

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (SBN 297296)

jeff@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Andrew Magaline (SBN 290413)

andrew@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, ISMAEL LOPEZ and JUAN AGUILAR,
on behalf of themselves and all others similarly situated
and aggrieved

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A Professional Law Corporation

Michael J. O'Connor, Jr. State Bar No. 202734

Michael.OConnor@aalrr.com

Casandra P. Secord State Bar No. 237395

CSecord@aalrr.com

Sarkis A. Atoyan State Bar No. 309618

Sarkis.Atoyan@aalrr.com

4275 Executive Square, Suite 700

La Jolla, California 92037-1477

Telephone: (858) 485-9526 Fax: (858) 485-9412

Attorneys for Defendant, BACHEM AMERICAS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ISMAEL LOPEZ and JUAN AGUILAR, as
individuals and on behalf of all others
similarly situated,

Plaintiffs,

v.

BACHEM AMERICAS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No: 23STCV04258

[Assigned for all purposes to the Hon.
Maren Nelson in Dept. 17]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: February 27, 2023

Trial Date: None Set

1 **1. DEFINITIONS**

2 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against
3 Defendant, captioned *Ismael Lopez, et al. v. Bachem Americas, Inc.*, Case No. 23STCV04258,
4 initiated on February 27, 2023, and pending in Superior Court of the State of California, County
5 of Los Angeles.

6 1.2. “Administrator” means Pheonix Class Action Administration Solutions (“Phoenix”) the
7 neutral entity the Parties have agreed to appoint to administer the Settlement.

8 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
9 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
10 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
11 Preliminary Approval of the Settlement.

12 1.4. “Aggrieved Employees” means all persons currently or formerly employed by Defendant,
13 as non-exempt, hourly-paid employees in the State of California, at any time during the PAGA
14 Period.

15 1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by
16 Defendant, as non-exempt, hourly-paid employees in the State of California, at any time during
17 the Class Period.

18 1.6. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of
19 Bibiyan Law Group, P.C.

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

23 1.8. “Class Data” means Class Member’s identifying information in Defendant’s custody,
24 possession, or control, including the Class Member’s: (1) name; (2) last known address(es); (3)
25 last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of
26 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

27 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either
28 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 PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit “A” and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from September 3, 2021 through October 4, 2023.

1.13. “Class Representatives” means the named plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.

1.14. “Class Representative Service Payments” means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendant” means named defendant Bachem Americas, Inc.

1.17. “Defense Counsel” means Michael J. O'Connor, Jr., Casandra P. Secord and Sarkis A. Atoyan of Atkinson, Andelson, Loya, Ruud & Romo, A Professional Law Corporation.

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 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final
2 Approval.

3 1.22. “Gross Settlement Amount” means \$395,000.00 (Three Hundred Ninety-Five Thousand
4 Dollars and Zero Cents), which is the total, and maximum, all-in, amount Defendant agrees to
5 pay under the Settlement, except (1) as provided in Paragraph 8.1 below, and (2) any and all
6 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross
7 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
8 the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
9 Payment, Class Representative Service Payments, and Administrator’s Expenses Payment.

10 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
11 Net Settlement Amount calculated according to the number of Workweeks worked during the
12 Class Period.

13 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
14 the PAGA Penalties calculated according to the number of pay periods worked during the PAGA
15 Period.

16 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

17 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
18 entitled, under Labor Code section 2699, subd. (i).

19 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
20 under Labor Code section 2699, subd. (i).

21 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
22 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
23 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
25 paid to Participating Class Members as Individual Class Payments.

26 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
27 Settlement by sending the Administrator a valid and timely Request for Exclusion.

28 1.30. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked

for Defendants for at least one day during the PAGA Period, based on dates of employment (*i.e.* hire dates, re-hire dates (as applicable), and termination dates (as applicable)).

1.31. “PAGA Period” means the period from February 23, 2022 through the end of the Class Period.

1.32. “PAGA” means the Private Attorneys’ General Act (Labor Code §§ 2698. *et seq.*).

1.33. “PAGA Notice” means the letter Plaintiff Ismael Lopez sent to Defendant and LWDA, dated February 23, 2023 and the amended letter Plaintiffs Ismael Lopez and Juan Aguilar sent to Defendant and LWDA, dated April 7, 2023, providing notices pursuant to Labor Code section 2699.3 subd. (a).

1.34. “PAGA Penalties” means the total amount of PAGA civil penalties (\$20,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and the 75% to the LWDA (\$15,000.00) in settlement of PAGA claims.

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiffs” means Ismael Lopez and Juan Aguilar, the named plaintiffs in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41. “Released Parties” means: Defendant and each of its former and present directors, partners, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, parent companies, joint employers, subsidiaries and affiliates, and their respective heirs, estates, executors, administrators, successors and assigns, subsidiaries, and affiliates.

1.42. “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.

1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) 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 fifteen (15) days beyond the Response Deadline has expired.

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

1.45. “Workweek” means any week during which a Class Member was employed by the Defendants in a non-exempt, hourly position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. On February 24, 2023, Plaintiff Ismael Lopez commenced this Action by filing a complaint alleging causes of action against Defendants for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate and compliant wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition (the “Class Action”). On April 7, 2023, after 65 days passed without any communication from the LWDA, Plaintiffs filed a separate representative action under PAGA in the Los Angeles County Superior Court, captioned *Ismael Lopez, et al. v. Bachem Americas, Inc., et al.*, Case Number 23STCV16155, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, in connection with the allegations made in the PAGA Notice (the “PAGA Action”). On April 11, 2023, Plaintiff Ismael Lopez filed a First Amended Complaint in the Class Action, adding Plaintiff Juan Aguilar as Class Representative. As part of this Agreement, the Parties agree to stipulate to Plaintiffs’ filing of a Second Amended Complaint in

1 the Class Action, adding all allegations brought in the PAGA Action, and request for dismissal
2 of the PAGA Action, without prejudice, thereby effectively consolidating the two actions for
3 purposes of Settlement (hereinafter, the “Action”). The Second Amended Complaint is the
4 operative complaint in the Action (the “Operative Complaint). Defendant denies the allegations
5 in the Operative Complaint, denies any failure to comply with the laws identified in the Operative
6 Complaint and denies any and all liability for the causes of action alleged.

7 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written notice to
8 Defendant and the LWDA by sending the PAGA Notice.

9 2.3. On October 4, 2023, the Parties participated in an all-day mediation presided over by
10 Tripper Ortman, Esquire, after which a post-mediation mediator’s proposal was issued by Mr.
11 Ortman, which led to this Agreement to settle and fully resolve the Action.

12 2.4. Prior to mediation, Plaintiffs obtained, through various forms of informal discovery: (1)
13 time and payroll records for approximately 20% of the estimated 296 putative class members
14 from September 7, 2021 through mediation; (2) putative class data points, including the number
15 of putative class members from September 7, 2021 through mediation, the number of aggrieved
16 employees from February 23, 2022 through mediation, the number of employees separated from
17 employment from September 7, 2021 through mediation, average hourly rate of pay, the number
18 of Workweeks from September 7, 2021 through mediation, the number of pay periods during the
19 PAGA Period, and the number of shifts from September 7, 2021 through mediation; (3) all
20 relevant policy documents of Defendants; and (4) Plaintiffs’ personnel records. Plaintiffs’
21 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
22 *Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
23 (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

24 2.5. The Court has not granted class certification.

25 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
26 other pending matter or action asserting claims that will be extinguished or affected by the
27 Settlement.
28

1 **3. MONETARY TERMS**

2 3.1. Gross Settlement Amount. Defendants promise to pay \$395,000.00 as the Gross
3 Settlement Amount, unless escalated pursuant to Paragraph 8.1 of this Agreement, and to
4 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
5 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount or any
6 payroll taxes prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator
7 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
8 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
9 Gross Settlement Amount will revert to Defendants.

10 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
11 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
12 in the Final Approval:

13 3.2.1. To Plaintiff: Class Representative Service Payments to each Class Representative
14 of not more than \$7,500.00, for a total of \$15,000.00, in addition to any Individual Class
15 Payment and any Individual PAGA Payment the Class Representatives are entitled to
16 receive as Participating Class Members. Defendants will not oppose Plaintiffs' request
17 for Class Representative Service Payments that do not exceed this amount. As part of
18 the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,
19 Plaintiffs will seek Court approval for any Class Representative Service Payments no
20 later than 16 court days prior to the Final Approval Hearing. If the Court approves the
21 Class Representative Service Payments less than the amount requested, the
22 Administrator will retain the remainder in the Net Settlement Amount. The
23 Administrator will pay the Class Representative Service Payments using IRS Form
24 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the
25 Class Representative Service Payments.

26 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-five
27 percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to
28 Paragraph 8.1 of this Agreement, is currently estimated to be \$138,250.00 and a Class

Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose Class Counsel's request for these payments provided they do not exceed these amounts. Class Counsel will endeavor to 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 Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fees 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 assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and hold Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary for Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$9,750, 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 \$9,750 the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked

by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (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 non-statutory damages (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. The Individual PAGA Payments are counted as penalties, in full, rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Participating Individual Class Payments 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 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) 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 (\$5,000.00) 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 Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 296 Class Members who collectively worked approximately a total of 20,909 Workweeks during the Class Period, and 265 Aggrieved Employees who worked approximately a total of 7,603 PAGA Pay Periods.

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

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by

transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments 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.

1 The Administrator shall promptly send a replacement check to any Class Member whose
2 original check was lost or misplaced, requested by the Class Member prior to the void
3 date.

4 4.4.3. For any Class Member whose Individual Class Payment check or Individual
5 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
6 shall transmit the funds represented by such checks to the California Controller's
7 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
8 residue" subject to the requirements of California Code of Civil Procedure Section 384,
9 subd. (b).

10 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
11 not obligate Defendant to confer any additional benefits or make any additional
12 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
13 specified in this Agreement.

14 **5. RELEASE OF CLAIMS**

15 Effective on the date when Defendants fully fund the entire Gross Settlement Amount
16 and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
17 Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as
18 follows:

19 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
20 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
21 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
22 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
23 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
24 have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA
25 Notices, or ascertained during the Action and released under 5.2, below ("Plaintiffs' Release").
26 Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any
27 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
28 workers' compensation benefits that arose at any time, or based on occurrences outside the Class

1 Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in
2 addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless,
3 that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such
4 different or additional facts or Plaintiffs' discovery of them.

5 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
6 purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquishes the
7 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
8 which reads:

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

13 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
14 themselves and their respective former and present representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, release Released Parties from all claims that were
16 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
17 Complaint, including: (1) all claims for failure to pay overtime wages; (2) all claims for failure
18 to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu
19 thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all
20 claims for failure to pay all wages due upon separation from employment; (6) all claims for
21 failure to provide accurate and compliant wage statements; (7) all claims for failure to timely pay
22 wages during employment; (8) all claims for failure to indemnify for business expenses; (9) all
23 claims for failure to pay unused vested vacation time; and (10) all claims asserted through
24 California Business & Professions Code section 17200, *et seq.*, arising out of the Labor Code
25 violations referenced in the Class Action Operative Complaint, inclusive of all related claims for
26 relief in the form of monetary damages, penalties, injunctive relief, and all other forms of relief
27 afforded based on the above ("Released Class Claims"). Except as set forth in Section 5.3 of this
28 Agreement, Participating Class Members do not release any other claims, including claims for

1 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
2 unemployment insurance, disability, social security, workers' compensation, or claims based on
3 facts occurring outside the Class Period.

4 5.3. Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved
5 Employees are deemed to release, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
7 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
8 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including,
9 claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and
10 2699, in connection with alleged violations of Labor Code sections 96, 98.6, 201, 202, 203, 204,
11 226, 226.7, 227.3, 232, 232.5, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802,
12 and 2810.5, among others ("Released PAGA Claims").

13 **6. MOTION FOR PRELIMINARY APPROVAL**

14 The Parties agree to jointly prepare and Plaintiff shall file a motion for preliminary
15 approval ("Motion for Preliminary Approval") that complies with the Court's current checklist
16 for Preliminary Approvals.

17 6.1. Defendant's Declaration in Support of Preliminary Approval. Because funds from
18 uncashed checks will be transmitted to the California Controller's Office, Unclaimed Property
19 Fund, Defendant and Defendant's counsel have no obligation to provide declarations disclosing
20 any facts relevant to any actual or potential conflicts with a "cy pres recipient."

21 6.2. Plaintiffs' Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
22 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
23 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
24 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
25 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
26 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
27 the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting
28 to its willingness to serve; competency; operative procedures for protecting the security of Class

1 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
2 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
3 and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense
4 Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve
5 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members
6 and/or the Administrator; and (vi) a signed declaration from Class Counsel firm attesting to its
7 competency to represent the Class Members; its timely transmission to the LWDA of all
8 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
9 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
10 section 2699, subd. (l)(2)).

11 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
12 for expeditiously finalizing and supporting Plaintiff's filing the Motion for Preliminary Approval
13 after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for
14 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for
15 Preliminary Approval. Class Counsel are responsible for delivering the Court's Preliminary
16 Approval to the Administrator. Class Counsel shall provide the Motion for Preliminary Approval
17 and Final Approval to Defendant's Counsel in advance of submission, and the final form to be
18 mutually agreed upon by the Parties, then presented for approval to the Court.

19 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
20 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
21 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
22 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
23 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
24 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
25 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
26 Court's concerns.

27 7. SETTLEMENT ADMINISTRATION

28 7.1. Selection of Administrator. The Parties have jointly selected Pheonix Class Action

Administration Solutions (“Phoenix”) to serve as the Administrator and verified that, as a condition of appointment, Phoenix 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 to state and federal tax authorities.

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

7.4. Notice to Class Members

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

7.4.2. Within 14 days after receiving the Class Data, or soon thereafter, 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, substantially in the form attached to this Agreement as Exhibit “A.” The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than three (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

1 Notice using any forwarding address provided by the USPS. If the USPS does not
2 provide a forwarding address, the Administrator shall conduct a Class Member Address
3 Search, and re-mail the Class Notice to the most current address obtained. The
4 Administrator has no obligation to make further attempts to locate or send Class Notice
5 to Class Members whose Class Notice is returned by the USPS a second time.

6 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks
7 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
8 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
9 notice is re-mailed. The Administrator will inform the Class Member of the extended
10 deadline with the re-mailed Class Notice.

11 7.4.5. If the Administrator, Defendant or Class Counsel are contacted by or otherwise
12 discover any persons who believe they should have been included in the Class Data and
13 should have received Class Notice, the Parties will expeditiously meet and confer in
14 person or by telephone, and in good faith, in an effort to agree on whether to include
15 them as Class Members. If the Parties agree, such persons will be Class Members
16 entitled to the same rights as other Class Members, and the Administrator will send, via
17 email or overnight delivery, a Class Notice requiring them to exercise options under this
18 Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in
19 the Class Notice, which ever are later.

20 7.5. Requests for Exclusion (Opt-Outs).

21 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
22 must send the Administrator, by fax, email or mail, a signed written Request for
23 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an
24 additional 15 days for Class Members whose Class Notice is re-mailed). A Request for
25 Exclusion is a letter from a Class Member or his/her representative that reasonably
26 communicates the Class Member's election to be excluded from the Settlement and
27 includes the Class Member's name, address, last four of their social security number,
28 and email address or telephone number. To be valid, a Request for Exclusion must be

complete and timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. The Administrator is only to accept a complete and timely Request for Exclusion. To the extent any Request for Exclusion is not complete, but is timely, the Administrator shall attempt to ascertain the identity and desire to be excluded. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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

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

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the

1 allocation by communicating with the Administrator via mail. The Administrator must encourage
2 the challenging Class Member to submit supporting documentation. In the absence of any
3 contrary documentation, the Administrator is entitled to presume that the Workweeks contained
4 in the Class Notice are correct so long as they are consistent with the Class Data. The
5 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
6 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator
7 shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods
8 to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

9 **7.7. Objections to Settlement**

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

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

21 7.7.3. Non-Participating Class Members have no right to object to any of the class action
22 components of the Settlement.

23 **7.8. Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be
24 performed or observed by the Administrator contained in this Agreement or otherwise.

25 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
26 and use an internet website to post information of interest to Class Members, including
27 the date, time and location for the Final Approval Hearing and copies of the Settlement
28 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class

1 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
2 Class Counsel Litigation Expenses Payment and Class Representative Service
3 Payments, the Final Approval and the Judgment. The Administrator will also maintain
4 and monitor an email address and a toll-free telephone number to receive Class Member
5 calls and emails.

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

15 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
16 reports to Class Counsel and Defense Counsel that, among other things, tally the number
17 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
18 Exclusion (whether valid or invalid) received, objections received, challenges to
19 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
20 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
21 Weekly Reports must include/provide the Administrator’s assessment of the validity of
22 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
23 received.

24 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
25 address and make final decisions consistent with the terms of this Agreement on all
26 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
27 Administrator’s decision shall be final and not appealable or otherwise susceptible to
28 challenge.

1 7.8.5. Administrator's Declaration. Before the date by which Plaintiffs are required to
2 file the Motion for Final Approval of Settlement, the Administrator will provide to Class
3 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting
4 to its due diligence and compliance with all of its obligations under this Agreement,
5 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
6 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
7 number of Requests for Exclusion from Settlement it received (both valid or invalid),
8 the number of written objections and attach the Exclusion List. The Administrator will
9 supplement its declaration as needed or requested by the Parties and/or the Court. Class
10 Counsel are responsible for filing the Administrator's declaration(s) in Court.

11 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
12 disburses all funds in the Gross Settlement Amount, the Administrator will provide
13 Class Counsel and Defense Counsel with a final report detailing its disbursements by
14 employee identification number only of all payments made under this Agreement. At
15 least 7 days before any deadline set by the Court, the Administrator will prepare, and
16 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
17 Court attesting to its disbursement of all payments required under this Agreement. Class
18 Counsel are responsible for filing the Administrator's declaration in Court.

19 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

20 Based on its records, Defendants estimate that, as of the date of mediation on October 4,
21 2023, (1) there are 296 Class Members and 20,909 total Workweeks during the Class Period and
22 (2) there were 265 Aggrieved Employees who worked approximately a total 7,603 Pay Periods
23 during the PAGA Period.

24 8.1. Increased in Workweeks. Defendants represent that there are no more than 20,909
25 Workweeks worked by Class Members during the Class Period. In the event the number of
26 Workweeks worked increases by more than 10% or 2,091 Workweeks worked, then the Gross
27 Settlement Amount shall be increased proportionally by the Workweeks worked in the Class
28 Period in excess of 23,000 (i.e. 20,909 + 2,091) Workweeks multiplied by the Workweek Value.

The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$395,000.00) by 20,909 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts to \$18.89 per Workweek ($\$395,000.00 / 20,909$ Workweeks). Thus, for example, should there be 24,000 Workweeks worked by Class Members in the Class Period, then the Gross Settlement Amount shall be increased by \$18,890 ($(24,000 \text{ Workweeks} - 23,000 \text{ Workweeks}) \times \$18.89 \text{ per Workweek}$).

9. 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”).

9.1. 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.

9.2. 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 Payments, 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.

9.3. 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.

9.4. 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.

9.5. 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 Payments 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.

10. 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.

11. ADDITIONAL PROVISIONS

11.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint has merit or that Defendant has any liability

1 for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that
2 Defendant's defenses in the Action have merit. The Parties agree that class certification and
3 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
4 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
5 contest certification of any class for any reasons, and Defendant reserves all available defenses
6 to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any
7 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and
8 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
9 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
10 and this Agreement, including but not limited to an affirmative defense, in whole or in part).

11 11.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and
12 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
13 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
14 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
15 or indirectly, specifically or generally, to any person, corporation, association, government
16 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
17 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
18 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
19 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
20 government agency. Each Party agrees to immediately notify each other Party of any judicial or
21 agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,
22 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
23 conversation or other communication, before the filing of the Motion for Preliminary Approval,
24 any with third party regarding this Agreement or the matters giving rise to this Agreement except
25 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
26 restrict Class Counsel's communications with Class Members in accordance with Class
27 Counsel's ethical obligations owed to Class Members.

28 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and

1 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
2 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
3 ability to communicate with Class Members in accordance with Class Counsel's ethical
4 obligations owed to Class Members.

5 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
6 together with its attached exhibits shall constitute the entire agreement between the Parties
7 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
8 inducements made to or by any Party.

9 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
10 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate
11 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
12 its terms, and to execute any other documents reasonably required to effectuate the terms of this
13 Agreement including any amendments to this Agreement.

14 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
15 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
16 Settlement Agreement, submitting supplemental evidence, and supplementing points and
17 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
18 or content of any document necessary to implement the Settlement, or on any modification of the
19 Agreement that may become necessary to implement the Settlement, the Parties will seek the
20 assistance of a mediator and/or the Court for resolution.

21 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
23 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
24 action, or right released and discharged by the Party in this Settlement.

25 11.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are
26 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
27 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
28 Part 10, as amended) or otherwise.

1 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
2 modified, changed, or waived only by an express written instrument signed by all Parties or their
3 representatives, and approved by the Court.

4 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
5 the benefit of, the successors of each of the Parties.

6 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
7 governed by and interpreted according to the internal laws of the state of California, without
8 regard to conflict of law principles.

9 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
10 this Agreement. This Agreement will not be construed against any Party on the basis that the
11 Party was the drafter or participated in the drafting.

12 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
13 during Action and in this Agreement relating to the confidentiality of information shall survive
14 the execution of this Agreement. Plaintiff agrees that they have not and will not publish the
15 Agreement or any of its term in or with the media, or via any public or third-party reports, posting,
16 or publishing. In response to any inquiries, Plaintiffs will state that “the case was resolved.” Class
17 Counsel agrees they have not and shall not report the Agreement or its terms or content in or with
18 the media, or via any public or third-party report, shall not post or report anything regarding
19 Plaintiffs’ claims or those of the Class and/or Aggrieved Employees on their website, and shall
20 not contact any reporters or media regarding the Agreement or its content. However, Class
21 Counsel is authorized to make all reasonably necessary disclosures to the Court, the Class,
22 Aggrieved Employees, and the LWDA.

23 11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
24 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
25 Defendant in connection with the mediation, other settlement negotiations, or in connection with
26 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
27 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

28 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is

1 inserted for convenience of reference only and does not constitute a part of this Agreement.

2 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
3 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
4 weekend or federal legal holiday, such date or deadline shall be on the first business day
5 thereafter.

6 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
7 by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall
8 be accepted as an original. All executed counterparts and each of them will be deemed to be one
9 and the same instrument if counsel for the Parties will exchange between themselves signed
10 counterparts. Any executed counterpart will be admissible in evidence to prove the existence and
11 contents of this Agreement.

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11.18. 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.

IT IS SO AGREED:



Ismael Lopez (Mar 26, 2024 15:56 PDT)

For Plaintiff, Ismael Lopez

For Defendant, Bachem Americas, Inc.

For Plaintiff, Juan Aguilar

APPROVED AS TO FORM:

David D. Bibiyan
Jeffrey D. Klein
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiffs, Ismael Lopez and
Juan Aguilar

Michael J. O'Connor, Jr.
Casandra P. Secord
Sarkis A. Atoyan
Counsel for Defendant, Bachem Americas, Inc.

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IT IS SO AGREED:

For Plaintiff, Ismael Lopez

For Defendant, Bachem Americas, Inc.



Juan Aguilar (Mar 26, 2024 15:56 PDT)
For Plaintiff, Juan Aguilar

APPROVED AS TO FORM:

David D. Bibiyan
Jeffrey D. Klein
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiffs, Ismael Lopez and
Juan Aguilar

Michael J. O'Connor, Jr.
Casandra P. Secord
Sarkis A. Atoyan
Counsel for Defendant, Bachem Americas, Inc.

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IT IS SO AGREED:

Anne-Kathrin Stoller

For Plaintiff, Ismael Lopez

Chief Operating Officer, April 5, 2024
For Defendant, Bachem Americas, Inc.

For Plaintiff, Juan Aguilar

APPROVED AS TO FORM:

David D. Bibiyan
Jeffrey D. Klein
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiffs, Ismael Lopez and
Juan Aguilar

Michael J. O'Connor, Jr. April 5, 2024
Casandra P. Secord
Sarkis A. Atoyan
Counsel for Defendant, Bachem Americas, Inc.

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IT IS SO AGREED:

For Plaintiff, Ismael Lopez

For Defendant, Bachem Americas, Inc.

For Plaintiff, Juan Aguilar

APPROVED AS TO FORM:

Vedang J. Patel 4/5/2024
David D. Bibiyan
Jeffrey D. Klein
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiffs, Ismael Lopez and
Juan Aguilar

Michael J. O'Connor, Jr.
Casandra P. Secord
Sarkis A. Atoyan
Counsel for Defendant, Bachem Americas, Inc.

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EXHIBIT A

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

Lopez and Aguilar v Bachem Americas, Inc.

(County of Los Angeles, California Superior Court Case No. 23STCV04258)

As an hourly, non-exempt employee who works or worked for Bachem Americas, Inc. in California, you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement (“Notice”) because the records of Bachem Americas, Inc. (“Defendant”) show that you are a “Class Member” and, therefore, entitled to a payment from this class action settlement (“Settlement”). Class Members are all current and former non-exempt, hourly-paid employees who worked in California for Defendant at any time from September 3, 2021 through October 4, 2023.

The settlement is to resolve a class and representative action lawsuit filed by Ismael Lopez and Juan Aguilar (together referred to as “Plaintiffs”) entitled *Ismael Lopez and Juan Aguilar v Bachem Americas, Inc.*, pending in the Superior Court of California for the County of Los Angeles, Case Number 23STCV04258 (the “Lawsuit”), alleging, among other things, claims for (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate and compliant wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition. Plaintiffs also seek penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).

Defendant disputes Plaintiffs’ claims. Defendant expressly and specifically denies violating any laws and believes it has complied with the law in all respects and denies any liability for the claims asserted by Plaintiffs. Defendant is not admitting liability of any of the factual and legal allegations asserted in the lawsuit and denies that the lawsuit should proceed as a class action for any purpose other than this Settlement.

- On [REDACTED], Los Angeles County Superior Court granted preliminary approval of this Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the Settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the Settlement of the Lawsuit. If you worked at any time from February 23, 2022 through October 4, 2023 (“PAGA Period”) as an hourly, non-

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	exempt employee for Defendant in California as well, then you will be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the Settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the class portion of the Settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, [REDACTED] about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [REDACTED], 2024 at [REDACTED]:00 .m.] in Department 17 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held at [REDACTED]:00 .m. on [REDACTED], 2024, in the Los Angeles Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, in Department 17 You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendant as an hourly, non-exempt employee in California during the Class Period. You were sent this Class Notice because you have a right to know about a proposed Settlement of a Lawsuit, and about all your options before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

What is This Case About?

Ismael Lopez and Juan Aguilar were hourly, non-exempt employees of Defendant. They are the “Plaintiffs” in this case and are suing on behalf of themselves and Class Members. Their complaint made claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate and compliant wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition.

Based on the alleged Labor Code violations above-mentioned and other alleged Labor Code violations, Plaintiffs also seek penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).

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Defendant denies all the allegations made by Plaintiffs and denies that it violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this Settlement. The Court will decide whether to give final approval to this Settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiffs and Defendant have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the total Gross Settlement Amount of \$395,000.00, unless increased pursuant to the Settlement Agreement. The Gross Settlement Amount includes: (1) Administration Costs up to \$9,750 (2) a service award of up to \$7,500.00 each to Ismael Lopez and Juan Aguilar, for a total of \$15,000.00, for their time and effort in pursuing this case; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, amounts to \$138,250.00; (4) up to \$25,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$20,000.00 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA, or \$15,000.00, will be paid to the LWDA and twenty-five percent (25%), or \$5,000.00, will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$187,000 will be available for distribution to Class Members ("Net Settlement Amount").

Defendant represents that there are no more than 20,909 Workweeks worked by Class Members during the Class Period. In the event the number of Workweeks worked increases by more than 10% or 2,091 Workweeks worked, then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in the Class Period in excess of 23,000 (i.e. 20,909 + 2,091) Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$395,000.00) by 20,909 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts to \$18.89 per Workweek (\$395,000.00 / 20,909 Workweeks). Thus, for example, should there be 24,000 Workweeks worked by Class Members in the Class Period, then the Gross Settlement Amount shall be increased by \$18,890 ((24,000 Workweeks – 23,000 Workweeks) x \$18.89 per Workweek).

Distribution to Class Members

Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Class Members in non-exempt, hourly-paid positions for Defendant in California during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, individuals who were employed by Defendant between February 23, 2022 through October 4, 2023 (i.e., Aggrieved Employees) will receive a *pro rata* share of the \$5,000.00, allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by each Aggrieved Employee between February 23, 2022 through October 4, 2023 (i.e., the PAGA Period).

Defendant's records indicate that you worked [] Workweeks as an hourly, non-exempt employee in California during the Class Period and [] pay periods during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award].

Tax Reporting

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Payments to Class Members as PAGA Payments shall be designated as penalties. All other payments to Class Members from the Net Settlement Amount shall be designated 20% as wages and 80% as non-statutory damages and interest. The Settlement Administrator will be responsible for issuing a form W-2 to each Class Member for the amount each receives for “wages” and IRS Form 1099s for the amount each receives for non-statutory damages, interest, and PAGA Payments as required by law. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your check will be valid for 180 days after issuance. After 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall escheat to the State and shall be sent by the Settlement Administrator to the State Controller’s Office, Unclaimed Property Division, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all “Released Claims” he or she may have or had upon final approval of this Settlement and payment by Defendant to the Settlement Administrator.

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement, and on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

For the duration of the Class Period, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages due upon separation from employment; (6) all claims for failure to provide accurate and compliant wage statements; (7) all claims for failure to timely pay wages during employment; (8) all claims for failure to indemnify for business expenses; (9) all claims for failure to pay unused vested vacation time; and (10) all claims asserted through California Business & Professions Code section 17200, et seq., arising out of the Labor Code violations referenced in the Class Action Operative Complaint, inclusive of all related claims for relief in the form of monetary damages, penalties, injunctive relief, and all other forms of relief afforded based on the above.

For the duration of the PAGA Period, all Aggrieved Employees are deemed to release, on behalf of themselves

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

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 facts stated in the Operative Complaint and the PAGA Notice, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, in connection with alleged violations of Labor Code sections 96, 98.6, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5.

“Released Parties” shall mean Defendant and each of its former and present directors, partners, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, parent companies, joint employers, subsidiaries and affiliates, and their respective heirs, estates, executors, administrators, successors and assigns, subsidiaries, and affiliates.

Option 2 – Opt Out of the Settlement

In order to opt out of the Settlement, the Class Member must send the Administrator a Request for Exclusion by [RESPONSE DEADLINE]. 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, last four of their social security number, and email address or telephone number. To be valid, your Request for Exclusion must be complete and timely faxed, emailed, or postmarked by [RESPONSE DEADLINE] to the address below.

[Settlement Agreement]
[Mailing Address]

Your written Request for Exclusion must be faxed, emailed, or mailed to the Administrator not later than [RESPONSE DEADLINE].

The proposed Settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the Settlement of a PAGA claim. Thus, if the court approves the Settlement, then even if you request exclusion from the Settlement, if you are Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A Request for Exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – Submit an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing by mail, stating why you object to the Settlement. Your written objection must provide your name, address, the last four digits of your social security number, your signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s), along with whatever legal authority, if any, why you believe that the Court should not approve the Settlement. Your written objection must be faxed, emailed, or mailed to the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Even if you don’t submit a written objection, you may appear at the Final Approval Hearing and provide a verbal objection before the Court.

Final Approval Hearing

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

You may, if you wish, appear at the Final Approval Hearing set for _____, 2024 at __:00 __.m. in the Department 17 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may attend this hearing virtually by audio or video at <https://my.lacourt.org/remoteppearance/>. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Andrew T. Magaline (SBN 290413)

andrew@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

You may also visit the Settlement Administrator's website at <https://my.lacourt.org/remoteppearance/> to gain access to key documents in this case, including the Settlement Agreement, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Department 17 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, during regular business hours of each court day. You may also obtain these documents through the Court's website at <https://www.lacourt.org/casesummary/ui/>.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]