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

ERIK CLEMENTE, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

MIDWAY CONSTRUCTION CORP., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: CIVSB2228816

CLASS ACTION

[Assigned for all purposes to the Hon. Jessica
Morgan]

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Complaint filed: December 27, 2022

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
2 plaintiff Erik Clemente (“Plaintiff”) and defendant Midway Construction Corporation (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as “Parties.”

4 **1. DEFINITIONS.**

5 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant
6 captioned *Erik Clemente v. Midway Construction Corporation* initiated on December 27,
7 2022, and pending in Superior Court of the State of California, County of San Bernardino.

8 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to
9 appoint to administer the Settlement.

10 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
11 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
12 accordance with the Administrator’s “not to exceed” bid submitted to the Court in
13 connection with Preliminary Approval of the Settlement.

14 1.4. “Aggrieved Employee” means all persons who worked for Defendant in California as
15 non-exempt employees during the PAGA Period.

16 1.5. “Class” means all persons who worked for Defendant in California as non-exempt
17 employees during the Class Period.

18 1.6. “Class Counsel” means Moon Law Group, PC.

19 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
20 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees
21 and expenses, respectively, incurred to prosecute the Action.

22 1.8. “Class Data” means Class Member identifying information in Defendant’s possession
23 including the Class Member’s name, last-known mailing address, Social Security number,
24 and number of Class Period Workweeks and PAGA Pay Periods.

25 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a
26 Participating Class Member or Non-Participating Class Member (including a Non-
27 Participating Class Member who qualifies as an Aggrieved Employee).

28 1.10. “Class Member Address Search” means the Administrator’s investigation and search for

current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address (“NCOA”) database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation unless otherwise agreed by the Parties, attached as Exhibit A and incorporated by reference into this Agreement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend this Agreement, and the revised Class Notice shall be incorporated herein in place of the original Exhibit A.

1.12. “Class Period” means the period from December 27, 2021, through August 24, 2024.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of San Bernardino.

1.16. “Defendant” means named Defendant Midway Construction Corporation.

1.17. “Defense Counsel” means ArentFox Schiff LLP.

1.18. “Effective Date” means the date by when the following have occurred: the date the Court grants the Motion for Final Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal, or other challenge is filed, the sixty-first (61st) day following Notice of Entry of the Court’s Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment.

- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of the Settlement.
- 1.21. "Gross Settlement Amount" means \$350,000 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3.1 and 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.
- 1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

- 1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.30. "PAGA Period" means the period from December 27, 2021, through August 24, 2024.
- 1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.32. "PAGA Notice" means Plaintiff's December 24, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.
- 1.35. "Plaintiff" means Erik Clemente, the named plaintiff in the Action.
- 1.36. "Preliminary Approval" means the Court's order granting preliminary approval of the Class portion of the Settlement.
- 1.37. "Preliminary Approval Order" means the proposed order granting preliminary approval of the Class portion of the Settlement.
- 1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.40. "Released Parties" means: Defendant and each of its past, present, and future agents, employees, clients, officers, directors, managing agents, owners (whether direct or indirect), partners, trustees, representatives, shareholders, attorneys, parents, subsidiaries, related companies/corporations and/or partnerships, assigns, predecessors, successors, insurers, joint employers, temporary staffing agencies, common law employers, dual employers, co-employers, contractors, affiliates, any person and/or entity alleged to have joint liability, and all of their respective past, present, and future employees, directors, officers, owners, agents, representatives, payroll agencies, attorneys, fiduciaries, parents,

1 subsidiaries, and assigns.

2 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be
3 excluded from the Class Settlement signed by the Class Member.

4 1.42. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to
5 Class Members and Aggrieved Employees, and shall be the last date on which Class
6 Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the
7 Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. The Response
8 Deadline for Class Members to whom Notice Packets are resent after having been returned
9 undeliverable to the Administrator shall be extended by fourteen (14) calendar days
10 beyond the original Response Deadline.

11 1.43. "Settlement" means the disposition of the Action effected by this Agreement and the
12 Judgment.

13 1.44. "Workweek" means any week during which a Class Member worked for Defendant for at
14 least one day, during the Class Period.

15 **2. RECITALS.**

16 2.1. On December 27, 2022, Plaintiff commenced this Action by filing a Complaint alleging
17 causes of action against Defendant for failure to pay minimum and regular rate wages,
18 failure to pay overtime compensation, failure to provide meal periods, failure to authorize
19 and provide rest breaks, failure to timely pay final wages at termination, failure to provide
20 accurate itemized wage statements, and unfair business practices. On April 21, 2023,
21 Plaintiff filed a First Amended Complaint (the "Operative Complaint") alleging an
22 additional cause of action against Defendant for violation of the Private Attorneys General
23 Act ("PAGA"). Defendant denies the allegations in the Operative Complaint, denies any
24 failure to comply with the laws identified in in the Operative Complaint and denies any
25 and all liability for the causes of action alleged.

26 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and
27 the LWDA by sending the PAGA Notice.

28 2.3. On June 25, 2024, the Parties participated in an all-day mediation presided over by Hon.

Carl West (Ret.), which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained through informal discovery, electronic time and pay records, policy documents, and data about the class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$350,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for Class Representative Service Payment that do not exceed this amount. As part of

1 the motion for Class Counsel Fees Payment and Class Litigation Expenses
2 Payment, Plaintiff will seek Court approval for any Class Representative Service
3 Payment no later than 16 court days prior to the Final Approval Hearing. If the
4 Court approves Class Representative Service Payment less than the amount
5 requested, the Administrator will retain the remainder in the Net Settlement
6 Amount. The Administrator will pay the Class Representative Service Payment
7 using IRS Form 1099. Plaintiff assumes full responsibility and liability for
8 employee taxes owed on the Class Representative Service Payment.

9 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of
10 the Gross Settlement Amount, which is currently estimated to be \$116,666.66 and
11 a Class Counsel Litigation Expenses Payment of not more than \$14,000.00.
12 Defendant will not oppose requests for these payments provided that they do not
13 exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class
14 Counsel Fees Payment and Class Litigation Expenses Payment no later than 16
15 court days prior to the Final Approval Hearing. If the Court approves a Class
16 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less
17 than the amounts requested, the Administrator will allocate the remainder to the
18 Net Settlement Amount. Released Parties shall have no liability to Class Counsel
19 or any other Plaintiff's Counsel arising from any claim to any portion any Class
20 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
21 Administrator will pay the Class Counsel Fees Payment and Class Counsel
22 Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel
23 assumes full responsibility and liability for taxes owed on the Class Counsel Fees
24 Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
25 harmless, and indemnifies Defendant, from any dispute or controversy regarding
26 any division or sharing of any of these Payments.

27 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
28 \$10,000.00 except for a showing of good cause and as approved by the Court. To

1 the extent the Administration expenses are less or the Court approves payment less
2 than \$10,000.00, the Administrator will retain the remainder in the Net Settlement
3 Amount.

4 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
5 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
6 by all Participating Class Members during the Class Period and (b) multiplying the
7 result by each Participating Class Member's Workweeks.

8 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
9 Class Member's Individual Class Payment will be allocated to settlement
10 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
11 withholding and will be reported on an IRS W-2 Form. 80% of each
12 Participating Class Member's Individual Class Payment will be allocated
13 to settlement of claims for interest and penalties (the "Non-Wage
14 Portion"). The Non-Wage Portions are not subject to wage withholdings
15 and will be reported on IRS 1099 Forms. Participating Class Members
16 assume full responsibility and liability for any employee taxes owed on
17 their Individual Class Payment.

18 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
19 Class Payments. Non-Participating Class Members will not receive any
20 Individual Class Payments. The Workweeks of Non-Participating Class
21 Members are not included in the calculation of payments to Participating
22 Class Members and therefor have no effect on the calculation of Individual
23 Class Payments paid from the Net Settlement Amount.

24 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
25 \$35,000.00 to be paid from the Gross Settlement Amount, with 75% (\$26,250.00)
26 allocated to the LWDA PAGA Payment and 25% (\$8,750.00) allocated to the
27 Individual PAGA Payments.

28 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)

dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099-MISC Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 747 Class Members who collectively worked a total of 33,910 Workweeks, and 747 of Aggrieved Employees who worked a total of 16,955 PAGA Pay Periods.

4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall make the settlement payment to the

1 settlement administrator in two payments. Defendant shall fund half of the Gross Settlement
2 Amount within sixty (60) days of the Effective Date and fund the remaining portion of the
3 Gross Settlement Amount within six (6) months of the first payment, along with Defendant's
4 share of any employer taxes owed on the Wage Portion of the Individual Class Payments.

5 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant fully funds
6 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
7 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
8 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
9 Litigation Expenses Payment, and the Class Representative Service Payment.
10 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
11 Payment and the Class Representative Service Payment shall not precede disbursement of
12 Individual Class Payments and Individual PAGA Payments.

13 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
14 Individual PAGA Payments and send them to the Class Members via First Class
15 U.S. Mail, postage prepaid. The face of each check shall prominently state the
16 date (not less than 180 days after the date of mailing) when the check will be
17 voided. The Administrator will cancel all checks not cashed by the void date. The
18 Administrator will send checks for Individual Settlement Payments to all
19 Participating Class Members (including those for whom Class Notice was returned
20 undelivered). The Administrator will send checks for Individual PAGA Payments
21 to all Aggrieved Employees including Non-Participating Class Members who
22 qualify as Aggrieved Employees (including those for whom Class Notice was
23 returned undelivered). The Administrator may send Participating Class Members a
24 single check combining the Individual Class Payment and the Individual PAGA
25 Payment. Before mailing any checks, the Settlement Administrator must update
26 the recipients' mailing addresses using the NCOA database.

27 4.4.2. The Administrator must conduct a Class Member Address Search for all other
28 Class Members whose checks are returned undelivered without a United States

Postal Service (“USPS”) forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the State Bar’s Justice Gap Fund (“Cy Pres Recipient”). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. The Parties authorize their counsel to jointly select a new Cy Pres Recipient without requiring an amendment to this Settlement in the event that the selected Cy Pres Recipient is not approved by the Court.

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

5. RELEASES OF CLAIMS.

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

5.1. Plaintiff’s Release.

5.1.1. Scope of Plaintiff’s Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all claims,

1 known and unknown, under federal, state, and/or local law, including but not
2 limited to claims arising from or related to his employment with Defendant and his
3 compensation while an employee of Defendant, including, but not limited to: all
4 causes of actions alleged in the Action, or that could have been raised in the
5 Action, and/or raised in the PAGA letter sent to the LWDA (dated December 24,
6 2022). Plaintiff's Released Claims include all claims for unpaid wages, including,
7 but not limited to, failure to pay minimum wages, straight time compensation,
8 overtime, and interest; the calculation of the regular rate of pay; wages related to
9 alleged illegal time rounding; meal and rest period premiums; failure to provide
10 meal periods; failure to authorize and permit rest periods; reimbursement for all
11 necessary business expenses; payment for all hours worked, including off-the-
12 clock work; failure to pay vacation wages; timely payment of wages due; wage
13 statements; unlawful deductions; failure to keep accurate records; unfair business
14 practices; penalties, including, but not limited to, recordkeeping penalties, wage
15 statement penalties, minimum-wage penalties, and waiting-time penalties; and
16 attorneys' fees and costs. Plaintiff's Released Claims include all claims arising
17 under the California Labor Code; the Wage Orders of the California Industrial
18 Welfare Commission; the California Private Attorneys General Act ("PAGA");
19 California Business and Professions Code sections 17200, et seq.; the California
20 Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR §
21 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the
22 California common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; federal
23 common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§
24 1001, et seq. Plaintiff's Released Claims also include all claims for lost benefits,
25 emotional distress, retaliation, punitive damages, and attorneys' fees and costs
26 arising under federal, state, or local laws for discrimination, harassment, and
27 retaliation, such as, by way of example only, (as amended) 42 U.S.C. section 1981,
28 Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the

1 Age Discrimination in Employment Act, and the California Fair Employment and
2 Housing Act; and the law of contract and tort. This release excludes the release of
3 claims not permitted by law. Plaintiff's Released Claims include all claims, whether
4 known or unknown. ("Plaintiff's Release.") Plaintiff's Release does not extend to
5 any claims or actions to enforce this Agreement, or to any claims for vested
6 benefits, unemployment benefits, disability benefits, social security benefits,
7 workers' compensation benefits that arose at any time, or based on occurrences
8 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
9 or law different from, or in addition to, the facts or law that Plaintiff now knows or
10 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and
11 remain effective in all respects, notwithstanding such different or additional facts or
12 Plaintiff's discovery of them.

13 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
14 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
15 rights, and benefits of Section 1542 of the California Civil Code, which reads:

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

19 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
20 themselves and their respective former and present representatives, agents, attorneys,
21 heirs, administrators, successors, and assigns, release Released Parties from all claims
22 alleged in the Operative Complaint or that could have been alleged based on the facts
23 and allegations in the Operative Complaint, including all claims for unpaid wages,
24 including, failure to pay minimum wages, overtime compensation, and interest; the
25 calculation of the regular rate of pay; failure to provide meal periods; failure to
26 authorize and permit rest periods; payment for all hours worked, including off-the-clock
27 work; failure to reimburse business expenses; wage statements; failure to pay all wages
28 when due; unfair business practices related to the Class Released Claims; penalties,

1 including wage statement penalties, minimum-wage penalties, and waiting-time
2 penalties; and attorneys' fees and costs; as well as all claims related to the Class
3 Released Claims arising under: the Wage Orders of the California Industrial Welfare
4 Commission. This release excludes the release of claims not permitted by law.

5 5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
6 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
7 former and present representatives, agents, attorneys, heirs, administrators, successors, and
8 assigns, the Released Parties from all claims for civil penalties under PAGA asserted in the
9 December 24, 2022, PAGA letter sent to the LWDA or that could have been asserted
10 based upon the facts and allegations stated in the December 24, 2022, PAGA letter sent to
11 the LWDA.

12 **6. MOTION FOR PRELIMINARY APPROVAL.**

13 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary
14 Approval") that complies with the Court's current checklist for preliminary approvals, to the extent the
15 Court maintains such a checklist.

16 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 14 days of the full
17 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
18 declaration from Defendant and/or Defense Counsel disclosing all facts relevant to any
19 actual or potential conflicts of interest with the Administrator and Cy Pres Recipient, *if any*
20 *such actual or potential conflicts exist*. Similarly, if any other pending matter or action
21 asserting claims will be extinguished or adversely affected by the Settlement, Defendant
22 shall prepare and deliver to Class Counsel a signed declaration from Defendant and/or
23 Defense Counsel identifying any other pending matter or action asserting claims that will
24 be extinguished or adversely affected by the Settlement. Alternatively, if such other
25 actions are filed between the execution of this Agreement and the filing of the Motion for
26 Preliminary Approval and become known to Defendant and/or Defense Counsel, Defense
27 Counsel will advise Class Counsel. If there are no actual or potential conflicts of interest
28 with the Administrator and the Cy Pres Recipient to disclose, or any pending matters to

disclose, no declaration from Defendant and/or Defense Counsel is required.

- 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed order granting preliminary approval and approval of PAGA settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator and the proposed Cy Pres; and, (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents; and, all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator, and the Cy Pres Recipient. Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement or disclose the existence of any such pending matters. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Class Counsel, Class Counsel will advise Defense Counsel.
- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the

1 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
2 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's
3 Preliminary Approval to the Administrator.

4 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
5 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
6 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
7 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
8 not grant Preliminary Approval or conditions Preliminary Approval on any material
9 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
10 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
11 modify the Agreement and otherwise satisfy the Court's concerns.

12 **7. SETTLEMENT ADMINISTRATION.**

13 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
14 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
15 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
16 this Agreement in exchange for payment of Administration Expenses. The Parties and
17 their Counsel represent that they have no interest or relationship, financial or otherwise,
18 with the Administrator other than a professional relationship arising out of prior
19 experiences administering settlements.

20 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
21 Identification Number for purposes of calculating payroll tax withholdings and providing
22 reports state and federal tax authorities.

23 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
24 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
25 468B-1.

26 7.4. Notice to Class Members.

27 7.4.1. No later than three (3) business days after receipt of the Class Data, the
28 Administrator shall notify Class Counsel that the list has been received and state

1 the number of Class Members, Aggrieved Employees, Workweeks, and Pay
2 Periods in the Class Data.

3 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
4 fourteen (14) days after receiving the Class Data, the Administrator will send to all
5 Class Members identified in the Class Data, via first-class USPS mail, the Class
6 Notice, with Spanish translation, substantially in the form attached to this
7 Agreement as Exhibit A. The first page of the Class Notice shall prominently
8 estimate the dollar amounts of each Individual Class Payment and/or Individual
9 PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the
10 number of Workweeks and PAGA Pay Periods (if applicable) used to calculate
11 these amounts. Before mailing Class Notices, the Administrator shall update Class
12 Member addresses using the NCOA database.

13 7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class
14 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
15 Class Notice using any forwarding address provided by the USPS. If the USPS
16 does not provide a forwarding address, the Administrator shall conduct a Class
17 Member Address Search, and re-mail the Class Notice to the most current address
18 obtained. The Administrator has no obligation to make further attempts to locate
19 or send Class Notice to Class Members whose Class Notice is returned by the
20 USPS a second time.

21 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks
22 and/or pay periods, and Requests for Exclusion will be extended an additional
23 fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class
24 Notice for all Class Members whose notices are re-mailed. The Administrator will
25 inform the Class Member of the extended deadline with the re-mailed Class
26 Notice.

27 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
28 discovers any persons who believe they should have been included in the Class

1 Data and should have received Class Notice, the Parties will expeditiously meet
2 and confer in person or by telephone, and in good faith, in an effort to agree on
3 whether to include them as Class Members. If the Parties agree, such persons will
4 be Class Members entitled to the same rights as other Class Members, and the
5 Administrator will send, via email or overnight delivery, a Class Notice requiring
6 them to exercise options under this Agreement not later than fourteen (14) days
7 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever
8 are later.

9 7.5. Requests for Exclusion (Opt-Outs).

10 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of
11 the Settlement must send the Administrator, by fax, email, or mail, a signed written
12 Request for Exclusion not later than forty-five (45) days after the Administrator
13 mails the Class Notice (plus an additional fourteen (14) days for Class Members
14 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
15 Member or his/her representative that reasonably communicates the Class
16 Member's election to be excluded from the Class portion of the Settlement and
17 includes the Class Member's name, address and email address or telephone
18 number. To be valid, a Request for Exclusion must be timely faxed, emailed, or
19 postmarked by the Response Deadline.

20 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
21 fails to contain all the information specified in the Class Notice. The Administrator
22 shall accept any Request for Exclusion as valid if the Administrator can reasonably
23 ascertain the identity of the person as a Class Member and the Class Member's
24 desire to be excluded. The Administrator's determination shall be final and not
25 appealable or otherwise susceptible to challenge. If the Administrator has reason to
26 question the authenticity of a Request for Exclusion, the Administrator may
27 demand additional proof of the Class Member's identity. The Administrator's
28 determination of authenticity shall be final as to the Parties, but a Class Member

1 whose Request for Exclusion is rejected by the Administrator may present a
2 challenge to that determination to the Court.

3 7.5.3. Every Class Member who does not submit a timely and valid Request for
4 Exclusion is deemed to be a Participating Class Member under this Agreement,
5 entitled to all benefits and bound by all terms and conditions of the Settlement,
6 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
7 of this Agreement, regardless of whether the Participating Class Member actually
8 receives the Class Notice or objects to the Settlement.

9 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
10 Non-Participating Class Member and shall not receive an Individual Class
11 Payment or have the right to object to the class action components of the
12 Settlement. Because future PAGA claims are subject to claim preclusion upon
13 entry of the Judgment, Non-Participating Class Members who are Aggrieved
14 Employees are deemed to release the claims identified in Paragraph 5.3 of this
15 Agreement and are eligible for an Individual PAGA Payment.

16 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
17 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days
18 for Class Members whose Class Notice is re-mailed) to challenge the number of Class
19 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
20 Notice. The Class Member may challenge the allocation by communicating with the
21 Administrator via fax, email or mail. The Administrator must encourage the challenging
22 Class Member to submit supporting documentation. In the absence of any contrary
23 documentation, the Administrator is entitled to presume that the Workweeks contained in
24 the Class Notice are correct so long as they are consistent with the Class Data. The
25 Administrator's determination of each Class Member's allocation of Workweeks and/or
26 PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right
27 to correct erroneous Class Data if subsequently discovered), but a Class Member whose
28 Workweek and/or Pay Period challenge is rejected by the Administrator may present the

1 same evidence supporting the Workweek and/or Pay Period challenge to the Court for
2 review. The Administrator shall promptly provide copies of all challenges to calculation of
3 Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the
4 Administrator's determination the challenges.

5 7.7. Objections to Settlement.

6 7.7.1. Only Participating Class Members may object to the class action components of
7 the Settlement and/or this Agreement, including contesting the fairness of the
8 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
9 Counsel Litigation Expenses Payment and/or Class Representative Service
10 Payment.

11 7.7.2. Participating Class Members may send written objections to the Administrator, by
12 fax, email, or mail. In the alternative, Participating Class Members may appear in
13 Court (or hire an attorney to appear in Court) to present verbal objections at the
14 Final Approval Hearing. A Participating Class Member who elects to send a
15 written objection to the Administrator must do so not later than 45 days after the
16 Administrator's mailing of the Class Notice (plus an additional 14 days for Class
17 Members whose Class Notice was re-mailed).

18 7.7.3. Non-Participating Class Members have no right to object to any of the class action
19 components of the Settlement.

20 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
21 performed or observed by the Administrator contained in this Agreement or otherwise.

22 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
23 and maintain and use an internet website to post information of interest to Class
24 Members including the date, time and location for the Final Approval Hearing and
25 copies of the Settlement Agreement, Motion for Preliminary Approval, the
26 Preliminary Approval Order, the Class Notice, the motion for final approval, the
27 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
28 Payment and Class Representative Service Payment, the Final approval Order and

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

3 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
4 promptly review on a rolling basis Requests for Exclusion to ascertain their
5 validity. Not later than five (5) days after the expiration of the deadline for
6 submitting Requests for Exclusion, the Administrator shall email a list to Class
7 Counsel and Defense Counsel containing (a) the names and other identifying
8 information of Class Members who have timely submitted valid Requests for
9 Exclusion (“Exclusion List”); (b) the names and other identifying information of
10 Class Members who have submitted invalid Requests for Exclusion; (c) copies of
11 all Requests for Exclusion from Settlement submitted (whether valid or invalid).

12 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
13 reports to Class Counsel and Defense Counsel that, among other things, tally the
14 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
15 Requests for Exclusion (whether valid or invalid) received, objections received,
16 and challenges to Workweeks and/or PAGA Pay Periods received and/or resolved
17 (“Weekly Report”). The Weekly Reports must include provide the Administrator’s
18 assessment of the validity of Requests for Exclusion and attach copies of all
19 Requests for Exclusion and objections received. In addition to the Weekly Reports,
20 the Administrator shall report to the Parties when it has completed the initial
21 distribution of the Individual Class Payments and Individual PAGA Payments to
22 all individuals with valid addresses.

23 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
24 address and make decisions consistent with the terms of this Agreement on all
25 Class Member challenges over the calculation of Workweeks and/or PAGA Pay
26 Periods. The Administrator’s determination of each Class Member’s allocation of
27 Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although
28 Defendant shall retain the right to correct erroneous Class Data if subsequently

discovered), but a Class Member whose Workweek and/or Pay Period challenge is rejected by the Administrator may present the same evidence supporting the Workweek and/or Pay Period challenge to the Court for review.

7.8.5. Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 747 Class Members and 33,910 Total Workweeks during the Class period and (2) there were 747 Aggrieved Employees who worked 16,955 Pay Periods during the PAGA Period. If the number of work weeks worked by class members exceeds 35,530 (i.e., 10% more than the number of work weeks

1 estimated by Defendant), then the settlement will increase by 1% for every 1% over the 10% threshold. If
2 this escalator clause is triggered due to a more than 10% increase in the expected workweeks, then
3 Defendant can terminate the settlement agreement at its sole discretion.

4 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

5 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all
6 Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree
7 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
8 that neither Party will have any further obligation to perform under this Agreement; provided, however,
9 Defendant will remain responsible for paying all Settlement administration expenses incurred to that point.
10 Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days
11 after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no
12 effect.

13 **10. MOTION FOR FINAL APPROVAL.**

14 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a
15 motion for final approval of the Settlement that includes a request for approval of the PAGA settlement
16 under Labor Code § 2699(l), a Proposed final approval order and a proposed Judgment (collectively
17 "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not
18 later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
19 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
20 disagreements concerning the Motion for Final Approval.

21 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
22 a Participating Class Member, including the right to file responsive documents in Court no
23 later than five court days prior to the Final Approval Hearing, or as otherwise ordered or
24 accepted by the Court.

25 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
26 Approval on any material change to the Settlement (including, but not limited to, the scope
27 of release to be granted by Class Members), the Parties will expeditiously work together in
28 good faith to address the Court's concerns by revising the Agreement as necessary to

1 obtain Final Approval. The Court's decision to award less than the amounts requested for
2 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute
4 a material modification to the Agreement within the meaning of this paragraph.

5 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
6 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
7 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
8 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
9 law.

10 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
11 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
12 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
13 Parties, their respective counsel, and all Participating Class Members who did not object to
14 the Settlement as provided in this Agreement, waive all rights to appeal from the
15 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
16 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
17 waiver of appeal does not include any waiver of the right to oppose such motions, writs or
18 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
19 Agreement will be suspended until such time as the appeal is finally resolved and the
20 Judgment becomes final.

21 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
22 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
23 material modification of this Agreement (including, but not limited to, the scope of release
24 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
25 nevertheless expeditiously work together in good faith to address the appellate court's
26 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis,
27 any additional Administration Expenses reasonably incurred after remittitur. An appellate
28 decision to vacate, reverse, or modify the Court's award of the Class Representative

Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

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

12. ADDITIONAL PROVISIONS.

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

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,

1 accountants, or spouses, all of whom will be instructed to keep this Agreement
2 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
3 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
4 response to an inquiry or subpoena issued by a state or federal government agency. Each
5 Party agrees to immediately notify each other Party of any judicial or agency order,
6 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
7 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
8 other communication, before the filing of the Motion for Preliminary Approval, with any
9 third party regarding this Agreement or the matters giving rise to this Agreement except to
10 respond only that "the matter was resolved," or words to that effect. This paragraph does
11 not restrict Class Counsel's communications with Class Members in accordance with Class
12 Counsel's ethical obligations owed to Class Members.

13 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
14 employees will not solicit any Class Member to opt out of or object to the Settlement, or
15 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
17 ethical obligations owed to Class Members.

18 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
19 together with its attached exhibits shall constitute the entire agreement between the Parties
20 relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
23 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this
25 Agreement to effectuate its terms, and to execute any other documents reasonably required
26 to effectuate the terms of this Agreement including any amendments to this Agreement.

27 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
28 best efforts, in good faith, to implement the Settlement by, among other things, modifying

1 the Settlement Agreement, submitting supplemental evidence and supplementing points
2 and authorities as requested by the Court. In the event the Parties are unable to agree upon
3 the form or content of any document necessary to implement the Settlement, or on any
4 modification of the Agreement that may become necessary to implement the Settlement,
5 the Parties will seek the assistance of a mediator and/or the Court for resolution.

6 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
8 encumber to any person or entity and portion of any liability, claim, demand, action, cause
9 of action, or right released and discharged by the Party in this Settlement.

10 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
11 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
12 relied upon as such within the meaning of United States Treasury Department Circular 230
13 (31 CFR Part 10, as amended) or otherwise.

14 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
15 modified, changed, or waived only by an express written instrument signed by all Parties
16 or their representatives, and approved by the Court.

17 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
18 benefit of, the successors of each of the Parties.

19 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
20 governed by and interpreted according to the internal laws of the state of California,
21 without regard to conflict of law principles.

22 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
23 this Agreement. This Agreement will not be construed against any Party on the basis that
24 the Party was the drafter or participated in the drafting.

25 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
26 during Action and in this Agreement relating to the confidentiality of information shall
27 survive the execution of this Agreement.

28 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to

Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kane Moon
kmoon@moonlawgroup.com
H. Scott Leviant
hsleviant@moonlawgroup.com
Mariam Ghazaryan
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., Suite 3100
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant:

Daniel J. McQueen
daniel.mcqueen@afslaw.com
ARENTFOX SCHIFF LLP
555 West Fifth Street, 48th Floor
Los Angeles, California 90013
Telephone (213) 629-7400
Facsimile: (213) 629-7401

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

Plaintiff & Class Representative:

Dated: September 16, 2024

By: _____

Erik Clemente

Erik Clemente

Plaintiff's Counsel:

Dated: September 16, 2024

MOON LAW GROUP, PC

By: _____

[Signature]

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

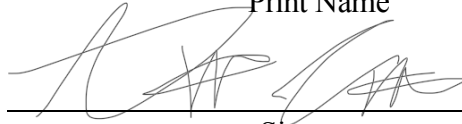
Defendant:

Dated: September 16, 2024

MIDWAY CONSTRUCTION CORPORATION

By: Austin Campbell

Print Name



Signature

President

Title

Defendant's Counsel:

Dated: September 16, 2024

ARENTFOX SCHIFF LLP

By: 

Daniel J. McQueen

Attorneys for Defendant

Exhibit “A”

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

Clemente v. Midway Construction Corporation, Case No. CIVSB2228816

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Midway Construction Corporation (“Midway”) for alleged wage and hour violations. The Action was filed by a former Midway employee Erik Clemente (“Plaintiff”) and seeks payment of: (1) back wages and other relief for hourly/piece rate employees (“Class Members”) who worked for Midway during the “Class Period” (December 27, 2021 through August 24, 2024); and, (2) penalties under the Private Attorneys General Act (“PAGA”) for hourly/piece rate employees who worked for Midway during the “PAGA Period” (December 27, 2021 to August 24, 2024) (“Aggrieved Employees”). The proposed settlement (the “Settlement”) has two main parts: (1) a “Class Settlement” requiring Midway to make individual settlement payments to Class Members (“Individual Class Payments”), and (2) a “PAGA Settlement” requiring Midway to make individual settlement payments to Aggrieved Employees (“Individual PAGA Payments”) and pay penalties to the Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholdings) and your Individual PAGA Payment is estimated to be \$ [REDACTED].

The above estimates are based on Defendant’s records showing that you worked [REDACTED] workweeks during the Class Period, and [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks or pay periods during either of those periods, you can submit a challenge by the deadline date. See **Section 4** of this Notice.

The court has 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, depending on whether you take action or do nothing in response to this Notice. Read this Notice carefully. At the final approval hearing, the court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The final approval hearing is scheduled to be held on _____ at _____ in Department 26 of the San Bernardino Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415.

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a participant in the Settlement, and remain eligible for an Individual Class Payment and an Individual PAGA Payment. In exchange, you will give up your right to assert the wage claims against Midway that are covered by this Settlement (“Released Claims”).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [REDACTED]	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a “Non-Participating Class Member” and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Midway employee. The Action accuses Midway of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses, and by failing to provide meal periods, rest breaks, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for penalties under the PAGA. Plaintiff is represented by Moon Law Group, PC (“Class Counsel”).

Midway strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. The court has made no determination whether Midway or Plaintiff are correct on the merits.

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

Plaintiff and Midway hired an experienced mediator, Hon. Carl West (Ret.), in an effort to settle the Action. The negotiations were successful. Plaintiff and Midway 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, Midway does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Midway 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. Midway will pay \$350,000 as the Gross Settlement Amount (“Gross Settlement”). Midway has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsels’ attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the LWDA. Midway will make the settlement payment to the Administrator in two payments. Midway will fund one-half of the Gross Settlement 60 days after the judgement entered by the court becomes final. Midway will fund the remaining portion of the Gross Settlement 6 months thereafter. The judgment will be final 61 days after the Court enters judgment and Notice of Entry of Order and/or Judgment is served, or a later date if Participating Class Members object to the proposed Settlement or the judgment is appealed.

2. Court approved deductions from Gross Settlement. At the final approval hearing, Plaintiff and/or Class Counsel will ask the court to approve the following deductions from the Gross Settlement:

- A. Up to \$116,666.66 (One Third of the Gross Settlement Amount) to Class Counsel for attorneys' fees and up to \$14,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$5,000 for the class representative service award for filing the Action, working with Class Counsel, and representing the Class.
- C. Up to \$10,000 to the Administrator for services administering the Settlement.
- D. \$35,000 for PAGA penalties, allocated 75% to the LWDA (\$26,250) and 25% in Individual PAGA Payments (\$8,750) to the Aggrieved Employees based on their PAGA Period pay periods.

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

3. Net Settlement distributed to Class Members. After making the above deductions in amounts approved by the court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period workweeks.

4. Taxes owed on payments to Class Members. Plaintiff and Midway are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Midway will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Midway 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 the Settlement 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 money will be redirected to California State Bar's Justice Gap Fund, or some other charitable entity approved by the Court.

6. Requests for exclusion from the Class Settlement ("Opt-Outs"). You will be treated as a Settlement Class Member unless you notify the Administrator in writing, not later than [REDACTED], that you wish to Opt-Out. The easiest way to notify the Administrator is to send in a Request for Exclusion by the response deadline. The Request for Exclusion should be signed. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Midway.

You cannot Opt-Out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments in the Action but are required to give up their right to assert PAGA claims against Midway based on the PAGA Period facts alleged in the Action.

7. The proposed settlement will be void if the court denies final approval. It is possible the court will decline to grant final approval of the Settlement or decline to enter a judgment. It is also possible the court will enter a judgment that is reversed on appeal. Plaintiff and Midway have agreed that, in either case, the Settlement will be void: Midway will not pay any money and Class Members will not release any claims against Midway.

8. Administrator. The court has appointed a neutral company, [REDACTED] (the "Administrator"), to send this Notice, calculate and make payments, and process Class Members' requests for exclusion. The Administrator will also decide Class Member challenges over workweeks and/or pay periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement.

9. Participating Class Members' release. After the judgment is final and Midway has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out, you cannot sue, continue to sue, or be part of another lawsuit against Midway or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The “Released Parties” are Midway and each of its past, present, and future agents, employees, clients, officers, directors, managing agents, owners (whether direct or indirect), partners, trustees, representatives, shareholders, attorneys, parents, subsidiaries, related companies/corporations and/or partnerships, assigns, predecessors, successors, insurers, joint employers, temporary staffing agencies, common law employers, dual employers, co-employers, contractors, affiliates, any person and/or entity alleged to have joint liability, and all of their respective past, present, and future employees, directors, officers, owners, agents, representatives, payroll agencies, attorneys, fiduciaries, parents, subsidiaries, and assigns.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims alleged in the Operative Complaint or that could have been alleged based on the facts and allegations in the Operative Complaint, including all claims for unpaid wages, including, failure to pay minimum wages, overtime compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods; failure to authorize and permit rest periods; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to pay all wages when due; unfair business practices related to the Class Released Claims; penalties, including wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs; as well as all claims related to the Class Released Claims arising under: the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

10. The PAGA release. After the court’s judgment is final, and Midway has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff and the LWDA will release the PAGA claim for violations identified in Plaintiff’s PAGA Notice to the LWDA. The PAGA Release is as follows:

All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under PAGA asserted in the December 24, 2022, PAGA letter sent to the LWDA or that could have been asserted based upon the facts and allegations stated in the December 24, 2022, PAGA letter sent to the LWDA.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$8,750 by the total number of PAGA Period pay periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period pay periods worked by each individual Aggrieved Employee.
3. Workweek/pay period challenges. The number of workweeks and pay periods, as recorded in Midway’s records, are stated in the first page of this Notice. You have until [REDACTED] to challenge these numbers. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Midway’s calculations 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 or pay period challenges based on your submission and on input from Class Counsel and Midway’s Counsel.

5. HOW WILL I GET PAID?

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

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.

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

Send in a Request for Exclusion to the Administrator. A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Class portion of the Settlement and includes the Class Member's name, address and email address or telephone number. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to identify the Action in a way that is clear (include the case name and case number). The Administrator must receive your request to be excluded by [REDACTED], or it will be invalid.

If you wish to opt-out of the Class Settlement, DO NOT send in a written objection.

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, the motion for final approval and for awards of fees, litigation expenses and service award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is [REDACTED]. Be sure to tell the Administrator in your written objection what you object to, why you object, and any facts that support your objection. If you submit a written objection, make sure you identify the Action (by including the case name and case number) and print your name, address and email address or telephone number and sign the objection.

Alternatively, a Participating Class Member can object (or personally hire 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 (below) for specifics regarding the final approval hearing.

If you wish to object in writing or in person, DO NOT send in a Request for Exclusion.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the final approval hearing on [REDACTED] at [REDACTED] in Department 26 of the San Bernardino Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415. At the hearing, the court will decide whether to grant final approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The court will invite comment from objectors, Class Counsel, and defense counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or telephonically.

It's possible the court will reschedule the final approval hearing. You should contact Class Counsel to verify the date and time of the final approval hearing if you are planning to attend the hearing or have your own lawyer attend.

9. HOW CAN I GET MORE INFORMATION?

The Agreement summarizes everything Midway and Plaintiff have promised to do under the proposed Settlement. The easiest way to obtain and read the Agreement or any other Settlement document is to go to the Administrator's website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://cap.sb-court.org/search>, selecting the case number search, and entering the case number for the Action, CIVSB2228816, as instructed on the web form.

At least 16 court days before the final approval hearing, Class Counsel will file in court a motion for final approval that includes, among other things, the reasons why the proposed Settlement is fair, and a request for awards of fees, litigation expenses and a service award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (contact information below), will send you copies of these documents at no cost to you.

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

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Settlement Administrator:Name of Company:

Email Address:

Mailing Address:

Telephone:

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.

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.

12. WHAT IS A PAGA PENALTY?

The Net Settlement is money paid to settle claims for Participating Class Members. But the PAGA claim is different. PAGA penalties were originally penalties that only the State of California could collect through an enforcement action brought by the State against an employer. In 2004, the State enacted PAGA, a law that allows employees to try to recover those penalties for the State. Under the version of PAGA applicable to this Settlement, the State agrees to share 25% of its penalties with the affected employees (here, the Aggrieved Employees). The PAGA settlement proposed as part of this Settlement is a settlement of the State's PAGA claim.