

SECOND AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Second Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Delaine Phillips (“Plaintiff”) and Defendant Penumbra, Inc. (“Defendant”). The Settlement Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party”.

A. DEFINITIONS.

1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Phillips v. Penumbra, Inc.*, Case No. 23CV030740, initiated on April 7, 2023 and pending in Superior Court of the State of California, County of Alameda.
2. “Administrator” means ILYM Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties represent they do not have any financial interest in the Administrator or otherwise have a relationship with the Administrator that could create a conflict of interest.
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 bid submitted to the Court in connection with Preliminary Approval of the Settlement.
4. “Aggrieved Employees” means all current and former hourly-paid or non-exempt employees of Defendant, including all direct hires as well as all indirect hires for whom contact information can be obtained from the applicable Third-Party Employers, within the State of California at any time during the PAGA Period.
5. “Class” means all current and former hourly-paid or non-exempt employees of Defendant, including all direct hires as well as all indirect hires for whom contact information can be obtained from the applicable Third-Party Employers, within the State of California at any time during the Class Period.
6. “Class Counsel” means Justice Law Corporation, the attorneys representing Plaintiff in the Action.
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. The Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are the fees and expenses approved by the Court for Class Counsel’s litigation and resolution of this Action.
8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s: (a) full name; (b) last-known mailing address; (c) Social Security Number; and (d) number of Class Period Workweeks and PAGA Pay Periods.

9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
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 (“NCOA”), skip traces, and direct contact by the Administrator with Class Members.
11. “Class Notice” means the Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in the form attached as **Exhibit A** and incorporated by reference into this Agreement.
12. “Class Period” means the period from April 7, 2019, through June 22, 2024.
13. “Class Representative” means the named plaintiff in the operative complaint in the Action seeking Court approval to serve as the Class Representative.
14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
15. “Court” means the Superior Court of California, County of Alameda.
16. “Defendant” means Penumbra, Inc.
17. “Defense Counsel” means Littler Mendelson, P.C., the attorneys representing Defendant in the Action.
18. “Effective Date” means the later of: (a) the last date to appeal Final Approval and Judgment by the Court and no appeal is filed; or (b) if an appeal, review, or writ is sought from the Judgment, the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review.
19. “Final Approval” means the Court’s order granting final approval of the Settlement.
20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
21. “Gross Settlement Amount” means the total amount of up to \$4,595,000 Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment. In no event will Defendant be liable for more than the Gross Settlement Amount.
22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of twenty-five percent (25%) of the PAGA Payment calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
25. “LWDA” means the California Labor and Workforce Development Agency.
26. “LWDA PAGA Payment” means the seventy-five percent (75%) of the PAGA Payment paid to the LWDA under Labor Code section 2699, subd. (i).
27. “Net Settlement Amount” means the Gross Settlement Amount less the following payments in the amounts approved by the Court: Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, Individual PAGA Payments, LWDA PAGA Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
28. “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.
29. “Operative Complaint” means the Third Amended Class Action Complaint for Damages filed in the Action on August 20, 2024.
30. “PAGA” means the Private Attorneys General Act of 2004 (Labor Code section 2698, *et seq.*).
31. “PAGA Notice” means Plaintiff’s letter sent to the LWDA and Defendant on January 31, 2023 and Plaintiff’s amended letter sent to the LWDA and Defendant on May 21, 2024 that provided notice pursuant to Labor Code section 2699.3, subd. (a).
32. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendant for at least one (1) day during the PAGA Period.
33. “PAGA Payment” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the Aggrieved Employees.
34. “PAGA Period” means the period from January 31, 2022, through June 22, 2024.
35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
36. “Plaintiff” means Delaine Phillips.
37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
38. “Released Class Claims” means the Class claims being released as described in Paragraph E.2 below.

39. “Released PAGA Claims” means the PAGA claims being released as described in Paragraph E.3 below.
40. “Released Parties” means Defendant and each of its former and present directors, officers, shareholders, owners, members, agents, employees, attorneys, insurers, parent companies, predecessors, successors, assigns, subsidiaries, affiliates, representatives, heirs, executors, administrators, and transferees along with the Third-Party Employers. In the case of the Third-Party Employers, they are included as Released Parties to the extent that they furnish their last known contact information for Class Members and/or Aggrieved Employees in connection with this Settlement. The finalized list of Third-Party Employers who are able to furnish their last known contact information for Class Members and/or Aggrieved Employees in connection with this Settlement (and will be deemed Released Parties) will be provided to the Court in the Proposed Final Approval Order and proposed Judgment (“Motion for Final Approval”).
41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the class portion of the Settlement signed by the Class Member.
42. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax or mail Requests for Exclusion from the Settlement, or (b) fax or mail his or her Objection to the Settlement. Class Members to whom Class Notices are re-sent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the original Response Deadline.
43. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
44. “Third-Party Employers” means the following staffing companies and third parties who directly employed workers who were placed and worked at Defendant at any time during the Class Period and PAGA Period: 3 Bridge Networks LLC, Addison Group (and its affiliates; purchased CVPartners, Inc.), Aerotek, Inc. and Aerotek Scientific, LLC, Aston Carter, Inc. (affiliate of Aerotek), Align Technical Resources, Athena Technology, Inc., Barrett Business Services, Inc., BVOH, Compass Consulting Group, Inc., Cristo Rey De La Salle Work Study, Inc., DeWinter Group, LLC, Finance Solutions, LLC, FLEX by Fenwick & West LLP, Human Bees, Inc., LHH Recruitment Solutions (formerly Parker + Lynch), Platinum Resource Group, Inc., Robert Half (and its divisions/affiliates), QSI Services, Inc., SOAPProjects, Inc., Sterling IM Inc. DBA Sterling Life Sciences, Target CW, TRUGlobal, Inc., Ultimate Staffing, ZealTech, Inc., and their successors, assigns, or affiliates.
45. “Workweek” means any week during which a Class Member worked for Defendant for at least one (1) day, during the Class Period.

B. RECITALS.

1. On January 31, 2023, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions.
2. On April 7, 2023, Plaintiff filed a wage-and- hour class and representative action lawsuit in the Superior Court of California, County of Alameda, alleging violations of: (a) Labor Code sections 510 and 1198 (unpaid overtime); (b) Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (c) Labor Code section 226.7 (unpaid rest period premiums); (d) Labor Code sections 1194 and 1197 (unpaid minimum wages); (e) Labor Code sections 201 and 202 (final wages not timely paid); (f) Labor Code section 226(a) (non-compliant wage statements); (g) Labor Code sections 2800 and 2802 (unreimbursed business expenses); (h) Labor Code section 2698, *et seq.* (PAGA); and (i) Business & Professions Code section 17200, *et seq.*
3. On November 6, 2023, Plaintiff filed a First Amended Complaint that updated the “class” definition to remove the “California-based” portion of the definition.
4. After engaging in discovery, investigations, and negotiation, the Parties remotely attended mediation with the mediator Brandon McKelvey on April 22, 2024, ultimately resulting in the Parties reaching a tentative settlement via a mediator’s proposal.
5. In line with the Settlement, on May 7, 2024, Plaintiff filed a Second Amended Complaint that adjusted the “class” definition, adjusted the “aggrieved employees” definition, and updated the PAGA cause of action (“Operative Complaint”).
6. On May 21, 2024, Plaintiff provided an amended written notice to the LWDA and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions.
7. The Parties previously executed a settlement agreement and Plaintiff filed a Motion for Preliminary Approval of Class and PAGA Settlement with the Court. Following the Court’s issuance of a tentative ruling, the Parties stipulated that leave be granted to Plaintiff to file a Third Amended Complaint that explicitly referenced the amended written notice submitted to the LWDA on May 21, 2024. Leave was granted and Plaintiff filed the Third Amended Complaint on August 20, 2024.
8. Defendant denies: (a) all the material allegations asserted in the Action and Operative Complaint; (b) that it violated any state and/or federal laws; (c) that it is liable for damages, penalties, interest, restitution, attorneys’ fees or costs, or for any other compensation or remedy with respect to anyone on account of the claims asserted in the Action and Operative Complaint; and (d) that class certification, collective action certification, or representative treatment is appropriate as to any claim in the Action and Operative Complaint for purposes other than settlement. Defendant contends its policies, procedures, and practices comply with all applicable laws asserted in the Action and Operative Complaint. Nonetheless, without admitting any liability or wrongdoing whatsoever and without admitting that class certification, collective action certification, or representative treatment is appropriate for any purpose other than for settlement purposes alone,

Defendant has agreed to settle the Action and Operative Complaint on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this Agreement are made for settlement purposes only and shall under no circumstances be construed as an admission of fault or liability by Defendant.

9. The Parties conducted significant investigation and discovery of the facts and law both before and after the Action was filed. Defendant produced a substantial amount of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, and meal and rest breaks, along with payroll, timekeeping, and operational policies. As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of Workweeks and PAGA Pay Periods. Plaintiff also located and interviewed Class Members who worked for Defendant throughout the Class Period. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.
10. The Court has not granted class certification.

C. MONETARY TERMS.

1. Gross Settlement Amount. Defendant promises to pay up to \$4,595,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Section D of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
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:
 - a. To Plaintiff: Class Representative Service Payment to Plaintiff (in addition to any Individual Class Payment and Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member) of not more than \$10,000. Defendant will not oppose Plaintiff's request for the Class Representative Service Payment provided that it does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for the Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative

Service Payment.

- b. To Class Counsel: A Class Counsel Fees Payment of not more than \$1,531,666.67 (1/3 of the Gross Settlement Amount) and Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (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. The Released Parties shall have no liability to Class Counsel or any other counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator may purchase an annuity to utilize U.S. treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS Form 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, holds Defendant harmless, and indemnifies Defendant from any dispute or controversy regarding any division or sharing of any of these payments.
- c. To the Administrator: An Administration Expenses Payment not to exceed \$40,000 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 \$40,000, the Administrator will retain the remainder in the Net Settlement Amount.
- d. To Participating Class Members: An Individual Class Payment is calculated by:
 - (i) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period; and (ii) multiplying the result by each Participating Class Member's Workweeks during the Class Period.
 - i. Tax Allocation. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims ("Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS Form W-2. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties ("Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Form 1099. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- e. To the LWDA and Aggrieved Employees: PAGA Payment in the amount of \$400,000 to be paid from the Gross Settlement Amount, seventy-five percent (75%) of which (\$300,000) will be allocated to the LWDA PAGA Payment and twenty-five percent (25%) of which (\$100,000) will be allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by: (1) dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Payment (\$100,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (2) multiplying the result by each Aggrieved Employee's PAGA Pay Periods during the PAGA Period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Payment 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 Form 1099.

D. SETTLEMENT FUNDING AND SETTLEMENT PAYMENTS.

1. Class Members, Workweeks, Aggrieved Employees, and PAGA Pay Periods. Based on its records, Defendant estimates, as of the date of this Settlement Agreement, there are 4,963 Class Members who collectively worked a total of 490,000 Workweeks, and 3,780 Aggrieved Employees who worked a total of 120,000 PAGA Pay Periods.
2. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and amounts necessary to fully pay employer's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date.
3. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, Individual Class Payments, Individual PAGA Payments, and LWDA PAGA Payment. Disbursement of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

- a. 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 calendar 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 Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the NCOA.
- b. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar 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.
- c. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the *cy pres* recipient Legal Aid At Work.
- d. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to calculate any additional benefits under any benefit plans to which any Class Member may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. It is the Parties' intention this Agreement will not affect any rights, contributions, or amounts to which any Class Member may be entitled under any benefit plans.

E. RELEASE OF CLAIMS.

Effective on the date when Defendant fully funds the Gross Settlement Amount and all employer's 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:

1. Plaintiff's Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally releases from any and all claims and potential claims that may legally be waived by private agreement, whether known or unknown, which Plaintiff has asserted or could assert against the Released Parties arising out of or relating in any way to any acts, circumstances, facts, transactions, or omissions, occurring up to and including the date Plaintiff signs this Agreement, including, but not limited to: (a) all claims that were, or could have been, alleged based on the facts contained in the Operative Complaint; and (b) all PAGA claims that were, or could have been, alleged based on facts contained in the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges he may discover facts or law different from, or in addition to, the facts or law Plaintiff now knows or believes to be true but agree Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them.
 - a. Plaintiff's Waiver of Rights Under Civil Code section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the 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.
2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, transferees, and assigns, release the Released Parties from all claims that were alleged, or could have been alleged, based on the facts contained in the Operative Complaint and that occurred during the Class Period. 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.
3. Release by the State of California. Plaintiff, as an agent and proxy of the State of California, and State of California itself (including the LWDA) are deemed to release the Released Parties from all claims for PAGA penalties based on the facts and/or theories alleged in the PAGA Notice that were also alleged in the Operative Complaint.

F. 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.

1. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and 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.
2. 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 or email, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

G. SETTLEMENT ADMINISTRATION.

1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, the Administrator 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.
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 to state and federal tax authorities.
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.
4. Notice to Class Members.
 - a. Because the Class Data will be coming from multiple sources, Class Data shall be delivered to the Administrator no later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement in the form of one or more Microsoft Excel spreadsheet(s). To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers the Class Data omitted Class Members' identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use their best efforts, in good faith, to reconstruct

or otherwise resolve any issues related to missing or omitted Class Data.

- b. 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, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
- c. Before mailing Class Notices, the Administrator shall update Class Member addresses using the NCOA. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data the Class Notice substantially in the form attached to this Agreement as **Exhibit A** via First Class U.S. Mail. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
- d. No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall remail 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 remail the Class Notice to the most current address obtained.
- e. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the original Response Deadline otherwise provided in the Class Notice for all Class Members whose notice is remailed. The Administrator will inform the Class Member of the extended deadline with the remailed Class Notice.
- f. If the Administrator, Defendant, 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 or email, and in good faith, 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 no later than fourteen (14) calendar days after receipt of Class Notice or the deadline dates in the Class Notice, whichever is later.

5. Requests for Exclusion (Opt-Outs).

- a. Class Members who wish to exclude themselves (opt out of) the Class Settlement must send the Administrator by fax, email, or mail a signed written Request for Exclusion no later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notices are remailed). 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: (i) full name; (ii) present address; (iii) email address or telephone number; and (iv) simple statement electing to be excluded from the Settlement. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- b. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or 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 (*e.g.*, declaration, affidavit). The Administrator's determination of authenticity shall be final and not appealable or susceptible to challenge.
- c. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits, and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Section E.2. of this Agreement, regardless of whether the Participating Class Member receives the Class Notice or objects to the Settlement.
- d. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement but will still receive their Individual PAGA Payments. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, the State of California releases all claims identified in Section E.3 of this Agreement and may not bring such claims in the future, nor can anyone bring any of the claims released pursuant to Section E.3 of this Agreement in the future as agent and proxy of the State of California (including the LWDA).
- e. Any individuals separately represented by Class Counsel who made a pre-mediation request for personnel records shall agree as part of the settlement not to request exclusion from this Settlement.

6. Challenges to Calculation of Workweeks and/or PAGA Pay Periods.

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

7. Objections to the Settlement.

- a. Only Participating Class Members may object to the class action components of the Settlement and/or this Settlement Agreement, including contesting the fairness of the Settlement Agreement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- b. Participating Class Members may send signed written objections to the Administrator by fax, email, or mail. The written objection must: (i) indicate what the Class Member is objecting to; (ii) explain why the Class Member is objecting; (iii) include any fact(s) that support the objection; and (iv) include the Class Member's full name, present address, and email address or telephone number.
- c. Alternatively, 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 no later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notices are re-mailed).

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

- a. Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use a website to post information of interest to Class Members. This information includes the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for

Preliminary Approval, Preliminary Approval, Class Notice, Motion for Final Approval, Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, Final Approval, and Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive calls, faxes, and emails from Class Members.

- b. Requests for Exclusion (Opt-Outs). The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
- c. 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: (i) Class Notices mailed or re-mailed; (ii) Class Notices returned undelivered; (iii) Requests for Exclusion (whether valid or invalid) received; (iv) objections received; (v) challenges to Workweeks and/or PAGA Pay Periods received and/or resolved; and (vi) checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion.
- d. Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- e. Administrator’s Declaration. No later than sixteen (16) court 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: (i) its mailing of Class Notice; (ii) Class Notices returned as undelivered; (iii) re-mailing of Class Notices; (iv) attempts to locate Class Members; (v) total number of Requests for Exclusion from Settlement it received (both valid or invalid); (vi) total number of written objections it received. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- f. Final Report by Settlement Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar 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.

H. ESCALATOR/DE-ESCALATOR CLAUSE. Based on its records, Defendant estimates that there are: (1) 4,963 Class Members who worked a total of 490,000 Workweeks in the Class Period; and (2) 3,780 Aggrieved Employees who worked a total of 120,000 PAGA Pay Periods in the PAGA Period.

1. Escalator Clause. If the number of Workweeks during the Class Period increases by more than ten percent (10%) (*i.e.*, if the Workweeks exceed 539,000), Defendant, at its option, can either choose to either: (a) cut off the end date for the Class Period as of the date on which the number of Workweeks reaches 539,000; or (b) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of Workweeks above ten percent (10%) (*i.e.*, if there was an 11% increase in the number of Workweeks, Defendant would agree to increase the Gross Settlement Amount by 1%).
2. De-escalator Clause. Because certain contact information of Class Members and Aggrieved Employees is not in Defendant's possession, if that contact information cannot be obtained from the Third-Party Employers, such Class Members and Aggrieved Employees and their Workweeks and PAGA Pay Periods will be excluded from the settlement. Accordingly, these Class Members and Aggrieved Employees' Workweeks and PAGA Pay Periods will be deducted from the Workweek and PAGA Pay Period totals. To the extent that this results in a Workweek count lower than 539,000, the Gross Settlement Amount will be reduced to an amount proportional to the decrease in the estimated Workweeks.

I. MOTION FOR FINAL APPROVAL.

No later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file 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), Motion for Final Approval.

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 (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
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 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
3. Continuing Jurisdiction of the Court. The Parties agree that after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters.

4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their counsel, and Participating Class Members who did not object to the Settlement waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings and 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.
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 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 settlement administration expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment shall not constitute a material modification of the Judgment within the meaning of this paragraph as long as the Gross Settlement Amount remains unchanged.

J. AMENDED JUDGMENT.

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

K. ADDITIONAL PROVISIONS.

1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Action and Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that the defenses in the Action have merit. The Parties agree to stipulate to class action certification for settlement purposes only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Agreement will not be admissible in this or any other proceeding as evidence that either a class action should be certified or Defendant is liable to Plaintiff or any Class Member, other than according to the Settlement's terms. The Settlement 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).

2. Confidentiality Prior to Preliminary Approval. Plaintiff and Class Counsel 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: (i) to Class Counsel, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (ii) counsel in a related matter; (iii) to the extent necessary to report income to appropriate taxing authorities; (iv) in response to a court order or subpoena; or (v) in response to an inquiry or subpoena issued by a state or federal government agency. Plaintiff agrees to immediately notify Defendant of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff and Class Counsel agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
3. No Public Comment. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Agreement.
4. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant 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.
7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

8. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, considering all relevant factors, present and potential. The Parties acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.
9. 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.
10. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
11. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
12. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
13. 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.
14. 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.
15. Confidentiality. To the extent permitted by law, all agreements made, and orders entered into during this Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
16. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. No later than ninety (90) calendar 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 and the Administrator shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction of Class Data. Plaintiff and Administrator shall provide written certification to Defendant confirming destruction of information pursuant to the Section.

17. 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.
18. 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.
19. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to fully construe the provision as valid possible consistent with applicable precedents to define all provisions of this Agreement valid and enforceable.
20. All Terms Subject to Final Court Approval. All amounts and procedures described in this Agreement herein will be subject to final Court approval.
21. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all Parties. The Parties also agree that this Agreement will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.
22. 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 (3rd) business day after mailing by U.S. mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Douglas Han
Shunt Tatavos-Gharajeh
Justice Law Corporation
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
(Tel) (818) 230-7502
(Fax) (818) 230-7259
dhan@JusticeLawCorp.com
statavos@JusticeLawCorp.com

To Defendant:

Steven A Groode
Littler Mendelson, P.C.
1255 Treat Blvd, Suite 600
Walnut Creek, California 94597
(Tel) (925) 932-2468
(Fax) (925) 946-9809
SGroode@littler.com

Nathaniel H. Jenkins
Littler Mendelson, P.C.
500 Capitol Mall, Suite 2000
Sacramento, California 95814
(Tel) (916) 830-7200
(Fax) (916) 561-0828
NJenkins@littler.com

23. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*e.g.*, 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.
24. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

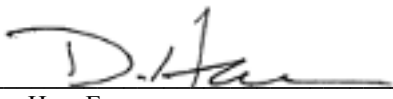
Dated: 09/13/2024

Delaine Phillips

By: 

Dated: September 13, 2024

Justice Law Corporation [Approving as to Form Only]

By: 
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiff

Dated: _____

Penumbra, Inc.

By: _____
On behalf of Penumbra, Inc.

Dated: _____

Little Mendelson, P.C. [Approving as to Form Only]

By: _____
Steven A Groode, Esq.
Nathaniel H. Jenkins, Esq.
Attorneys for Defendant

Dated: _____

Delaine Phillips

By: _____

Dated: _____

Justice Law Corporation [Approving as to Form Only]

By: _____

Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiff

Dated: September 13, 2024 | 11:13:12 PDT
_____ **Penumbra, Inc.**

DocuSigned by:
Johanna Roberts
By: _____
On behalf of Penumbra, Inc.

Dated: 9/13/2024 _____

Littler Mendelson, P.C. [Approving as to Form Only]

By:  _____
Steven A Groode, Esq.
Nathaniel H. Jenkins, Esq.
Attorneys for Defendant

EXHIBIT A

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

Phillips v. Penumbra, Inc. (Case No. 23CV030740)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Penumbra, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiff Delaine Phillips (“Plaintiff”), a former employee of a staffing company that supplied workers to Defendant. The Action seeks payment of:

(1) Unpaid wages for a class of current and former hourly-paid or non-exempt employees of Defendant, including all direct hires as well as all indirect hires for whom contact information can be obtained from the applicable Third-Party Employers, within the State of California at any time during the period from April 7, 2019, through June 22, 2024 (“Class,” “Class Members,” “Class Period”); and

(2) Penalties under the Private Attorneys General Act of 2004 (“PAGA”) for all current and former hourly-paid or non-exempt employees of Defendant, including all direct hires as well as all indirect hires for whom contact information can be obtained from the applicable Third-Party Employers, within the State of California at any time during the period from January 31, 2022, through June 22, 2024 (“Aggrieved Employees” and “PAGA Period”).

The settlement has two main parts: (1) Class Settlement requiring Defendant to fund Individual Class Payments; and (2) PAGA Settlement requiring Defendant to fund Individual PAGA Payments.

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the settlement because you didn’t work during the PAGA Period.)

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

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

If you worked for Defendant during the Class Period and/or PAGA Period, you have two (2) basic options under the settlement:

1. **Do Nothing.** You don't have to do anything to participate in the settlement and be eligible for an Individual Class Payment and/or Individual PAGA Payment. As a Participating Class Member, you will give up your right to assert Class Period wage claims against Defendant.
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 but will preserve your right to personally pursue Class Period wage claims against Defendant. If you are an Aggrieved Employee, you remain eligible for an Individual PAGA Payment. You cannot opt out of the PAGA portion of the settlement.

Defendant won't retaliate against you for any actions you take with respect to the 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 Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant covered by this settlement (Released Claims).
You Can Opt Out of the Class Settlement but not the PAGA Settlement The Opt Out Deadline is	If you don't want to fully participate in the 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 will no longer be eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the settlement. See Section 6 of this Class Notice. You cannot opt out of the PAGA portion of the settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt out ("Participating Class Members") can object to any aspect of the settlement. The Court's decision whether to finally approve the settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Class Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on . 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 or by telephone. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Class Notice.
You Can Challenge the Calculation of Your Workweeks / PAGA Pay Periods Written Challenges Must be Submitted by	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one (1) day during the Class Period and how many PAGA Pay Periods you worked at least one (1) day during the PAGA Period, respectively. The number of Workweeks and number of PAGA Pay Periods you worked according to Defendant's records is stated on the first page of this Class Notice. See Section 4 of this Class Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of a staffing company engaged by the Defendant. The Action accuses Defendant of violating California labor laws by failing to: (1) pay overtime wages; (2) provide meal period premiums; (3) provide rest period premiums; (4) pay minimum wages; (5) timely pay final wages; (6) provide compliant wage statements; (7) reimburse business expenses; and (8) comply with the requirements of Business & Professions Code section 17200, *et seq.* Based on the same claims, Plaintiff has asserted a claim for civil penalties under Labor Code section 2698, *et seq.* (PAGA). Plaintiff is represented by attorneys Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation.

Defendant strongly denies Plaintiff's allegations in the Action and specifically denies violating any laws or failing to pay any wages and premiums, provide compliant wage statements, and reimburse business expenses. Defendant contends it complied with all applicable laws at all relevant times.

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

The Court has made no determination whether Plaintiff or Defendant is correct on the merits. In the meantime, the Parties hired an experienced, neutral mediator to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful following a full day of mediation. By signing the Second Amended Class Action and PAGA Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Settlement Agreement, the Parties have negotiated a settlement that is subject to the Court's Final Approval. Both sides agree the settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe: (1) Defendant agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and 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 Settlement as fair, reasonable, and adequate, authorized this Class Notice, and scheduled a hearing to determine Final Approval.

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

1. Defendant Will Pay Up To \$4,595,000 as the Gross Settlement Amount. Defendant agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”).
 - a. Assuming the Court grants Final Approval, Defendant shall fully fund the Gross Settlement Amount and amounts necessary to fully pay employer’s share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date.
 - b. “Effective Date” later of: (i) the last date to appeal Final Approval and Judgment by the Court and no appeal is filed; or (ii) if an appeal, review, or writ is sought from the Judgment, the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review.
2. Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to \$1,531,666.67 (1/3 of the Gross Settlement Amount) to Class Counsel as their Class Counsel Fees Payment and up to \$20,000 as their Class Counsel Litigation Expenses Payment. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$10,000 to Plaintiff as the Class Representative Service Payment for filing the Action, working with Class Counsel, and effectively representing the Class. The Class Representative Service Payment will be the only monies Plaintiff will receive other than the Individual Class Payments and any Individual PAGA Payments.
 - c. Up to \$40,000 to the Administrator as the Administration Expenses Payment for services administering the Settlement.
 - d. Up to \$400,000 for PAGA Payment, seventy-five percent (75%) of which (\$300,000) will be paid to the LWDA as the LWDA PAGA Payment and twenty-five percent (25%) of which (\$100,000) will be paid to the Aggrieved Employees as their Individual PAGA Payments based on their PAGA Pay Periods.
3. Right to Object. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

4. Net Settlement Amount 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 Amount (“Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their Workweeks.
5. Taxes Owed on Payments to Class Members. The Parties are asking the Court to approve an allocation of twenty percent (20%) of each Individual Class Payment to taxable wages (“Wage Portion”) and eighty percent (80%) to interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS Form W-2. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS Form 1099.
 - a. While the Parties 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 Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the settlement.
6. Need to Promptly Cash Payment Checks. The face of each check shall state checks that are not cashed within one hundred eighty (180) calendar days after the date of mailing will be voided. The Administrator will cancel all checks not cashed by the void date. 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 *cy pres* recipient Legal Aid At Work. If your uncashed funds are transmitted to the *cy pres* recipient Legal Aid At Work, you will have no means to retrieve your uncashed funds.
7. 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 that you wish to opt out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by [REDACTED]. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s: (a) full name; (b) present address; (c) email address or telephone number; and (d) simple statement electing to be excluded from the Settlement. Non-Participating Class Members will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Defendant.
 - a. You cannot opt out of the PAGA portion of the Settlement. In other words, Non-Participating Class Members remain eligible for Individual PAGA Payments.
 - b. If you are an individual who was separately represented by Class Counsel who made a pre-mediation request for personnel records, you cannot request exclusion from the Settlement.

8. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. The Parties agreed, in either case, the Settlement will be void: (a) Defendant will not pay any money; and (b) Class Members will not release any claims against Defendant.
9. Administrator. The Court has appointed a neutral company ILYM Group, Inc. (“Administrator”) to send this Class Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges over Workweeks, mail and remail 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 Class Notice.
10. Release by Participating Class Members. After the Judgment is final and Defendant has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement Agreement. This means 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 the Released Parties involving claims that were alleged, or could have been alleged, based on the facts contained in the Operative Complaint filed in the Action, that occurred during the Class Period, and that have been resolved by the Settlement Agreement. The Participating Class Members will be bound by the following release:
 - a. All Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, transferees, and assigns, release the Released Parties from all claims that were alleged, or could have been alleged, based on the facts contained in the Operative Complaint and that occurred during the Class Period. 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.
11. State of California’s Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement Amount and separately paid the employer-side payroll taxes, the State of California (including the LWDA) will be legally barred from asserting PAGA claims against the Released Parties. Consistent with this release, no one may assert PAGA claims as an agent and proxy of the State of California against the Released Parties. The State of California will be bound by the following release:
 - a. Plaintiff, as an agent and proxy of the State of California, and State of California itself (including the LWDA) are deemed to release the Released Parties from all claims for PAGA penalties based on the facts and/or theories alleged in the PAGA Notice that were also alleged in the Operative Complaint.

12. Released Parties. The Released Parties include Defendant and each of its former and present directors, officers, shareholders, owners, members, agents, employees, attorneys, insurers, parent companies, predecessors, successors, assigns, subsidiaries, affiliates, representatives, heirs, executors, administrators, and transferees along with the Third-Party Employers.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Workweeks during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by: (a) dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Payment (\$100,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods during the PAGA Period.
3. Workweek / Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated on the first page of this Class Notice. You have until [REDACTED] to challenge the number of Workweeks and/or PAGA 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 Class Notice has the Administrator's contact information.
 - a. You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or PAGA Pay Periods based on Defendant's records as accurate unless you send copies of records validating contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defense Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, via First Class U.S. Mail, postage prepaid, a single check to every Participating Class Member, including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, via First Class U.S. Mail, postage prepaid, a single Individual PAGA Payment check to every Aggrieved Employee who is a Non-Participating Class Member.

3. **Your check will be sent to the same address as this Class Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Class 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 full name, present address, email address or telephone number, and 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 *Phillips v. Penumbra, Inc.* (Case No. 23CV030740), and include your identifying information (full name, present address, email address or telephone number). 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 [REDACTED], or it will be invalid. Section 9 of the Class Notice has the Administrator's contact information.

If you are an individual who was separately represented by Class Counsel who made a pre-mediation request for personnel records, you cannot request exclusion from the Settlement.

7. HOW DO I OBJECT TO THE SETTLEMENT?

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment may wish to object. The deadline for sending written objections to the Administrator is [REDACTED]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Phillips v. Penumbra, Inc.* (Case No. 23CV030740) and include your full name, present address, email address or telephone number, and signature. Section 9 of this Class 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 Class Notice for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department 22 of the Alameda County Superior Court located at 1225 Fallon Street, Oakland, California, 94612. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and Administrator. The Court will invite comments from objectors, Class Counsel, and Defense Counsel before deciding.

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

9. HOW CAN I GET MORE INFORMATION?

The Settlement Agreement sets forth everything the Parties have promised to do under the Settlement Agreement. The easiest way to read the Settlement Agreement, Judgment, or any other Settlement documents is to go to Administrator's website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website at <https://eportal.alameda.courts.ca.gov/?q=node/388>. After arriving at the website, click the "Case Number Search" link, create an account, then enter 23CV030740 as the case number, confirm you are not a Robot, and click "SEARCH." Images of every document filed in the case may be viewed through the "Document Download" button at the top right of the page at a minimal charge.

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

For more detailed information, you may refer to the underlying documents and papers on file with the Court at the Alameda County Administrative Building, located at 1221 Oak Street, Oakland, California 94612, between 8:30 a.m. and 4:00 p.m.

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

Class Counsel:

Douglas Han
Shunt Tatavos-Gharajeh
Justice Law Corporation
751 North Fair Oaks Ave., Suite 101
Pasadena, California 91103
(Tel) (818) 230-7502
(Fax) (818) 230-7259
dhan@JusticeLawCorp.com
statavos@JusticeLawCorp.com

Administrator:

[ADMINISTRATOR]
[MAILING ADDRESS]
[TELEPHONE NUMBER]
[FAX NUMBER]
[EMAIL]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void, you will have no means to retrieve it.

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 SERVICE
1013A(3) CCP**

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 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On September 24, 2024, I served the foregoing document described as

SECOND AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

for the following case: **Phillips v. Penumbra, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-932949-23**
Court Case No.: 23CV030740
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

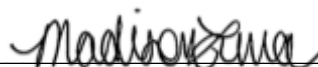
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on September 24, 2024, at Pasadena, California.



Madison Luna