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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES SARAMI; DOUGLAS STUMVOLL;
ANDREY TARASOV, as individuals, on
behalf of themselves and others similarly
situated,

PLAINTIFFS,

v.

TEND EXCHANGE SUBSIDIARY, LLC;
TEND EXCHANGE & DELAWARE
TENDER STAFFING, LLC; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 23STCV02139

[Case Assigned for All Purposes to Hon.
William F. Highberger in Dept. 10]

DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFFS'
AMENDED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: January 16, 2025

Time: 11:00 AM

Dept.: 10

Complaint Filed: January 31, 2023

Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley Szamet & Ly, counsel of record for Plaintiffs in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiffs' Amended Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

FACTUAL BACKGROUND

4. Defendants Tend Exchange Subsidiary, LLC; Tend Exchange, Inc., & Delaware Tender Staffing, LLC are hospitality staffing agencies that operate throughout the United States.

5. Plaintiffs James Sarami and Andrey Tarasov formerly worked for Defendants in California during all or part of the Class Period. Douglas Stumvoll is a current employee of Defendant.

6. Plaintiffs allege that they, and other Class Members, were jointly employed by Tend Exchange Subsidiary, LLC; Tend Exchange, Inc., & Delaware Tender Staffing, LLC.

7. On January 31, 2023, Plaintiff JAMES SARAMI filed a Class Action Complaint entitled *JAMES SARAMI v. TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC. AND DELAWARE TENDER STAFFING, LLC*, in Los Angeles County Superior Court, Case No. 23STCV02139, seeking recovery for: (1) failure to pay wages and/or overtime under Labor Code §§ 510, 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; (3) failure to reimburse expenses pursuant to Labor Code § 2802; (4) failure to provide

1 accurate itemized wage statements pursuant to Labor Code § 226(a); (5) penalties under Labor
2 Code § 203; and (6) violation of Business & Professions Code § 17200.

3 8. On January 31, 2023, Plaintiff Sarami sent a notice letter, pursuant to Labor PAGA,
4 to the Labor Workforce Development Agency (“LWDA”) regarding his intent to seek civil
5 penalties for the same Labor Code violations above, under Labor Code § 2699, *et seq.*

6 9. On April 7, 2023, Plaintiff Sarami filed a First Amended Class and Representative
7 Action Complaint adding an additional cause of action for penalties pursuant to Labor Code §
8 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code
9 violations already pled and an additional claim for penalties under PAGA for Labor Code § 226.8.

10 10. On December 11, 2023, the above-entitled Court found that the case *Gregory*
11 *Flowers v. Tend Exchange, Inc. et al.*, Los Angeles County Superior Court Case No.
12 23STCV17918 was related to the above-entitled case.

13 11. On December 18, 2023, Plaintiff submitted an amended notice letter to the LWDA
14 and mailed a letter by certified mail to each of Defendants’ entity addresses, as proscribed by the
15 Code, adding Plaintiff Douglas Stumvoll and describing Defendants’ alleged failure to pay
16 minimum wages, provide compliant rest periods, and maintain employee records, in violation of
17 Labor Code §§ 226.7, 1174, 1174.5, 1182.12, 1197, and 1198.

18 12. On January 16, 2024, Plaintiffs submitted a second amended notice letter to the
19 LWDA and mailed a letter to each of Defendants’ entity addresses, adding Plaintiff Andrey
20 Tarasov to the Action.

21 13. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiffs from
22 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of January
23 16, 2024.

24 14. On April 16, 2024, Plaintiffs filed a Second Amended Complaint adding Plaintiffs
25 Douglas Stumvoll and Andrey Tarasov to the Action, as well as adding additional claims for
26 violations of Labor Code §§ 1174, 1182.12, 1197, and 1198. (“SAC”; “Operative Complaint”)

27 15. The Parties have yet to engage in formal discovery, instead focusing their efforts
28 on resolving this case through early mediation.

1 16. On October 23, 2023, the Parties participated in an all-day mediation presided
2 over by Peter S. Rukin, Esq. which led to this Agreement to settle the Action.

3 17. In preparation for mediation, Defendants informally produced multiple
4 documents and provided other information necessary to evaluate settlement. This included
5 Plaintiff Sarami's personnel file, a sampling of time and pay records for members of the putative
6 class, employee agreements and rules, and the total number of Class Members.

7 18. It is Plaintiffs' position that the Parties engaged in sufficient informal discovery to
8 allow the Parties to fully investigate the claims at issue and understand their strengths and weakness
9 and to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
10 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130
11 ("*Dunk/Kullar*").

12 19. Defendants deny any liability or wrongdoing of any kind associated with the claims
13 alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further
14 contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class
15 or representative action treatment. Defendants contend, among other things, that, at all times, it
16 has complied with the California Labor Code, and the Industrial Wage Commission Orders.

17 20. Based on their own independent investigation and evaluation, Class Counsel is of
18 the opinion that the Agreement with Defendants is fair, reasonable and adequate, and in the best
19 interest of the settlement classes in light of all known facts and circumstances, including the risk
20 of significant delay, defenses asserted by Defendants, uncertainties regarding a class and
21 representative action trial on the merits, and numerous potential appellate issues. Although
22 Defendants deny any liability, Defendants are agreeing to this Agreement solely to avoid the cost
23 of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle,
24 compromise and discharge all disputes and claims arising from or relating to the Action on the
25 terms set forth here.

26 21. On November 4, 2024, Plaintiffs filed a Notice of Motion and Motion for
27 Preliminary Approval of Class Action Settlement. After the Motion was filed, the Optional Tenth
28 Defendant, as defined in the Agreement, opted to join the Agreement. By joining, the Optional

1 Tend Defendant's (TEND EXCHANGE, Inc.) contribution is made as a 1:1 increase based on
2 the number of shifts.

3 **CERTIFICATION FOR SETTLEMENT PURPOSES**

4 22. Class certification for settlement purposes is proper in this case as the proposed
5 Settlement Class satisfies each of the requirements under Code of Civil Procedure § 382.

6 23. Here, Plaintiffs maintains that the proposed Settlement Class is ascertainable for
7 several reasons. Defendant has agreed in the Agreement to provide a class list to the Administrator
8 containing the name, last known mailing address, social security number, and number of Class
9 Period Shifts and PAGA Pay Periods for all putative class members after issuance of the
10 preliminary approval order.

11 24. Class Members consist of Defendant's employees, and Defendant is required to
12 keep records of its employees' names, home addresses, and social security numbers.

13 25. Defendant informally produced Plaintiff Sarami's personnel file and pay
14 statements, and time and pay data, for Class Members containing class member contact
15 information, which confirms that all Class Members may be readily identified based on
16 Defendant's records.

17 26. Plaintiffs are confident they will be able to establish that the proposed Settlement
18 Class is ascertainable and sufficiently numerous.

19 27. Plaintiffs argue that there are questions of law and fact common to the proposed
20 Settlement Class that predominate over any questions affecting only individual Class Members.

21 28. These common questions include:

- 22 1) Whether Defendants failed to pay minimum wages for each hour worked or part
23 thereof;
- 24 2) Whether Defendants failed to pay all wages for all hours at the appropriate rate of
25 pay;
- 26 3) Whether Defendants failed to provide lawfully required meal periods or meal
27 period premiums at the correct rate of pay in lieu thereof;
- 28 4) Whether Defendants failed to provide lawfully required rest or rest period
premiums at the correct rate of pay in lieu thereof;

- 5) Whether Defendants failed to reimburse business-related expenses;
- 6) Whether Defendants failed to provide accurate itemized wage statements;
- 7) Whether Defendants failed to maintain records as required by Labor Code section 1174;
- 8) Whether Defendants failed to pay compensation due and owing upon termination of employment;
- 9) Whether Defendants engaged in unfair competition; and,
- 10) Whether Defendants violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

29. Plaintiffs' challenge to Defendants' uniform policies and practices involves common factual and legal issues that are amenable to class treatment.

30. Plaintiffs maintain that the proposed Class Members suffered the same injuries, in the same manner: (1) Class Members were not properly paid minimum wages for each and every hour worked or part thereof, and were not properly paid for all hours at the appropriate rate of pay; (2) Class Members did not receive their meal and rest periods as required, or meal/rest period premiums at the correct rate of pay; (3) Class Members were not provided accurate itemized wage statements; (4) Class Members were not reimbursed for business-related expenses; and; (5) Class Members were not paid all wages owed upon termination/resignation.

31. Plaintiffs allege that Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Settlement Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate.

32. Plaintiffs worked as hourly employees for Defendants during the Class Period.

33. Plaintiffs allege that they: (1) worked without being paid minimum wage for each hour worked or part thereof; (2) worked without being paid for all hours at the appropriate rate of pay; (3) worked without being provided meal periods or meal period premiums at the correct rate of pay in lieu thereof; (4) work without being provided rest periods or rest period premiums at the correct rate of pay in lieu thereof; (5) work without being reimbursed for their out of pocket expenses; (6) work without being provided accurate wage statements; (7) work without Defendants

maintaining records in violation of Labor Code section 1174; (8) work without Defendants paying all wages at the time of termination of their employment with Defendants. Plaintiffs also allege that they experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, *et seq.*

34. Plaintiffs also contend that these claims are typical of those of the Settlement Class.

35. Plaintiffs believes that they are capable of fairly representing and adequately protecting the interests of the proposed Class Members.

36. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law.

37. Plaintiffs have agreed to serve as Class Representatives and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.

38. This demonstrates their commitment to bringing about the best possible results for the benefit of the proposed Settlement Class.

39. Plaintiffs have provided their Counsel with all necessary and pertinent information.

40. Plaintiffs have very active participants in the litigation including having frequent contact with Class Members and working closely with Class Counsel to develop the theories of liability.

41. Plaintiffs believe that they have and will continue to adequately represent the proposed Class Members.

42. The superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable.

43. The only alternative to certification would be to force over 12,500 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether.

44. Plaintiffs maintain that this economic reality would result in a windfall for Defendants if this case were not certified.

THE PROPOSED SETTLEMENT

1 45. The settlement class is defined as: “all current and former non-exempt California
2 employees or 1099 workers of Defendants between July 31, 2020 and December 31, 2023” (“Class
3 Members” or “Class”)

4 46. The Class Period is July 31, 2020, through December 31, 2023.

5 47. Based on documents and other information produced by Defendant in connection
6 with the mediation and the negotiation of the Settlement Agreement, there are approximately
7 13,000 Class Members who collectively worked a total of 165,500 shifts.

8 48. Because of the unique nature of this job of accepting periodic shift work through
9 an app, Plaintiffs believe it is more helpful to analyze this proposed Settlement in terms of shifts
10 as opposed to workweeks. Indeed, it was not common to work a full workweek due to the nature
11 of this position (accepting service-related work through the app such as bartending) and also
12 explains why the Class Member headcount is so high.

13 49. Using the Gross Settlement Amount of \$1,415,8500.00, the per shift amount of
14 this Settlement is \$8.54. ($\$1,415,850 / 165,000$).

15 50. When analyzed this way, on a per shift basis, Plaintiffs believe the proposed
16 Settlement is extremely fair and reasonable.

17 51. For purposes of the Agreement, the Aggrieved Employees are defined as: “all
18 current and former non-exempt California employees or 1099 workers of Defendants between
19 January 31, 2022 and December 31, 2023.” (“Aggrieved Employees”)

20 52. The PAGA Period is January 31, 2022 through December 31, 2023.

21 53. Based on documents and other information produced by Defendant in connection
22 with the mediation and the negotiation of the Settlement Agreement, there are approximately
23 12,500 Aggrieved Employees who collectively worked a total of 82,000 PAGA Pay Periods.

24 54. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a
25 Gross Settlement Amount of \$1,415,850.00, which includes the sum of the Individual Class
26 Payments, the Class Representatives Service Payments, the Class Counsel Fees Payment; Class
27 Counsel Litigation Payment, PAGA Penalties, and the Administrator Expenses Payment.

28 55. The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA

1 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel
2 Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses
3 Payment.

4 **KULLAR ANALYSIS**

5 56. The proposed settlement satisfies each of the *Kullar* factors.

6 57. Class Counsel conducted meaningful informal discovery before entering into
7 meaningful settlement negotiations in this matter.

8 58. This discovery permitted Class Counsel to fairly evaluate the strength of the case
9 and the risks associated with ongoing litigation.

10 59. Class Counsel is experienced in handling wage and hour class actions and, after
11 weighing all of the following factors, supports this Agreement.

12 a) The Risks Associated with the Minimum Wage/Overtime Claim

13 60. Plaintiffs and the Class Members alleged that they were not paid minimum wage
14 for each hour worked (or part thereof) during which they were required to perform acts at the
15 direction and for the benefit of Defendants.

16 61. Throughout the relevant period, Plaintiffs maintain that Defendant had an “auto
17 deduct” policy for meal periods meaning Plaintiffs were not able to actually take the meal periods
18 due to the nature of the work, but Defendant automatically deducted 30 minutes from their pay for
19 time they had actually worked.

20 62. Plaintiffs also contend that Defendants did not properly pay overtime for all hours
21 worked over 8 in a day or 40 in a week but paid at the regular rate instead.

22 63. Defendants vehemently denied this claim and argued that its policies specifically
23 provide for meal periods and prohibit off-the-clock work and, and as a practical matter, Class
24 Members were not expected to or required to work off the clock.

25 64. Defendant argued that Plaintiff’s theory of liability would be extremely difficult to
26 prove on a classwide basis because the time records will show that compliant meal periods
27 occurred.

28 65. Defendant argued that this case would devolve into a series of mini-trials wherein

1 each Class Member would have to testify as to whether he or she was required to perform work
2 off the clock during periods off time they were off the clock for meal periods.

3 66. Defendant argued that such an inquiry would defeat class certification altogether
4 whether or not any witnesses may have ultimately testified that they did perform some work off
5 the clock.

6 67. Plaintiffs acknowledge that this can be a highly difficult type of claim to prove
7 because the time records show compliant meal periods so there are no time records to substantiate
8 or evaluate an allegedly consistent policy or practice of failing to provide compliant meal periods
9 but still automatically deducting time worked on the assumption that they were lawfully provided.

10 68. Defendant would argue that if there was any such issue of meal periods being “auto
11 deducted” it would necessitate speaking to each and every Settlement Class Member about their
12 experiences day to day to determine whether they were provided a compliant meal period or not
13 and whether any off the clock time was ever worked during meal periods and if so, why it was
14 worked.

15 69. This type of inquiry, Defendants would argue, makes its very difficult to establish
16 liability based on common proof.

17 70. Because the theory of liability has this acute risk, Plaintiff believed it was
18 appropriate to discount this unpaid wages claim dramatically for settlement purposes.

19 b) The Risks Associated with the Meal Break Claim

20 71. As discussed in above, Plaintiffs contend that Defendants violated California’s
21 meal break laws by not allowing Plaintiff and other Class Members to take actual daily meal breaks
22 and instead “auto deducted” 30 minutes of time worked as a meal period. Indeed, Plaintiffs allege
23 that due to the hectic nature of the job, they were rarely if ever able to take all required,
24 uninterrupted meal periods per shift.

25 72. Plaintiff and Class Members were largely placed for work assignments at events
26 and performed work as bartenders and servers, etc.

27 73. They contend they were required to provide customer service and other work-
28 related service duties throughout their shifts and generally had no ability to take lawful,

uninterrupted meal periods because they were required to actively work their entire shift or were frequently interrupted. Plaintiffs contend that if they did not provide satisfactory customer service during a shift, they would be subject to potential discipline up to and including termination.

74. Plaintiff and Class Members argue that they were routinely discouraged and prevented from taking uninterrupted meal periods in order to complete their assignments and avoid the imposition of potential disciplinary measures, but Defendant automatically deducted that time nonetheless.

75. Plaintiff asserts that Defendant further violated California's meal period laws by not paying Plaintiff and Class Members an extra hour of wages for each missed or improper meal period.

76. Defendant vehemently denied this claim and argued that its written policies prohibit off-the-clock work, all meal periods were provided and Class Members were not working off the clock during meal periods.

77. Defendant argued that Plaintiff's theory of liability would be extremely difficult to prove on a classwide basis because the time records will show compliant meal periods so in the instance of an allegedly late, missed, or short meal period, Defendant argued that it would be entitled to inquire of each class member, as to any given meal period, whether or not the individual was provided with the opportunity to take a compliant meal period that shift.

78. Defendant argued that such an inquiry would defeat class certification altogether.

79. Plaintiff was confident that Defendant would attempt to gather testimonial evidence from class members indicating that the records were accurate, and they generally were able to take compliant meal breaks as reflected in the records or were paid a meal period premium in lieu thereof.

80. Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class.

81. There is risk as to both sides as to what declarations and depositions of class members might reveal.

82. Because the records largely show compliant meal periods, Plaintiff acknowledged

1 there was significant risk as to establishing liability on the meal period claim.

2 83. Considering this risk, Plaintiff believes it is fair and reasonable to discount the
3 meal period claim for settlement purposes.

4 c) The Risks Associated with the Rest Break Claim

5 84. Plaintiffs and the Class Members' rest period claims arise from an alleged common
6 course of conduct wherein Defendant did not provide employees with the opportunity to take a 10-
7 minute rest break during their shifts in compliance with California law.

8 85. Similar to the meal break violations, Plaintiffs alleged that Defendants maintained
9 a consistent policy of failing to provide Plaintiffs and the Class members with rest breaks of not
10 less than ten (10) minutes per four (4) hour work period or major fraction thereof.

11 86. Plaintiffs maintain that they and the Class members were unable to take compliant
12 rest breaks due to the nature of the work (customer-facing events and customer service).

13 87. Defendants argued that Plaintiffs' rest period claim was even less appropriate for
14 certification than their meal period claim because it maintained lawful written policies to provide
15 all required rest breaks and California law does not require employees to record rest periods.

16 88. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry,
17 Defendants argued that there was simply no way to know (1) whether a break was taken; and (2)
18 if not, why not?

19 89. For each instance where an employee allegedly did not take a 10-minute rest
20 period by the end of the fourth hour of work, the trier of fact would still have to determine why
21 that particular employee had less than their full allotment of rest time.

22 90. Plaintiffs had to acknowledge that it could potentially be easy for Defendants to
23 defeat certification of this claim if it was able to gather testimonial evidence from class members
24 indicating that they were able to take all required rest breaks each day.

25 91. Though Plaintiffs do not believe this was the case, Plaintiff must acknowledge it
26 poses risks for the Class as to this claim.

27 92. Just as with meal periods, there is risk as to both sides as to what declarations and
28 depositions of class members might reveal.

d) The Risks Associated with the Reimbursement Claim

93. Plaintiffs allege that Defendants have failed to reimburse for the cost of using their personal cell phones and tools that were not provided by Defendants but were necessary for the performance of Plaintiffs and the Class Members' job duties.

94. Plaintiffs contend that Defendants required that Plaintiffs and the Class Members be available by cell phone and use/answer their personal cell phone while working, as well as downloading an app to their cell phones to clock in and out for Defendants.

95. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to purchase tools and equipment such as knives, peelers, spatulas, and thermometers, among other items, and these tools were necessary to perform their job duties.

96. Plaintiffs argue that these cell phones and tools/equipment were not provided by Defendants, and Defendants failed to reimburse Plaintiffs and the Class Members for the costs associated with using these personal cell phones and tools/equipment.

97. Defendant argued that it provided all necessary tools and cellphones were not required to perform job duties.

98. Defendant argued that it provided paper timesheets to track shift length worked and that if any Class Members downloaded an app, it was out personal choice and convenience only.

99. Defendant would further argue that any time Class Members spent using a cellphone application to clock in or out was *de minimis* such that it would not give rise to a failure to reimburse claim, and that even if the business use of Plaintiff's personal cell phone was more substantial, that such an inquiry is individualized and uncommon to the class.

100. As for other tools such as knives and peelers, Defendants argued that any such necessary tools were provided or Class Members were free to seek reimbursement. As such, Plaintiff acknowledges there are also risks to the reimbursement claim.

e) The Risks Associated with the Inaccurate Wage Statement Claim

101. Plaintiffs alleged a derivative claim that Defendants issued wage statements that allegedly violate Labor Code §§ 226(a)(1)(2)(5)(8) and (9).

1 102. Plaintiffs allege that they and Class Members are issued wage statements that do
2 not accurately show all required information such gross wages earned, all applicable hourly rates,
3 and the number of hours worked at the corresponding rate based on Defendant’s alleged failure to
4 blend discussed above.

5 103. Plaintiffs have to recognize that this is a derivative claim.

6 104. Plaintiffs do not argue that Defendant failed to show required information on the
7 paystubs it issued to Class Members, only that the paystubs do not accurately show the information
8 as a result of the other claim alleged.

9 105. While Plaintiffs believe this claim is easily certifiable, Plaintiffs have to
10 acknowledge that this is a more difficult argument to prevail on when it comes to assessing liability
11 and a resulting discount for settlement purposes is appropriate.

12 106. In cases such as here, where the wage statement claim is a derivative claim
13 premised on disputed claims without a “standalone” violation pled, Plaintiffs acknowledge that
14 recovery of statutory penalties is likely very difficult.

15 107. Based on this risk, Plaintiffs believed it was appropriate to discount this claim
16 dramatically for settlement purposes.

17 f) The Risks Associated with the Waiting Time Penalty Claim

18 108. Here, some Class Members, including Plaintiffs, are no longer employed by
19 Defendants.

20 109. Plaintiffs contends that Defendants have failed to pay employees wages
21 immediately or within 72 hours of termination and/or resignation by not paying all meal period
22 premiums owed and wages.

23 110. Therefore, under California Law, Plaintiffs contends that “waiting time” penalties
24 would be triggered for each former employee in the class.

25 111. The risk analysis for the section 203 claim flows from the risk analysis for the
26 underlying wage claims discussed above.

27 g) The Risks Associated with the PAGA Claim

1 112. Plaintiffs discounted the PAGA claim for settlement purposes for multiple reasons.
2 First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims.
3 Second, a court has discretion to award less than the maximum penalty. Finally, the Class Members
4 are arguably compensated for these violations in the proposed Agreement, and thus any PAGA
5 recovery for these same violations would be duplicative.

6 113. Plaintiffs believe the Agreement's contemplated PAGA payment of \$40,000.00 is
7 appropriate.

8 114. An additional and important issue to consider when evaluating the risks associated
9 with a representative PAGA claim are the recent amendments to the statute.

10 115. On July 1, 2024, Governor Newsom signed AB 2288 and SB 92 which reformed
11 PAGA's penalty structure as well as its standing requirements.

12 116. The new legislation caps penalties imposed on employers who quickly cure the
13 Labor Code violations after receiving a PAGA notice, and also requires that the representative
14 plaintiff personally experience the alleged Labor Code violations brought in the action.

15 117. While this new legislation is not retroactive, courts may still take these reforms into
16 consideration when adjudicating a PAGA action at trial.

17 118. There is significant expense associated with the class certification process, which
18 the Parties can avoid by entering into the contemplated Agreement now.

19 119. If the Court did eventually certify a meal or wage class, trial of a case involving
20 approximately 12,500 Class Members would require the retention of expensive expert witnesses,
21 the accrual of extensive litigation costs, and a significant time overlay by the parties.

22 120. Given the complexity and unsettled nature of the issues in this case it is likely that
23 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
24 in further delay for the Class Members who are waiting for a resolution in this matter.

25 121. This case has not been certified to be tried as a class action. While Plaintiffs believe
26 there is strong evidence to support certification of several possible subclasses certification is
27 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification
28 is always a possibility. In attempting to certify a class, the parties would need to conduct multiple

depositions, including of the Class Representatives and of several person(s) most knowledgeable regarding Defendant's meal and wage policies. There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected.

122. It was very difficult for the Parties to reach this Settlement of \$1,415,850.00.

123. This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendants liable, and the assistance of an experienced mediator, Peter S. Rukin, Esq.

124. Plaintiffs assessed the full value of the wage/overtime claim, without any discount, at approximately \$1,399,380.

125. This calculation uses the average hourly rate for Class Members of \$19.92.

126. There are 140,500 shifts at issue.

127. Plaintiff's unpaid wages theory of liability relies upon an alleged "auto deduct" for a 30-minute meal period from time actually worked.

128. Thus, assuming Plaintiffs could establish that each and every shift actually had 30 minutes of time worked, the damages would be \$1,399,380 (\$9.96 for 30 minutes of time x 140,500 shifts = \$1,399,380.)

129. Plaintiffs assessed the full value of the meal period claim, without any discount, at approximately \$2,798,760.

130. This amount assumes Plaintiffs were able to prove that Class Members were owed a meal period premium of one hour of wages at the average hourly rate for each and every shift worked during the Class Period (\$19.92 x 140,500 shifts = \$2,798,760).

131. Just as with meals, Plaintiffs assessed the full value of the rest period claim, without any discount, at approximately \$2,798,760.

132. This amount assumes Plaintiffs were able to prove that Class Members were owed a rest period premium of one hour of wages at the average hourly rate for each and every shift worked during the Class Period (\$19.92 x 140,500 shifts = \$2,798,760).

1 133. With regard to the reimbursement claim analysis, Plaintiffs believed that it was
2 reasonable to value the potential reimbursement at \$2 per shift, per employee, for reimbursement
3 of personal cell phone usage and any necessary tools. This brought the damages for this claim to
4 \$281,000 ($\$2/\text{shift} \times 140,500 \text{ shifts} = \$281,000$).

5 134. Plaintiffs valued the wage statement claim, without discount, at \$8,025,000 ($\$100$
6 $\text{per pay period} \times 80,250 \text{ pay periods during the statutory one period} = \$8,025,000$).

7 135. Plaintiffs used \$100 for each wage statement issued (pay period) which is
8 overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts
9 a \$4,000 cap on wage statement penalties per employee.

10 136. Due to the risk discussed above that 226(a) liability wouldn't attach under
11 *Naranjo*, Plaintiffs determined that a steep discount of this claim was fair for settlement purposes.

12 137. Plaintiffs valued the waiting time claim, tied to the wage/overtime claim, at
13 approximately \$27,489,600. This calculation is based upon an assumption of 11,500 formers and
14 the penalty amount of \$6,912,000 per hour worked so if the average shift length is 4 hours the
15 calculation is $11,500 \text{ former employees} \times \$19.92 \text{ average hourly rate} \times 30 \text{ days} \times 4 \text{ hours average}$
16 $\text{shift length} = \$27,489,600$.

17 138. Considering the derivate nature of Labor Code §203, the dispute over whether class
18 members were owed any wages, and the required showing of "willfulness", Plaintiffs determined
19 that accepting a discount on this claim was appropriate.

20 139. Finally, Plaintiffs calculated the value of the PAGA, without discount, at
21 \$8,025,000 ($\$100 \text{ per pay period} \times 80,250 \text{ pay periods during the statutory one period} =$
22 $\$8,025,000$).

23 140. Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the
24 Class Members' claims core damages claims totals approximately \$7,277,900 for the wage claim,
25 meal and rest claims, and the business expense claim.

26 141. If the penalty exposure is added in, the total balloons to over \$50,000,000.

27 142. One of the main factors affecting settlement of this action was Defendant's
28 financial status.

143. Defendant is an app based company that allows individuals to login and accept jobs.

144. As discussed, the vast majority of workers do not work a traditional 5-day workweek but accept 1 or 2 jobs per week at most.

145. Defendant is a start-up company that has faced cash flow and profitability issues during its lifetime and lacks the financial resources of other well-known and far bigger delivery and driver companies to pay a settlement or judgement against it.

146. This issue has been discussed by the Parties in good faith and Defendants shared profit and loss statements under the mediation privilege to help Plaintiffs and the mediator consider potential solvency issues when working through a proposal to settle the case.

147. Class Counsel worked closely with the mediator to verify the information and representation made by Defendant regarding solvency.

148. Class Counsel determined that obtaining a settlement on behalf of the Settlement Class now, as opposed to protracted litigation with the uncertainty of Defendant's ability to pay made the most practical sense.

149. Based on this risk coupled with the risks on the merits, Plaintiffs and their Counsel focused on attempting to come to a realistic and meaningful resolution for the Class. Class Counsel believes the Gross Settlement Amount of \$1,415,850.00 is fair and reasonable.

ATTORNEY COMPETENCE

150. Kingsley Szamet & Ly is very experienced in prosecuting complex employment litigation and class action litigation. Since 2000, we have focused our practice on wage, hour, and working condition violations and our firm has diligently and aggressively pursued this action. Kingsley Szamet & Ly currently serves as class counsel for several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court. Below is a small, but representative sampling of wage and hour cases handled by my firm:

- a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In

- December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.
- e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.
- h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.
- i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of

1 \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

2 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
3 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement
4 in the gross amount of \$995,000.00, and the court granted attorney's fees request
5 of 33.33%.

6 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
7 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
8 Maguire, awarded Kingsley Szamet & Ly and co-counsel \$996,232.72 in attorney's
9 fees.

10 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
11 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
12 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
13 33.33%.

14 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was
15 proposed for final settlement by the Honorable Richard L. Fruin on February 19,
16 2016, in the gross amount of \$5,250,000.

17 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
18 The matter was approved for final settlement by the Honorable Lee Smally Edmund
19 in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of
20 38%.

21 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
22 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
23 matter was approved for final settlement by the Honorable Anthony W. Ishii in
24 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
25 attorney's fees benchmark award of \$1,525,000.

26 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
27 15-101333). The matter was approved for final settlement before the Hon. Stephen
28 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with

attorneys' fees request of 33.33%.

151. Kingsley Szamet & Ly filed its first class certification motion in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley Szamet & Ly has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

- a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927), approved for Class Certification in 2011.*
- b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley Szamet & Ly as class counsel).
- c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley Szamet & Ly as class counsel).
- d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley Szamet & Ly as class counsel).
- e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214). contested class certification granted in June 2020.
- f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.
- g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.
- h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876), contested class certification granted in August 2020.

152. Class Counsel is experienced in the handling of wage and hour class actions and supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair and reasonable and in the best interest of the Class.

1 153. After factoring in the risks explained above, Class Counsel believes that the
2 proposed settlement is fair and reasonable.

3 154. This allocation distributes Agreement funds proportionally to each class member's
4 potential damages and should therefore be approved as fair, adequate, and reasonable.

5 ///

6 **SERVICE AWARD TO THE NAMED PLAINTIFFS**

7 155. The Class Representatives is entitled to an enhancement for their valiant effort and
8 time expended in this matter. The time spent by Plaintiffs is significant and includes researching
9 and retaining competent counsel; providing information to Class Counsel regarding the nature of
10 the work at Defendants; compiling relevant documents; working closely with Class Counsel to
11 develop the theories of liability and martial relevant evidence; regularly discussing the status of
12 the case with Class Counsel; discussing the case via telephone with many Class Members; making
13 themselves available for a full-day of mediation; and responding promptly to Class Counsel's
14 communications regarding settlement. Thus, in addition to the sums paid to Class Members,
15 Plaintiffs request a proposed litigation enhancement in the amount of \$30,000.00, with \$10,000.00
16 for each Plaintiff, to be paid from the Gross Settlement Amount.

17 156. As set forth in the Agreement, Plaintiffs will also be entering into a general release
18 of liability pursuant to Civil Code Section 1542.

19 157. Class Counsel considers this to be a fair and reasonable enhancement. The
20 enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming
21 forward to litigate this matter on behalf of all Class Members. Plaintiffs concurrently provide
22 detailed declarations detailing their participation and further justification for the enhancement.

23 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

24 158. Proof of submission of Plaintiffs' Amended Motion, all related documents, and
25 copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M.
26 Szamet as Exhibit "2."

27 **EXHIBITS**

28 159. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed Class

1 Action and PAGA Settlement Agreement (“Agreement”).

2 160. Attached hereto as Exhibit “2” is a true and correct copy of the proof of submission
3 of Plaintiff’s Amended Motion, all related documents, and copy of the email from the LWDA
4 confirming receipt.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 This Declaration was executed this 19th day of November, 2024, in Encino, California.

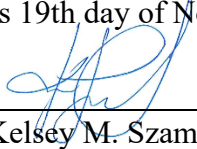
8 
9 _____
Kelsey M. Szamet

EXHIBIT "1"

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs James Sarami; Douglas Stomvoll; and Andrey Tarasov (“Plaintiffs”) and Defendants TEND EXCHANGE SUBSIDIARY, LLC; and DELAWARE TENDER STAFFING, LLC (“Defendants”). It also anticipates that an optional third defendant, TEND EXCHANGE, INC. (“Optional Tend Defendant”) may join in this settlement. The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC and DELAWARE TENDER STAFFING, LLC captioned *JAMES SARAMI; DOUGLAS STOMVOLL; and ANDREY TARASOV; as individuals, on behalf of themselves and others similarly situated, PLAINTIFFS, v. TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. 23STCV02139 initiated on January 31, 2023 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023.
- 1.5. “Class” means all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023.
- 1.6. “Class Counsel” means Kingsley Szamet & Ly.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Shifts and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from March 1, 2022 to December 31, 2023.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendants” means named Defendants TEND EXCHANGE SUBSIDIARY, LLC and DELAWARE TENDER STAFFING, LLC.
- 1.17. “Defense Counsel” means counsel for Defendants, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) 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.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$1,200,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraphs 8 and 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Shifts worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “Optional Tend Defendant Defense Counsel” means counsel for TEND EXCHANGE, INC., the predecessor entity to Defendants.
- 1.31. “Optional Tend Defendant” means TEND EXCHANGE, INC., the predecessor entity to Defendants.

- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.33. “PAGA Period” means the period from March 1, 2022 to and the earlier of either December 31, 2023.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.35. “PAGA Notice” means Plaintiff’s January 31, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000.00]) and the 75% to LWDA (\$30,000.00) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Plaintiffs” mean James Sarami, Douglas Stomvoll, and Andrey Tarasov, the named plaintiffs in the Action.
- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.40. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.41. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.42. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.43. “Released Parties” means: Defendants and each of its or their former and present directors, officers, shareholders, owners, members, agents, employees, attorneys, insurers, successors, assigns, subsidiaries, and affiliates.
- 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax,

email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

- 1.46. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On January 31, 2023, Plaintiff James Sarami commenced this Action by filing a Complaint alleging causes of action against Defendants for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, Wage Order 4-2001 California Code of Regulations, Title 8, Section 11040, and violation of Business & Professions Code § 17200. Also on January 31, 2023, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Sarami gave written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties under PAGA for the Labor Code violations alleged previously. On April 7, 2023, Plaintiff Sarami filed a First Amended Complaint alleging causes of action against adding an additional claim for penalties under Labor Code § 2699 et seq., the Private Attorneys General Act (“PAGA”), for the causes of action alleged previously and for Labor Code § 226.8. On April 16, 2024, Plaintiffs filed a Second Amended Complaint, adding Plaintiffs Douglas Stomvoll and Andrey Tarasov to the Action, as well as adding additional claims for violations of Labor Code §§ 1174, 1182.12, 1197, and 1198. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On October 23, 2023, the Parties participated in an all-day mediation presided over by Peter S. Rukin, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and pay records, employment records, and total number of class members, shifts, and work weeks. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. On December 11, 2023, the Court found that the case *Gregory Flowers v. Tend Exchange, Inc. et al.*, Los Angeles County Superior Court Case No. 23STCV17918 was related to the above-entitled case.

- 2.6. As a part of settlement, Plaintiff amended his complaint on April 16, 2024, to add in the causes of action listed in the *Flowers* case and adding in Douglas Stomvoll and Andrey Tarasov as Plaintiffs in the case.
- 2.7. The Court has not granted class certification.
- 2.8. 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 Paragraphs 8 and 9 below, Defendants promise to pay \$1,200,000.00 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. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. 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 Plaintiffs: Class Representative Service Payment to the Class Representative of not more than \$10,000 each or \$30,000 in the aggregate (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs' requests for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the GSA (approximately 33.33%), which is currently estimated to be \$400,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00, unless Paragraph 9 is triggered. Defendants will not oppose requests for these

payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$66,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$66,000, the Administrator will retain the remainder in the Net Settlement Amount.

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

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

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000.00 to be paid from the Gross Settlement Amount, with 75% (\$30,000.00)

allocated to the LWDA PAGA Payment and 25% (\$10,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Shifts and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 12,500 Class Members who collectively worked a total of 140,500 Shifts, and 12,500 Aggrieved Employees who worked a total of 80,250 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have 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 Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the

Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

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

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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

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

5. RELEASES OF CLAIMS. Effective on the date when Defendants 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 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: All causes of action and/or legal theories that were alleged in any operative Complaint, or that could have been alleged based on the factual allegations in any operative Complaint, including but not limited to all of the following claims for relief: (1) failure to pay wages and/or overtime; (2) failure to provide meal breaks and rest breaks; (3) failure to reimburse expenses; (4) failure to provide or maintain compliant and/or timely wage statements; (5) failure to timely pay all wages owed upon termination of employment; (6) violations of the Unfair Competition Law; (7) civil penalties under the Private Attorneys General Act ("PAGA"); and (8) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the "Released Claims"). The Release shall cover the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Class Members: All 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 causes of action and/or legal theories that were alleged in any operative Complaint, or that could have been alleged based on the factual allegations in any operative Complaint, including

but not limited to all of the following claims for relief: (1) failure to pay wages and/or overtime; (2) failure to provide meal breaks and rest breaks; (3) failure to reimburse expenses; (4) failure to maintain and provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; and (6) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the “Released Claims”). The Release shall cover the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

- 5.3 Release by Aggrieved Employees: All Aggrieved Employees, whether or not they attempt to opt-out of the Released Class Claims, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the three PAGA Notices as ascertained in the course of the Action including (1) failure to pay wages and/or overtime; (2) failure to provide meal breaks and rest breaks; (3) failure to reimburse expenses; (4) failure to maintain and provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; (6) intentional misclassification; and (7) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the “Released PAGA Claims”). The Released PAGA Claims shall cover the period from March 1, 2022 to the end of the PAGA Period.

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

- 6.1 Defendants’ Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement beyond those which they have identified for the Court through their Notices of Related Cases.

- 6.2 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator and/or the proposed Cy Pres; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

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

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

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Shifts, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Shifts and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Shifts and/or Pay Periods, and Requests for Exclusion will be extended an additional 14

days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Shifts. Each Class Member shall have [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Shifts and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Shifts contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Shifts and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Shifts and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Shifts and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Shifts and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Shifts and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total

number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendants estimate that, as of December 31, 2023, (1) there were 12,500 Class Members and 140,500 Total Shifts during the Class Period and (2) there were 12,500 Aggrieved Employees who worked 80,250 Pay Periods during the PAGA Period.

8.1 Increase in Class Members. Upon receipt of the Class Data, in the event that the number of Class Members exceeds this estimate by more than 2%, the Administrator shall notify the Parties. To the extent the number of Class Members in the Class Period increases by more than 2%, this will increase the Gross Settlement Amount by a proportionate amount above the 2%. For example, if the number of Class Members increases by 7%, the Gross Settlement Amount will increase by 5%.

8.2 Increase in Class Shifts. Upon receipt of the Class Data, in the event that the number of Shifts exceed this estimate by more than 2%, the Administrator shall notify the Parties. To the extent the number of Shifts in the Class Period increases by more than 2%, this will increase the Gross Settlement Amount by a proportionate amount above the 2%. For example, if the number of shifts increases by 7%, the Gross Settlement Amount will increase by 5%.

9. INCREASE DUE TO OPTIONAL TEND DEFENDANT. As drafted, this Agreement focuses on the period when Defendants were in operation since March 1, 2022. At its election, the Optional Tend Defendant may also join in this Agreement, as follows:

9.1 Increase in Gross Settlement Amount. If the Optional Tend Defendant joins in the settlement, its contribution will be made as a 1:1 increase based on the number of shifts. Specifically, if the Class Period and PAGA Period were extended to cover the earlier period between July 31, 2020 and February 28, 2022, there were an additional 25,000 shifts. Based on a valuation of \$8.54 per shift ($\$1,200,000 \div 140,500$ shifts),

that results in an additional contribution from the Optional Tend Defendant of \$215,850.00.

- 9.2 Impact of Optional Tend Defendant Contribution On Fees. Class Counsel Fees Payment will be grossed up to account for the additional \$215,850, *i.e.*, Class Counsel may seek 1/3 (approximately 33.33%) of the increased GSA.
- 9.3 Impact of Optional Tend Defendant Contribution On Releases. In exchange for the Optional Tend Defendant's contribution: (1) the Class Period will be adjusted to begin as of July 31, 2020, rather than March 1, 2022; (2) the PAGA Period will be adjusted to begin as of January 31, 2022, rather than March 1, 2022; (3) Released Parties will be amended to include the Optional Tend Defendant as a releasee.
- 9.4 Impact of Optional Tend Defendant Contribution on Total Class Shifts and Aggrieved Employee Pay Periods. If the Optional Tend Defendant joins in the settlement, based on a review of its records to date and accounting for the adjustment in the Class Period and the PAGA Period, Defendants estimate there are 13,000 Class Members who collectively worked a total of 165,500 Shifts, and 12,500 Aggrieved Employees who worked a total of 82,000 PAGA Pay Periods.
- 9.5 Timing for Optional Tend Defendant to Join Settlement. This Agreement shall be deemed fully-executed once Plaintiffs and Defendants sign this agreement. If the Optional Tend Defendant wishes to join this Agreement, then it must sign the Agreement prior to the filing of the Motion for Preliminary Approval.
- 9.6 Optional Tend Defendant's Responsibilities and Duties. If the Optional Tend Defendant joins this Agreement, the Optional Tend Defendant shall fully fund and be solely responsible for its portion of the Gross Settlement Amount, which is \$215,850.00, and also fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 9.7 Optional Tend Defendant's Duty to Cooperate. By entering this Agreement, the Optional Tend Defendant hereto agrees to execute any and all other documents and instruments in writing which may be reasonably necessary or proper to effectuate and carry out the purposes of this Agreement. Further, Optional Tend Defendant and Optional Tend Defendant Defense Counsel agree to expeditiously work with Class Counsel and Defense Counsel on behalf of the Parties by meeting in person or by telephone, and in good faith, to effectuate and carry out the purposes of this Agreement. The Optional Tend Defendant's failure to timely comply with its obligations under the Agreement can result in Optional Tend Defendant being excluded from the settlement proceedings.
- 9.8 Conforming Class Notice. If Optional Tend Defendant joins the settlement, the Parties shall modify the Class Notice to be consistent with the terms of Paragraph 9, including, but not limited to, modifying the Class Period and PAGA Period.

9.9 Conforming Other Provisions. To the extent that other provisions of this Agreement (including any defined terms) need to be adjusted to allow for the Optional Tenth Defendant's participation to be fully effective, the Parties agree that amendments can be accomplished through writings signed by the Parties' counsel only and provided the amendments do not change any of the material terms of the Agreement.

10. DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of their election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

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

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

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available

defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration

confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

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

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

To Plaintiff:

Kingsley Szamet & Ly
Eric B. Kingsley
Kelsey M. Szamet
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

To Defendants:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Alexander M. Chemers
Isabella B. Urrea
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

To Optional Tenth Defendant:

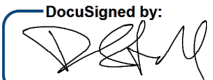
13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument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

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

DATED: _____

By: _____
PLAINTIFF James Sarami

DATED: October 2, 2024

By:  _____
PLAINTIFF Douglas Stomvoll

DATED: October 17, 2024

By:  _____
PLAINTIFF Andrey Tarasov

DEFENDANTS

DATED: _____

By: _____
DEFENDANT Tend Exchange Subsidiary, LLC

DATED: _____

By: _____
DEFENDANT Delaware Tender Staffing, LLC

OPTIONAL TEND DEFENDANT

DATED: _____

By: _____
OPTIONAL TEND DEFENDANT Tend Exchange,
Inc.

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

DATED: _____

By: _____
PLAINTIFF James Sarami

DATED: _____

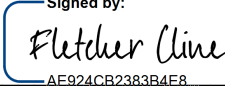
By: _____
PLAINTIFF Douglas Stomvoll

DATED: _____

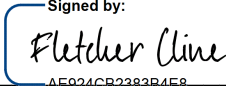
By: _____
PLAINTIFF Andrey Tarasov

DEFENDANTS

DATED: 28-Oct-2024

Signed by:

By: _____
DEFENDANT Tend Exchange Subsidiary, LLC

DATED: 28-Oct-2024

Signed by:

By: _____
DEFENDANT Delaware Tender Staffing, LLC

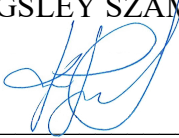
OPTIONAL TEND DEFENDANT

DATED: _____

By: _____
OPTIONAL TEND DEFENDANT Tend Exchange,
Inc.

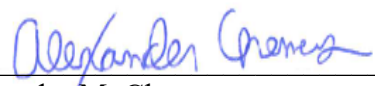
DATED: October 30, 2024

KINGSLEY SZAMET & LY

By: 
Kelsey M. Szamet
Attorneys for Plaintiffs and the proposed class

DATED: October 24, 2024

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
Alexander M. Chemers
Isabella B. Urrea
Attorneys for Defendant Tend Exchange Subsidiary,
LLC and Delaware Tender Staffing, LLC.

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

DATED: _____

By: _____
PLAINTIFF James Sarami

DATED: _____

By: _____
PLAINTIFF Douglas Stomvoll

DATED: _____

By: _____
PLAINTIFF Andrey Tarasov

DEFENDANTS

DATED: _____

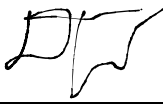
By: _____
DEFENDANT Tend Exchange Subsidiary, LLC

DATED: _____

By: _____
DEFENDANT Delaware Tender Staffing, LLC

OPTIONAL TEND DEFENDANT

DATED: 11/04/2024

By:  _____
OPTIONAL TEND DEFENDANT Tend Exchange,
Inc.

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

JAMES SARAMI; DOUGLAS STOMVOLL; and ANDREY TARASOV; as individuals, on behalf of themselves and others similarly situated, PLAINTIFFS, v. TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS, Los Angeles County Superior Court Case No. 23STCV02139
***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 TEND EXCHANGE SUBSIDIARY, LLC and DELAWARE TENDER STAFFING, LLC (“Defendants”) for alleged wage and hour violations. The Action was filed by former employees of Defendants named James Sarami, Douglas Stomvoll, and Andrey Tarasov (“Plaintiffs”) and seeks payment of (1) back wages and other relief for a class of all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023 (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023. (“Aggrieved Employees”).

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

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

The above estimates are based on Defendants’ records showing that **you worked _____ shifts** during the Class Period and **there were _____ workweeks** during the PAGA Period when you worked at least one shift. If you believe that you worked more shifts during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [date]	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. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	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

Written Objections Must be Submitted by [date]	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 [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many shifts you worked during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Shifts and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees and/or 1099 workers of TEND EXCHANGE SUBSIDIARY, LLC and DELAWARE TENDER STAFFING, LLC. The Action accuses TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING, LLC of violating California labor laws by misclassifying employees as independent contractors, failing to pay minimum wages, overtime wages, reimbursable expenses, wages due upon termination, failing to provide meal periods, rest breaks, and accurate itemized wage statements, and failing to preserve all employee payroll records. 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"). Plaintiff is represented by attorneys in the Action: Kingsley Szamet & Ly ("Class Counsel.")

Defendants strongly deny violating any laws or failing to pay any wages and contends 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 Defendants or Plaintiffs is correct on the merits. In the meantime, Plaintiffs and Defendants hired a neutral mediator in an effort to resolve the Action by negotiating an 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 Defendants 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, Defendants does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have 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. Defendants Will Pay \$1,200,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$400,000.00 (33.33% of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 each as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$66,000 to the Administrator for services administering the Settlement.

- D. Up to \$40,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Shifts.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants 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. (Defendants 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 Defendants 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 is 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 notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive

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

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

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Apex Class Action LLC (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 Shifts, 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 Defendants has fully funded the Gross Settlement and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

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 causes of action and/or legal theories that were alleged in any operative Complaint, or that could have been alleged based on the factual allegations in any operative Complaint, including but not limited to all of the following claims for relief: (1) failure to pay wages and/or overtime; (2) failure to provide meal breaks and rest breaks; (3) failure to reimburse expenses; (4) failure to maintain and provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; and (6) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights, to the extent permissible, including but not limited to the California Labor Code, the applicable

Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the “Released Claims”). The Release shall cover the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

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

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

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the three PAGA Notices and as ascertained in the course of the Action including, (1) failure to pay wages and/or overtime; (2) failure to provide meal breaks and rest breaks; (3) failure to reimburse expenses; (4) failure to maintain and provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; (6) violations of the Unfair Competition Law; (7) civil penalties under the Private Attorneys General Act (“PAGA”); and (8) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the “Released PAGA Claims”). The Released PAGA Claims shall cover the period from March 1, 2022 to the end of the PAGA Period.

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 Shifts worked by all

Participating Class Members, and (b) multiplying the result by the number of Shifts worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Shifts /Pay Period Challenges. The number of Class Shifts you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Shifts and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Shifts and/or Pay Periods based on Defendants' 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 Shifts and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to

personally sign your request, identify the Action as James Sarami et al. v. Tend Exchange Subsidiary, LLC, et al., and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action James Sarami et al. v. Tend Exchange Subsidiary, LLC, et al. and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 10 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense

Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Los Angeles County Superior Court's website at [lacourt.org](http://www.lacourt.org). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 23STCV02139. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling (213) 310-7000.

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

Class Counsel:

KINGSLEY SZAMET & LY
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16133 Ventura Blvd., Suite 1200
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Tel: (818) 990-8300

Settlement Administrator:

[Name of Company]
[Email Address]
[Mailing Address]
[Telephone]
[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

(Proof of Submission to Labor & Workforce
Development Agency)

EXHIBIT "2"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 20 2024 I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

OGLETREE DEAKINS

Isabella B. Urrea
Isbella.urrea@ogletree.com
Alexander M. Chemers
Zander.chemers@ogletreedeakins.com
Sally I. Navarrete
Sally.navarrete@ogletreedeakins.com
Jenny Carmona
Jenny.carmona@ogletreedeakins.com
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 20, 2024 at Woodland Hills, California.



Michelle Tanzer