96,666.66) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$10,000 to each Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representatives' Service Payment will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$5,450 to the Administrator for services administering the Settlement (unless the Court approves a higher or lower amount).
- D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

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 remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 66.67% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant 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 Plaintiffs and Defendant 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.

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

6. 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 opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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 to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void; Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, ILYM Group (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, 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 Defendant has fully funded the Settlement Amount 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 Defendant or the Released Parties entities based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest thereon; failure to timely pay regular and final wages; the calculation of the regular rate of pay; wages lost from time rounding and timekeeping; non-compliant (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide meal periods; failure to authorize and permit rest periods; the calculation and payment of meal period and rest period premiums; payment for all hours worked, including off-the-clock work and uncompensated work time; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to pay sick pay wages; failure to properly calculate sick pay wages; failure to keep accurate records; unfair business practices; recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; interest for claims for unpaid wages; and attorneys' fees and costs; claims under the California Labor Code including sections 200, 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 221-223, 224, 226, 226.3, 226.7, 233, 246, 246.5, 248.5, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2699, and 2802); the Wage Orders of the California Industrial Welfare Commission; and California Business and Professions Code section 17200, et seq. (the "Released Class Claims").

“Released Parties” includes Defendant and each of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, temporary staffing agencies, affiliates, alter-egos, vendors, and affiliated organizations, and all of its respective past, present and future employees, directors, officers, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiffs, the State of California, the LWDA and Aggrieved Employees shall release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice, including claims for unpaid wages, including failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; non-compliant (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide meal periods; failure to authorize and permit rest periods; the calculation and payment of meal period and rest period premiums; payment for all hours worked, including off-the-clock work and rounded time; wage statements; failure to keep accurate records; unlawful deductions and/or withholdings from wages; failure to timely pay wages; and failure to timely pay final wages ("Released PAGA Claims"). The Released PAGA Claims include claims for violation of the Wage Orders of the California Industrial Welfare Commission and the following California Labor Code sections: 200, 201, 202, 203, 204, 206, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, as well as 2698 et seq., and 2699 et seq. in relation to the claims alleged in the Complaint and PAGA Notice. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

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

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant'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 challenges based on your submission and on input from Class Counsel and Defendant'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 and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion" letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE ELEMENTIS SPECIALTIES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Vargas v. Elementis Specialties, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the "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. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the "Response Deadline").**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*Vargas v. Elementis Specialties, Inc.*, Case No. CIVSB2224689), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name [REDACTED] Mailing Address [REDACTED] Telephone Number [REDACTED]

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Kristina Carlson, Esq. <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XX, 2024 and which is available to be inspected at any time during regular business hours the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

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.

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 “3”



LAUBY, MANKIN & LAUBY LLP

November 3, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Elementis Specialties, Inc.
469 Old Trenton Road
East Windsor, NJ 08512

**Re: PAGA Civil Penalty Claim
Anthony Vargas v. Elementis Specialties, Inc.**

To the Labor and Workforce Development Agency and Elementis Specialties, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Anthony Vargas (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer, Elementis Specialties, Inc., and any affiliated entities (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately May through November 2022. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one such example, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In other words, the Company’s rounding policy is not neutral and results in systematic undercompensation for the Aggrieved Employees.

The Company also required Claimant and the Aggrieved Employees to work in excess of 8 hours per day and/or 40 hours per week without proper overtime and doubletime compensation. For example, during his employment, Claimant was required to work twelve-hour shifts, four days per week, yet was not paid any overtime on such occasions.

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5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

Also, at all relevant times, Claimant alleges that he and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses and shift differentials. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay.”

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of the entities listed herein and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein are an integrated enterprise and should be treated as a single employer because the entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein share common management, a centralized control of labor operations, and common ownership or financial control. Claimant also alleges the entities listed herein were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

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As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay proper overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

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The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start and end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company’s wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company.

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Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com

EXHIBIT “4”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Vargas v. Elementis

Thursday, December 14, 2023

Requesting Attorneys Name:

E-Mail

ILYM Contact

E-Mail

Contact Number

Brian J. Mankin

brian@lmlfirm.com

Lisa Mullins

Lisa@ilymgroup.com

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	75
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
ILYM Group Static Website	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$325.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
NCOA	Flat Rate	\$25.00	1	\$25.00
Toll Free Customer Service Representative	Flat Fee	\$50.00	1	\$50.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$1,155.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English only	Per Piece	\$1.50	75	\$112.50
USPS First Class Postage	Per Piece	\$0.63	75	\$47.25
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	15	\$30.00
Storage, Photocopies, Deliveries	Flat Fee	\$141.75	1	\$141.75

Subtotal \$331.50

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	75	\$75.00
USPS First Class Postage	Per Piece	\$0.63	75	\$47.25
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	8	\$11.25
Preparation of Taxes	Hourly	\$120.00	3	\$360.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,543.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Unclaimed Funds to the State	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,095.00

NOT TO EXCEED: \$5,450.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “5”