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Attorneys for Plaintiff ERIC CALDERON, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ERIC CALDERON on behalf of himself,
all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

CELS ENTERPRISES, INC. DBA
CHINESE LAUNDRY; and DOES 1-
100,

Defendants.

Case No. CIVSB2308785

*[Assigned for All Purposes to the
Hon. Jessica Morgan, Dept. S26]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date: November 21, 2024
Time: 8:30 a.m.

Complaint Filed: April 14, 2023
Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for the Plaintiff and the
3 putative class in this matter. I am duly admitted to practice before all the courts of the state
4 of California. The following facts are within my personal knowledge and, if called to
5 testify, I could and would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions
10 and cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have
11 litigated over three hundred and fifty (350) class action and PAGA lawsuits over the course
12 of approximately 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
14 Superior Court, Case No. GIC834348) which was the underlying case in the California
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
17 obligations to provide, and employee rights to receive, meal and rest periods under
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The
22 California Supreme Court ruling that, like meal periods, employers must relieve
23 employees of all duty and relinquish all control to satisfactorily discharge its obligation to
24 authorize and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The
25 California Supreme Court ruling that the time spent on the employer’s premises waiting
26 for, and undergoing, required exit searches of packages, bags, or personal technology
27 devices voluntarily brought to work is compensable hours worked within the meaning of
28

the Wage Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No. H049185 (A brief asking the California Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time of personal vehicles should be considered hours worked within the meaning of the Wage Orders’ suffered or permitted test.). *Davidson v. O’Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188)(a brief seeking Review *En Banc* of an order denying class certification in a wage and hour matter).

6. I am also a member of CAOC’s Amicus Committee that determines the cases in which the organization will agree to provide amicus support.

7. I have also lectured as a panelist for California Employment Lawyers Association regarding a host of wage and hour issues.

8. I have been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales, et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v. Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No. CIVDS2010153); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS).

1 9. I have also been named as class counsel in numerous cases during the settlement process.
2 Here is a non-exhaustive list of cases where I have been named as class counsel in cases
3 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior
4 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
5 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
6 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
7 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
8 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
9 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
10 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
11 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
12 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
13 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
14 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
15 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
16 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
17 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County
18 Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San
19 Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron,*
20 *LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
21 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
22 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San
23 Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega*
24 *Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case
25 No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside
26 County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba*
27 *NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO);
28

1 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case
2 No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San
3 Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw*
4 *Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No.
5 CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los
6 Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro*
7 *Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

8 10. Plaintiff filed a wage and hour class action complaint on April 14, 2023, alleging that
9 Defendant failed to pay all straight time and overtime wages, failed to provide lawful meal
10 and rest periods, failed to adopt a complaint sick pay policy, failed to provide accurate
11 itemized wage statements, failed to pay all wages due at the termination of employment,
12 and violated the Unfair Competition Law.

13 11. Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) in
14 accordance with the Private Attorneys General Act of 2004 (“PAGA”) on February 15,
15 2023. Thereafter, on May 1, 2023, Plaintiff filed a PAGA action (Case No.
16 CIVSB2312110) alleging that Defendant violated the PAGA by failing to pay all straight
17 time and overtime wages, failing to provide lawful meal and rest periods, failing to adopt
18 a complaint sick pay policy, failing to provide accurate itemized wage statements, and
19 failing to pay all wages due at the termination of employment. On July 17, 2023, the
20 Parties stipulated to consolidate the class and PAGA actions.

21 12. After filing, the Parties engaged in informal discovery. These discovery efforts led to
22 Defendant producing hundreds of pages of documents, including policy documents that
23 covered employees’ employment with Defendant, such as employee handbooks. Included
24 within these documents were Defendant’s wage and hour policies, including its meal and
25 rest period policies. Defendant also produced time and wage records for a 20% sampling
26 of Class Members. Plaintiff also requested, and Defendant produced, data surrounding the
27 number of current and former employees, as well as the number of workweeks worked by
28

1 Class Members during the relevant time period, to establish a potential exposure model in
2 preparation for mediation. From this discovery, Plaintiff and his Counsel were able to
3 analyze Defendant's liability in this action and prepare a realistic damage model.

4 13. The Parties attended an all-day mediation presided over by wage and hour mediator
5 Tagore Subramaniam on August 12, 2024. This mediation was successful. The Parties
6 then met and conferred over all the terms of the settlement and finalized their settlement
7 in the Parties' Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.

8 14. Defendant argues at the outset that it has an enforceable arbitration agreement that covers
9 Plaintiff's and the class members' employment. If Defendant were correct on this issue,
10 Plaintiff and the putative class members would only be able to pursue their claims in
11 arbitration. Defendant claims that its employee handbook contains an arbitration
12 agreement contains an arbitration agreement that is signed by employees.

13 15. Plaintiff asserts that the arbitration agreement in Defendant's employee handbook is
14 unenforceable. Plaintiff contends that Defendant's arbitration agreement is substantively
15 unconscionably overbroad, lacks mutuality, requires employees to engage in an employer-
16 controlled pre-mediation procedure, and sets limitations on the requirements of the
17 arbitrator that benefit Defendant. In making these arguments, Plaintiff relies on the case
18 *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-325. Plaintiff
19 also argues that Defendant's arbitration agreement is procedurally unconscionable
20 because it is a contract of adhesion, was unilaterally drafted by Defendant, was presented
21 to employees on a take-it-or-leave-it basis, and was a condition of employment. For these
22 reasons, Plaintiff contends that Defendant's arbitration agreement is unenforceable.

23 16. Defendant disagrees and contends that the Court would uphold its agreement and compel
24 Plaintiff's individual claims to arbitration and dismiss Plaintiff's class claims. Defendant
25 further asserts that, to the extent the Court were to find any of the provisions in the
26 agreement to be unenforceable, the Court could sever those terms from the arbitration
27 agreement and enforce the remainder of the agreement. Plaintiff contends that severance
28

1 is not possible as the agreement permeates with unconscionability.

2 17. As such, the Parties have a disagreement as to whether Defendant's arbitration agreement
3 is enforceable. As this is a threshold issue, if the Court were to agree with Defendant,
4 Plaintiff's individual claims would be compelled to arbitration and the class claims would
5 be dismissed. If this were to occur, the damages under Plaintiff's class claims would be
6 eliminated.

7 18. Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
8 an obligation to provide employees with ten (10) minute rest periods. An employer's
9 obligation to provide its employees with rest periods arises under the Industrial Welfare
10 Commission Wage Orders. Wage Order 7-2001, Section 12(A) states, "[e]very employer
11 shall authorize and permit all employees to take rest periods, which insofar as practicable
12 shall be in the middle of each work period. The authorized rest period time shall be based
13 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof." Here, Plaintiff alleges that Defendant requires employees
15 to remain on the premises during rest periods.

16 19. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
17 Court ruled that the standards applicable to providing meal periods the Court articulated
18 a few years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
19 were equally applicable to the rest period context. Citing *Brinker*, the *Augustus* Court
20 ruled that, like meal periods, "[d]uring required rest periods, employers must relieve their
21 employees of all duties and relinquish any control over how employees spend their break
22 time." *Augustus*, 2 Cal.5th at 260. At a minimum, to relinquish employer control over how
23 employees spend their break time, the employee must be "free to leave the premises."
24 *Brinker*, 53 Cal.4th at 1036. As the *Augustus* Court reasoned, the employee must be free
25 to travel five minutes away from the work site so that they can get back within the allotted
26 ten-minute time frame of the break. *Augustus*, 2 Cal.5th at 270. Plaintiff contends that,
27 here, Defendant does not permit employees to leave the premises during rest periods.

1 20. Defendant contends that it does not require employees to remain on the premises during
2 rest periods. Defendant argues that to resolve this claim, the factfinder would have to ask
3 whether employees thought they could leave the premises during rest breaks. In addition,
4 Defendant contends that employees did, in fact, leave the premises during rest periods.
5 Defendant asserts that should litigation continue, it would present declarations from
6 employees stating that they were free to leave the premises, and did leave the premises,
7 during rest periods.

8 21. Defendant also counters that even if it did tell employees they are to remain on the
9 premises, a point that Defendant does not concede, the practical limitations the ten (10)
10 minutes allotted for rest periods imposes on an employee's movement are what prevent
11 employees from leaving the premises. In other words, the time limitation of only having
12 ten (10) minutes for rest periods prevents off-premises movement during rest periods, not
13 expressly or impliedly telling employees that rest periods are to be taken on the premises.
14 Based on the practical limitations associated with ten (10) minute rest periods, and not
15 Defendant's policies, Defendant contends its policies are aligned with, and not
16 antagonistic to *Augustus*. Defendant finds support for this in the following language from
17 *Augustus*:

18 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they
19 impose practical limitations on an employee's movement. That is, during a rest
20 period an employee generally can travel at most five minutes from a particular
21 work post before returning to make it back on time. Thus, one would expect that
employees will ordinarily have to remain on site or nearby.

22 *Augustus, supra*, 2 Cal.5th at 270.

23 22. Defendant further asserts that employees are relieved of all work and employer control
24 during rest periods. And, to the extent there is any limitation placed on rest periods, it is
25 something that arises simply out of the fact that ten (10) minutes is a short amount of time.
26 Therefore, Defendant asserts that the limitations placed on employees, if any, are merely
27 inherent to rest periods and not an exertion of employer control.
28

1 23. Plaintiff contends that Defendant does not provide employees with meal periods that
2 conform with California law. Employers have an obligation under California law to
3 provide employees with thirty (30) minute meal periods. Under California Labor Code §
4 512(a), “[a]n employer may not employ an employee for a work period of more than five
5 hours per day without providing the employee with a meal period of not less than 30
6 minutes” Cal. Lab. Code § 512(a). An employer “satisfies this obligation [to provide
7 meal periods] if it relieves its employees of all duty, relinquishes control over their
8 activities and permits them a reasonable opportunity to take an uninterrupted 30-minute
9 break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp.*
10 *v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends that Defendant’s
11 time records show non-compliant meal periods.

12 24. In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
13 wherein it ruled that time records showing late, short, or missed meal periods raises a
14 rebuttable presumption that the meal periods were not provided: “If time records show
15 missed, short, or delayed meal periods with no indication of proper compensation, then a
16 rebuttable presumption arises” that the meal periods were not provided in accordance with
17 California law. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff
18 contends that, here, the time records show non-compliant meal periods. In these shifts,
19 under *Donohue*, Plaintiff contends that it is presumed that meal period violations occurred.

20 25. Defendant asserts that its meal period policy is lawful and that it provides employees with
21 meal periods in compliance with California law. Further, Defendant alleges that if
22 litigation continues it would be able to show that it advised employees of the right to take
23 a meal period in compliance with California law. Defendant contends that employees
24 either took a lawful meal period or knowingly and voluntarily decided to skip the meal
25 period or take a late or short meal period. Defendant contends that this evidence would
26 rebut the presumption under *Donohue v. AMN Services, LLC*. Defendant also asserts that
27 the evidence in this case shows that it paid meal period premiums in shifts in which
28

1 employees were not provided with compliant meal periods. Thus, Defendant contends that
2 to the extent an employee was not provided the opportunity to take a legally compliant
3 meal period, they were provided a meal premium.

4 26. In summary, Plaintiff contends that because Defendant's time records show non-
5 compliant meal periods, it is presumed that meal period violations occurred in these shifts.
6 Defendant counters that it would be able to rebut this presumption because its meal period
7 policy is lawful. Defendant also asserts that in rebutting the presumption, the Court or fact
8 finder would have to ask each employee why their time records show a non-compliant
9 meal period. This could be due to employees knowingly and voluntarily deciding to skip
10 the meal period or taking a late or short meal period. To make this determination,
11 Defendant contends the Court or fact finder would have to ask each employee about each
12 instance which would defeat certification as individual issues would predominate.
13 Plaintiff contends that this is not the case and that certification under *Donohue* is proper.
14 As such, disputes exist as to whether certification is proper and as to whether Defendant
15 can rebut the presumption under *Donohue*.

16 27. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
17 waiting time penalty claims. These claims are derivative of Plaintiff's meal and rest period
18 claims. Should Plaintiff's meal and rest period claims fail, these claims would also fail.

19 28. In addition, Defendant contends that even if Plaintiff were successful in his meal and rest
20 period, he would have to prove Defendant "willfully" failed to pay employees the
21 appropriate wages due upon separation of employment. "A willful failure to pay wages
22 within the meaning of Labor Code Section 203 occurs when an employer intentionally
23 fails to pay wages to an employee when those wages are due. However, a good faith
24 dispute that any wages are due will preclude imposition of waiting time penalties under
25 Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are
26 due occurs when an employer presents a defense, based in law or fact, which would
27 preclude any recovery on the part of the employee. The fact that a defense is ultimately
28

1 unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.*

2 29. Defendant contends that any failure to pay meal and rest period premiums due at the
3 separate of employment was not willful. Defendant argues that it would not be liable for
4 waiting time penalties because a “good faith dispute” exists over the payment of those
5 premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008)
6 163 Cal.App.4th 1157, 1201.

7 30. Further, Defendant contends that Plaintiff would also have to prove that Defendant
8 “knowingly and intentionally” failed to comply with the wage statement requirements
9 under Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15
10 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it
11 was providing a complete and accurate wage statement in compliance with California law.

12 31. Defendant also argues that Plaintiff’s meal and rest period claims cannot form the basis
13 of his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics,*
14 *Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under
15 California Labor Code § 226(a) so long as the wage statements correctly reflected the
16 hours worked and the pay received even if the pay is later determined to be inaccurate.

17 32. Plaintiff also seeks PAGA penalties for the claims outlined above. PAGA allows the
18 private enforcement of certain California Labor Code sections relating to wage and hour
19 violations. The statute of limitations for PAGA violations goes back one year. Because
20 Plaintiff’s PAGA claims are based on the same alleged unlawful conduct as his class
21 claims, Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s
22 class claims.

23 33. In addition, Defendant maintains that Plaintiff’s PAGA claims face manageability
24 concerns consistent with the class certification challenges. Specifically, Defendant has
25 due process rights which would not permit Plaintiff to attempt to generalize violations
26 from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.,* 59 Cal.4th 1
27 (2014).

1 34. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
2 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to
3 the Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims –
4 is higher in this case where these same individuals may also be receiving money for the
5 same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D.
6 Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142
7 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
8 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
9 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what
10 amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes
11 that the potential PAGA penalties are highly uncertain.”). As such, the Court will likely
12 reduce any PAGA penalty amount awarded to the Aggrieved Employees.

13 35. The settlement encompasses 10,899 workweeks. This equates to approximately 48,008
14 shifts. Employees earned approximately \$17.46 per hour on average.

15 36. Plaintiff alleges that Defendant failed to provide employees with rest periods in
16 accordance with California law. Plaintiff contends that employees are required to remain
17 on the premises during rest periods. If Plaintiff were to prevail on this claim for the entire
18 class period, Plaintiff and the Class Members would be entitled to the following potential
19 damages: \$838,219 (48,008 shifts x \$17.46 = \$838,219.68).

20 37. In addition, Plaintiff alleges that Defendant failed to provide employees with meal periods
21 in accordance with California law because Defendant’s time records show unlawful meal
22 periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and
23 the Class Members would be entitled to the following potential damages: \$525,807
24 (30,115 shifts with unique meal period violations x \$17.46 = \$525,807.90).

25 38. If Plaintiff were to prevail on his meal period and/or rest period claims, Plaintiff may be
26 entitled to penalties for inaccurate wage statements. If Plaintiff were to prevail on this
27 claim, the damages would be \$464,000 (116 class members x \$4,000 maximum penalty =
28

1 \$464,000).

2 39. If Plaintiff were to prevail on his meal period and/or rest period claims, he and the Class
3 Members may also be entitled to waiting time penalties. Plaintiff calculates the potential
4 exposure under his waiting time penalties cause of action as \$926,078 (221 former
5 employees x 30 days x 8 hours x \$17.46 = \$926,078.40).

6 40. Plaintiff also seeks PAGA penalties. The potential damages under Plaintiff's PAGA claim
7 is \$1,788,800.¹

8 41. As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class
9 claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's
10 class claims. In addition, the Court may reduce any PAGA penalties awarded under
11 Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties
12 awarded to Plaintiff and the PAGA Aggrieved Employees – assuming liability is proven
13 as to each of Plaintiff's claims – is higher in this case where these same individuals may
14 also be receiving money for the same unlawful conduct under the class claims. *See Avila*
15 *v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-
16 SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least
17 partially duplicative of penalties granted by the underlying Labor Code violations, *see*,
18 *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in
19 whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2),
20 Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such,
21 the Court may reduce any PAGA penalty amount awarded to Plaintiff and the PAGA
22 Aggrieved Employees.

23 42. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
24 he were successful in his core claims, Defendant's total exposure would be approximately
25 \$1,364,026 [\$838,219 (rest period exposure) + \$525,807 (meal period exposure) =

27 ¹ \$100 x 3 PAGA violations (meal periods, rest periods, and wage statements) x 5,889 pay periods
28 = \$1,766,700 plus \$100 x 1 PAGA violation (waiting time penalties) x 221 pay periods = \$22,100.

1 \$1,364,026]. If the fact finder were to side with Defendant on these claims, Plaintiff and
2 the Class Members would not be entitled to any damages for wage statements, waiting
3 time penalties, or PAGA penalties that are derivative of and dependent on Plaintiff
4 prevailing on his meal and rest period claims. In addition, if the Court were to find that
5 Defendant's arbitration agreement is enforceable and dismiss Plaintiff's class claims, the
6 damages for Plaintiff's class claims would be reduced to zero. If Plaintiff is successful in
7 his unpaid wages claim, and is able to prove that Defendant's wage statement violations
8 were knowing and intentional and that the waiting time penalties violations were willful,
9 he may also be entitled to damages for wage statements and waiting time penalties in the
10 amount of \$1,390,078 [\$464,000 (wage statements) and \$926,078 (waiting time penalties)
11 = \$1,390,078]. Plaintiff and the Aggrieved Employees may also be entitled to PAGA
12 penalties in the amount of \$1,788,800, subject to Court reduction.

13 43. In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the
14 settlement amount of \$500,000 – with an average settlement share amount estimated at
15 \$1,081.70 – is a reasonable and fair settlement amount.

16 44. The preliminary approval motion and supporting documents were uploaded to the Labor
17 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received
18 as a result of this upload.

19 I declare under penalty of perjury under the laws of the State of California that all the
20 foregoing is true and correct.

21
22 Date: October 29, 2024

MARA LAW FIRM, PC

Signed: 

David Mara, Esq.

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Joint Stipulation and Settlement Agreement (“Agreement”) is made between Plaintiff Eric Calderon (hereinafter “Plaintiff”) on behalf of himself and the Class and Defendant CELS Enterprises, Inc., dba Chinese Laundry (“Defendant” or “CELS”) (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This Agreement is intended to settle the cases entitled *Eric Calderon, etc., v. CELS Enterprises, Inc., etc.*; San Bernardino County Superior Court, Case No.: CIVSB2308785 (“Class Action Case”); *Eric Calderon etc., v. CELS Enterprises, Inc.*; San Bernardino County Superior Court, Case No.: CIVSB2312110 (“PAGA Case”) (collectively the “Complaints” or “Lawsuits”).

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

1. **Administration Costs:** The costs incurred by the Settlement Administrator, ILYM Group, Inc., to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Attorneys Fee Award:** The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed \$166,666.67 (33% of the Gross Settlement Amount). The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
4. **Class:** All individuals who are employed or have been employed by CELS in the State of California as hourly non-exempt employees and worked at one of CELS’s warehouses in California at any time from April 14, 2019, to October 12, 2024.
5. **Class Counsel:** David Mara and Jill Vecchi of Mara Law Firm, PC, and Peter Horton of Lawyers for Employee and Consumer Rights.

6. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
7. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
8. **Class Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
9. **Class Period**: April 14, 2019, to October 12, 2024.
10. **Class Representative or Plaintiff**: Eric Calderon.
11. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed \$7,500. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
12. **Cost Award**: The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$30,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Counsel for Defendant**: Katherine Den Bleyker and Sohin S. Gautam, of O'Hagan Meyer.
14. **Court**: Superior Court of California for the County of San Bernardino, Dept. S26, Hon. Jessica Morgan, presiding.
15. **Defendant**: CELS Enterprises, Inc., dba Chinese Laundry

16. **Disbursement of the Settlement:** Within fourteen (14) days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
17. **Effective Final Settlement Date:** The effective date of this settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the Court enters judgment granting final approval of the settlement.
18. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities.
19. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
20. **Funding of Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date.
21. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$500,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
22. **Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather,

Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.

23. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
24. **LWDA**: California Labor and Workforce Development Agency (“LWDA”). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in this Action through the procedural mechanisms provided for by statute.
25. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$10,000 (*i.e.*, \$7,500) that is to be paid to the LWDA as described in this Settlement.
26. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the tax liability for the share for the portion of the settlement shares allocated as wages.
27. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
28. **PAGA Aggrieved Employees**: All Class Members who worked at least one pay period for CELS between February 15, 2022, to October 12, 2024.
29. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work

during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll, personnel, and other business records.

30. **PAGA Payment**: Refers to the \$10,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$7,500, shall be paid to the LWDA. The remaining 25% or \$2,500, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
31. **PAGA Period**: February 15, 2022, to October 12, 2024.
32. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
33. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
34. **Parties**: Plaintiff Eric Calderon, as an individual and as a Class Representative, and Defendant CELS Enterprises, Inc.
35. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
36. **Released Class Claims**: The Released Class Claims include any and all claims that were asserted in the Class Action Complaint or could have arisen out of the allegations made in the Class Action Complaint. This release shall also apply to any amended complaint which is filed with the Court after August 12, 2024, i.e., the date of the mediation. This release shall be for the Class Period.
37. **Released PAGA Claims**: The Released PAGA Claims include any and all claims that were asserted in the PAGA Complaint or could have arisen out of the allegations made in the PAGA Complaint. PAGA Aggrieved Employees are deemed to release all claims that were asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter. This release shall be for the PAGA Period.
38. **Released Parties**: Defendant, and each of its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives
39. **Response Deadline**: Thirty (30) calendar days from the initial mailing of the Class Notices.

40. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
41. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is ILYM Group, Inc.

II. **RECITALS**

42. Plaintiff filed his wage and hour class action complaint on April 14, 2023, in the San Bernardino County Superior Court (Case No. CIVSB2308785) alleging that Defendant failed to pay all straight time and overtime wages, failed to provide lawful meal and rest periods, failed to adopt a complaint sick pay policy, failed to provide accurate itemized wage statements, failed to pay all wages due at the termination of employment, and violated the Unfair Competition Law.
43. Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) in accordance with the Private Attorneys General Act of 2004 (“PAGA”) on February 15, 2023.
44. On May 1, 2023, Plaintiff filed a PAGA action (Case No. CIVSB2312110) alleging that Defendant violated the PAGA by failing to pay all straight time and overtime wages, failing to provide lawful meal and rest periods, failing to adopt a complaint sick pay policy, failing to provide accurate itemized wage statements, and failing to pay all wages due at the termination of employment.
45. On July 17, 2023, the Parties stipulated to consolidate the class and PAGA actions.
46. Prior to the mediation, Defendant produced hundreds of pages of policy documents such as employee handbooks that covered Class Members’ employment. Defendant further produced a 20% sampling of time and pay records for Class Members.
47. On August 12, 2024, the parties participated in a full-day mediation with wage and hour mediator, Tagore Subramaniam, which resulted in the settlement that is reflected in this Agreement.

48. **Number of Class Members and Aggrieved Employees.** It was estimated for purposes of mediation that there are approximately 255 Class Members who worked approximately 10,899 workweeks that are part of this settlement. It was estimated for purposes of mediation that there are approximately 117 Aggrieved Employees who worked approximately 5,889 pay periods that are part of this settlement.
49. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
50. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
51. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
52. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this

Settlement is finally approved by the Court, the Plaintiff, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 53. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$500,000. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

53.1 Escalator Provision. This settlement is based on Defendant's belief that there are approximately 10,899 workweeks at issue during the class period. If the number of workweeks is 10% higher or 11,989 workweeks worked, then Defendant shall, in their sole discretion, have the option to either: (1) de-escalate the Settlement so that the Class Period ends on the date the workweek count totals 11,989; or (2) permit the Class Period to be increased proportionally by the workweeks worked in excess of 11,989, multiplied by the workweek value.

- 54. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 55. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

- 56. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Eric Calderon shall be appointed as representative for the Class.
- 57. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- 58. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

58.1 Calculation.

58.1.1 Individual Class Settlement Share Calculation. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

58.1.2 Workweek Calculation. Defendant will calculate the number of workweeks worked by all Class Members during the Class Period based on time clock data, and the amount to be paid to Class Members per workweek based on time clock data. The workweeks will be calculated by Defendant for each Class Member during the Class Period based on time clock data. Defendant's workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular Class Member. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

58.1.3 Workweek Value. The amount to be paid per workweek to eligible Class Members will be calculated by the Settlement

Administrator by dividing the Net Settlement Amount by the total number of workweeks for all Class Members; any person who opts out of the Settlement is not a Class Member.

58.2 Tax Withholdings. Each Class Member's Individual Settlement Share will be apportioned as follows: 33.33% will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; 66.66% will be allocated to alleged unpaid penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

59. Individual PAGA Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

59.1 Calculation.

59.1.1 Individual PAGA Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period.

59.1.2 Workweek Calculation. Defendant will calculate the number of workweeks worked by the PAGA Members during the PAGA Period based on time clock data. The workweeks will be calculated by Defendant for each PAGA Member based on the time clock data during the Class Period. Partial workweeks will not be counted; however, if a PAGA Member worked only one day as a PAGA Member, such PAGA Member will be credited with having worked one workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be correct, unless a particular PAGA Member proves otherwise to the

Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular PAGA Member. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

59.1.3 Workweek Value. The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the Net PAGA Settlement Amount by the aggregate number of weeks worked by PAGA Members.

59.2 Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

60. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

60.1 To the Named Plaintiff: In addition to their Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Eric Calderon, will receive up to \$7,500 in consideration for providing Defendant a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

60.2 To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33% of the GSA (\$166,666.67) and a Cost Award not to exceed \$30,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the

entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

60.3 To the Responsible Tax Authorities. The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of payroll withholding taxes and will forward the amount to the appropriate taxing authorities.

60.4 To the Settlement Administrator. The Settlement Administrator – ILYM Group, Inc. – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

60.5 To the LWDA and Aggrieved Employees. The Settlement Administrator will pay 75% of the PAGA Payment (\$7,500) to the LWDA. The remaining 25% of the PAGA Payment (\$2,500) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees

60.6 To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

61. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that ILYM Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and remailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion

from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and remailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds associated with any uncashed checks to the California Controller's Unclaimed Property Fund in the name of the Class Member; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in ILYM Group, Inc. or otherwise have a relationship with ILYM Group, Inc. that could create a conflict of interest.

62. Procedure for Approving Settlement.

62.1 Cooperation. All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement.

63. Motion for Preliminary Approval and Conditional Certification.

62.1 Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.

62.2 At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.

62.3 At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing. Defendant will also appear at the hearing and provide any support that is requested by the Court.

62.4 Effect of Denial of Preliminary Approval. Should the Court decline to conditionally certify the Class or to Preliminarily

Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

64. Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

64.1 Delivery of Class and PAGA Data. Within twenty-one (21) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

64.2 Preparation of Class Notices. Based on the information in the Class and PAGA Data and the formulae set forth in Paragraphs 58.1.1 and 59.1.1, above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth

those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

64.3 Issuing Checks. 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.

64.4 Mailing of Class Notices. Within fourteen (14) days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.

64.5 Returned Notices. If a Class Notice is returned because of an incorrect address, within three (3) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator

will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

64.6 If the Administrator or any Party 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 good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or U.S. mail, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. Individuals asserting that they should be included as a Class Member shall have until the Response Deadline to make such a request.

64.7 Weekly Status Reports. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

64.8 Settlement Administrator's Declaration. No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

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

Representative Enhancement Payment. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

65.1 Format. Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

65.2 Notice of Intent to Appear. Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

66. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

66.1 Effect of "Opt-Out." Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.

66.2 Confirmation of Authenticity. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by

the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

66.3 Report. No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

66.4 Defendant's Option to Terminate. Defendant retains the right, in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period if ten percent (10%) or more of the Class Members opt out of this settlement.

67. Class Member and Aggrieved Employee Disputes. If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim within seven (7) business days. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

68. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly

any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

69. Motion for Final Approval.

69.1 No later than sixteen (16) court days before the Final Approval Hearing, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

69.2 Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

69.3 Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

70. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set

aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

71. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

72. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

72.1 Funding the Settlement: Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount not later than thirty (30) days from the Effective Final Settlement Date.

72.2 Disbursement: Within fourteen (14) days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.

72.3 Qualified Settlement Fund or QSF: The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. §

1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

73. Settlement Administrator's Final Report. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

74. Uncashed Checks. Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

74.1 Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

74.2 If any checks remain uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining uncashed shall be sent to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

75. Release of Class Claims. As of the Effective Final Settlement Date, Participating Class Members shall release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

76. Release of PAGA Claims. As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. The Released Parties will also be entitled to assert claim or issue preclusion or other effects of this Settlement if any PAGA Aggrieved Employees

bring a subsequent claim on behalf of the LWDA concerning the Released PAGA Claims. PAGA Aggrieved Employees may not opt out of the PAGA Settlement.

77. Plaintiff's Release of Claims. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$7,500, Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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.

This release excludes any release of any claims not permitted to be released by law.

78. Miscellaneous Terms

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

will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

78.3 No Effect on Employee Benefits. The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility

for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

- 78.4 Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 78.5 Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 78.6 Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 78.7 Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 78.8 Press.** 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 settlement. If Counsel engages in any

advertising or distributes any marketing materials relating to the settlement of this case, including but not limited to any postings on any websites maintained by Class Counsel, the advertising will not identify the case name or case number, any Defendant's name, or any names of putative class members.

- 78.9 Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 78.10 Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 78.11 No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 78.12 Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 78.13 Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 78.14 No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

- 78.15 Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 78.16 Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 78.17 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.
- 78.18 Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 78.19 Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 78.20 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.
- 78.21 Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after

mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

David Mara, Esq.
dmara@maralawfirm.com
Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Peter Horton, Esq.
phorton@lfecr.com
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571

To Defendant:

Katherine Den Bleyker, Esq.
kdenbleykery@ohaganmeyer.com
Sohin S. Gautam, Esq.
sgautam@ohaganmeyer.com
O'HAGAN MEYER
550 S. Hope Street, Suite 2400
Los Angeles, California 90071
Telephone: (213) 647-0005

78.22 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.

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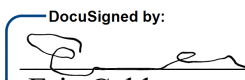
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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 9/5/2024

ERIC CALDERON, PLAINTIFF

DocuSigned by:

Eric Calderon, on behalf of himself and the Class

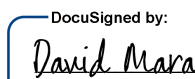
Dated: _____

**CELS ENTERPRISES, INC., DBA CHINESE
LAUNDRY, DEFENDANTS**

Robert Goldman

Dated: 9/5/2024

MARA LAW FIRM, PC

DocuSigned by:

David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff and the Proposed
Class/Aggrieved Employees

Dated: 9/5/2024

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**



Peter Horton, Esq.
Attorneys for Plaintiff and the Proposed
Class/Aggrieved Employees

Dated: _____

O'HAGAN MEYER

Katherine Den Bleyker, Esq.
Sohin S. Gautam, Esq.
Attorneys for Defendant, CELS Enterprises, Inc.,
dba Chinese Laundry

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

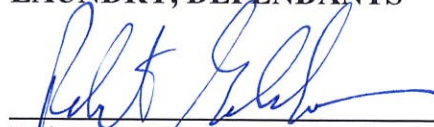
Dated: _____

ERIC CALDERON, PLAINTIFF

Dated: 9-20-24

Eric Calderon, on behalf of himself and the Class

**CELS ENTERPRISES, INC., DBA CHINESE
LAUNDRY, DEFENDANTS**



Robert Goldman

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff and the Proposed
Class/Aggrieved Employees

Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

Peter Horton, Esq.

Attorneys for Plaintiff and the Proposed
Class/Aggrieved Employees

Dated: September 27, 2024

O'HAGAN MEYER



Katherine Den Bleyker, Esq.

Sohin S. Gautam, Esq.

Attorneys for Defendant, CELS Enterprises, Inc.,
dba Chinese Laundry

Exhibit *A*

CALIFORNIA SUPERIOR COURT, COUNTY OF SAN BERNARDINO
Eric Calderon, on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiff,
v. CELS Enterprises, Inc. dba Chinese Laundry, Defendant
Case No. CIVSB2308785 and Case No. CIVSB2312110 (“Complaints” or “Action”)

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don’t act.*

TO: All individuals who are employed or have been employed by CELS Enterprises, Inc. dba Chinese Laundry (“Chinese Laundry” or “Defendant”) in the State of California as hourly non-exempt employees and worked at one of Chinese Laundry’s warehouses in California at any time from April 14, 2019, to October 12, 2024.

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All individuals who are employed or have been employed by Chinese Laundry in the State of California as hourly non-exempt employees and worked at one of Chinese Laundry’s warehouses in California at any time from April 14, 2019, to October 12, 2024.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

WHAT INFORMATION IS IN THIS NOTICE

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4. How Does This Class Action Settlement Work?	Page 2
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6. What Are My Options?	Page 3
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8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 4
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12. What Do I Do If I Need More Information or Have Questions?	Page 7

1. *Why Have I Received This Notice?*

Chinese Laundry's records indicate that you may be a Class Member. The settlement will resolve all Class Members' Released Claims, as described in Section No. 9 below, from April 14, 2019, to October 12, 2024 (this time period is referred to as the "Class Period"). If you worked for Chinese Laundry at some time during the Class Period, you may be entitled to money under this settlement. This notice provides you with basic information about the case and advises you of your options with regard to the settlement.

A Preliminary Approval Hearing was held on **November 21, 2024**, in the California Superior Court, County of San Bernardino. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

2. *What Is This Case About?*

A class action complaint was filed by Eric Calderon on April 14, 2023, in San Bernardino County Superior Court (Case No. CIVSB2308785) alleging that Defendant failed to pay all straight time and overtime wages, failed to provide lawful meal and rest periods, failed to adopt a complaint sick pay policy, failed to provide accurate itemized wage statements, failed to pay all wages due at the termination of employment, and violated the Unfair Competition Law.

On May 1, 2023, Plaintiff Eric Calderon filed a PAGA complaint in the San Bernardino County Superior Court (Case No. CV-23-004196) alleging that Defendant violated the PAGA by failing to pay all straight time and overtime wages, failing to provide lawful meal and rest periods, failing to adopt a complaint sick pay policy, failing to provide accurate itemized wage statements, and failing to pay all wages due at the termination of employment.

The Court has not made any determination as to whether the claims advanced by the Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you were employed as an hourly non-exempt employee by Defendant in California and worked at one of Defendant's warehouses in California at any time from April 14, 2019, to October 12, 2024.

If you are a Class Member and worked at least one pay period for Defendant at any time between February 15, 2022, to October 12, 2024, you are also an "Aggrieved Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

Plaintiff Eric Calderon brings this action behalf of himself and all other similarly situated individuals who worked for Defendant as non-exempt employees in California at any time during the Class Period. Plaintiff and these other individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the

Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. On [date of ruling on preliminary approval], the Court directed that you receive this notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2025 at [time a.m./p.m.], in Department S26 before Judge Jessica Morgan, located at 247 W. 3rd Street, San Bernardino, CA 92415. The date of the Final Approval Hearing may change without further notice to the Class. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class ("Class Counsel")	Attorneys for CELS Enterprises, Inc., dba Chinese Laundry
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, California 92108 Telephone: (619) 234-2833 LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS Peter Horton phorton@lfecr.com 4100 West Alameda Avenue, Third Floor Burbank, California 91505 Telephone: (323) 486-5101	O'HAGAN MEYER Katherine Den Bleyker Sohin S. Gautam 550 S. Hope Street, Suite 2400 Los Angeles, California 90071 Telephone: (213) 647-0005

The Court has decided that Mara Law Firm, PC, and Lawyers for Employee and Consumer Rights are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.
- **OBJECT:** You may assert a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release

Defendant and the Released Parties¹ from the Released Class Claims:

The Released Class Claims include any and all claims that were asserted in the Class Action Complaint or could have arisen out of the allegations made in the Class Action Complaint. This release shall also apply to any amended complaint which is filed with the Court after August 12, 2024, i.e., the date of the mediation. This release shall be for the Class Period.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include:

The Released PAGA Claims include any and all claims that were asserted in the PAGA Complaint or could have arisen out of the allegations made in the PAGA Complaint. PAGA Aggrieved Employees are deemed to release all claims that were asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter. This release shall be for the PAGA Period.

10. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$500,000 (“Gross Settlement Amount” or “GSA”).

A. Deductions from the Settlement

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payment to the named Plaintiff in an amount up to \$7,500, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a broader release of claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$10,000; (3) a payment of \$10,000 allocated to the PAGA claims; (4) Employer Taxes; and (5) payment to Class Counsel in an amount not to exceed \$166,666.67 (33% of the Gross Settlement Amount) for attorneys’ fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to ((i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (April 14, 2019, to October 12, 2024).

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment.

¹ “Released Parties” mean Defendant, and each of its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

Pursuant to PAGA, the LWDA will receive a payment of \$7,500 (75% of the \$10,000 total PAGA Payment). The remaining \$2,500 is the “Net PAGA Settlement Amount” and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee’s Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period (February 15, 2022, to October 12, 2024).

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the period of April 14, 2019, to October 12, 2024.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] pay periods during the period of February 15, 2022, to October 12, 2024.

If you believe the number of workweeks attributed to you is incorrect, you must call the Settlement Administrator at [PHONE NUMBER] no later than [RESPONSE DEADLINE] or mail documentation to the Settlement Administrator at [ADDRESS] that is postmarked no later than [RESPONSE DEADLINE]. You should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates you contend you worked for Messer during the Class or PAGA Period.

E. Tax Treatment of Your Settlement Payments

A third (33.33%) of each Individual Class Settlement Share is intended to settle each Class Member’s claims for unpaid wages (the “Wage Portion”). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant’s share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

Two-thirds (66.66%) of the Individual Class Settlement Share is intended to settle each Class Member’s claims for interest and penalties/other payments. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator at [PHONE NUMBER]. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall escheat to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member.

11. How Will the Attorneys for the Class and the Class Representatives Be Paid?

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed 33% of the Gross Settlement Amount (\$166,666.67) for attorney fees and \$30,000 for litigation costs.

Defendant has paid all of their own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$7,500, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a broader release of claims.

12. What do I do if I Need More Information or Have Questions?

This notice summarizes the proposed settlement. You can receive a copy of the settlement agreement by contacting Class Counsel at (619) 234-2833, or by accessing the Court docket in this case through the Court's website at <https://www.sb-court.org>, or by visiting the office of the Court at 247 W. 3rd Street, San Bernardino, CA 92415 between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the *Eric Calderon v. CELS Enterprises, Inc.* Class Action Settlement when calling the Settlement Administrator or Class Counsel.

To view the case documents on the Court's website, access the website <https://www.sb-court.org>. Once at this website, click on the "Online Services" link. Then click the link that says "Learn More" under the heading "Case Information and Document Sales." At the bottom of the page, click on the link "Accept (Court Access Portal)." Then, click on the heading "Search" and select "Case Information" under that heading. On the next page, type the case number "CIVSB2308785" into the box with the words Case Number." Then, click the "Search" button. This will take you to the case information. If you select the heading "Documents" on this page you will be able to access all of the documents filed in the case.

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

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2