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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W. Hopp,
Dept. 1]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Reservation ID: 412063266999
Date: May 22, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: March 27, 2023
Trial Date: Not Set

I, LILIT TUNYAN, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States District Courts for the Central, Eastern, Southern and Northern Districts of California. I am the founding partner at the law firm of Tunyan Law, APC. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I am the attorney of record for Plaintiff SCOTT ALLEN ATHEY ("Plaintiff").

2. This Declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

3. On March 27, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All Wages); (2) Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods); (3) Violation of Labor Code § 226.7 (Failure to Provide Rest Periods); (4) Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements); (5) Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment); (6) Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures); (7) Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices). On May 30, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). (The “Action.”) In the complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time September 22, 2021 through the date final judgment is entered.

4. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”).

5. **CMO ¶¶ G (3) (a) (vi)** The Parties agreed to participate in a mediation in an effort to

1 resolve the class and PAGA claims asserted in this matter. Prior to and during the mediation and
2 settlement discussions, the Parties exchanged extensive information and engaged in discussions
3 regarding their evaluations of the case and various aspects of the case, including but not limited to, the
4 risks and delays of further litigation, the risks to the Parties of proceeding with representative
5 adjudication, the law relating to off-the-clock theory, meal and rest periods, and wage-and-hour law and
6 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other
7 things. Plaintiff's Counsel conducted significant investigation and informal discovery regarding the facts
8 of the case, including and not limited to, the exchange, review, and analysis of a large volume of
9 documents and data obtained from Defendant, Plaintiff, and other sources. The volume of data and
10 documents that Plaintiff's Counsel reviewed and analyzed included and was not limited to: Plaintiff and
11 Class Members' employment records, a detailed sampling of Class Members' time and pay data,
12 Defendant's employment practices, procedures, and policies including, but not limited to Defendants'
13 expenses policy, meal and rest periods policy, work time policy, overtime policy, pay periods and pay
14 days policy, among other information and documents. Counsel for the Parties also met and conferred on
15 numerous occasions, e.g., to discuss issues relating to the production of documents and data prior to the
16 mediation. Plaintiff's Counsel also drafted the pleading and the mediation brief and prepared for and
17 attended court proceedings, mediation, and settlement negotiations, among other tasks. After reviewing
18 the provided documents and data, Class Counsel were able to evaluate the probability of class
19 certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all
20 claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class
21 Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.

22 6. On March 11, 2024, the Parties mediated before a mediator Steven Rottman, Esq., who is
23 a well-regarded mediator for wage and hour class action litigation. At the mediation, the Parties
24 discussed at length the burdens and risks of continuing with the litigation as well as the merits of the
25 claims and defenses. The Parties have been able to reach a settlement at the mediation. The Parties have
26 reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties'
27 agreement on a long-form class settlement agreement. The Parties then signed a long form settlement
28 agreement ("Agreement" or "Settlement").

1 7. **CMO ¶¶ G (3) (a) (vi)** Plaintiff and Class Counsel are aware of the burdens of proof
2 necessary to establish liability for the claims asserted in the Action, both generally and in response to
3 Defendant's defenses thereto. Based on investigation and information discovered, Plaintiff's Counsel
4 believes that there is sufficient evidence to support the allegations made in the lawsuit, including the
5 allegations that Defendant, with respect to Plaintiff and Class Members, inter alia, failed to pay wages
6 for off-the-clock work performed by class members, failed to record and provide compliant meal and rest
7 periods and to pay associated premium pay, failed to timely pay wages during employment and upon
8 termination of employment, failed to provide compliant wage statements, failed to maintain requisite
9 payroll records, and failed to reimburse necessary business expenses. Plaintiff also asserted that Class
10 Members were expected to perform similar job duties and were subject to the same or similar operations
11 and employment policies, practices, and procedures. Additionally, Plaintiff asserted that Defendant's
12 recordkeeping practices with respect to Plaintiff and Class Members were substantially the same during
13 the time period at issue. As a result of said alleged uniform practices, Plaintiff claims that Class Members
14 were not paid all of the compensation that was owed to them by Defendant. Thus, in Plaintiff's
15 Counsel's view, it is clear that the outcome of this litigation would be determined by Defendant's
16 uniform operations and employment practices, policies, and procedures that Plaintiff alleges applied
17 across Defendant's hourly-paid or non-exempt employees in California during the Class period. Plaintiff
18 and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that
19 confers substantial relief upon the Class. Based on the foregoing, Plaintiff and Class Counsel have
20 determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement
21 and is in the best interests of the Class. Solely for the purpose of settling this case, the parties agree that
22 the requirements for establishing class action certification with respect to this class have been met and
23 are met. If this Settlement is not approved by the Court for any reason, Defendant reserves its right to
24 contest class certification. This Settlement, if approved by the Court, will result in the termination with
25 prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all
26 Class Members, including all within the class definition who have not elected to exclude themselves
27 from the Class.
28

SUMMARY OF THE SETTLEMENT TERMS

8. A true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT (“Settlement,” “Agreement,” or “Settlement Agreement”) is attached hereto as Exhibit “1.” The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”), Exclusion Form (“Exclusion Form”), and Objection Form (“Objection Form”), which are attached to the Settlement Agreement as “Exhibit B,” “Exhibit B,” and “Exhibit D,” respectively, and respectfully request that the Court approve them as well.

9. **CMO ¶¶ G (3) (a) (i).** Key provisions of the proposed settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 21);
- **Settlement Amount:** Defendant will pay a maximum of **\$175,000**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$902.06** (Settlement, ¶ 26(g));
- **Class Size:** approximately **194** individuals as of the date of mediation. (Settlement, ¶ 4, Tunyan Decl., ¶ 16.)
- **PAGA Group Size:** approximately **165** individuals as of the date of mediation (Tunyan Decl., ¶ 17);
- **Escalator Clause:** The number of workweeks during the Class Period is estimated to be **10,469**. The parties stipulate a 10% escalation of the estimated workweeks without any increase to the Gross Settlement Amount. If the number of actual workweeks during the Class Period exceeds 10% of the estimated workweeks (i.e., exceeds 11,516 workweeks), Defendant can either have the Class Period end on the date that the workweeks exceed 11,516 or increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of workweeks in excess of 11,516 workweeks. For example, if there is a 1% increase over 10% then the Gross Settlement Amount increases by 1%. (the “Escalator Clause”). (Settlement, ¶ 26(d).)
- **Kullar/Munoz Analysis:** Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 18;

- 1 • **No Reversion:** The Settlement is a *non-reversionary* settlement (Settlement, ¶ 26(e));
- 2 • **Certification:** Plaintiff addresses certification requisites herein, at Part V.A., and in the
- 3 Declaration of Tunyan, at Paragraphs 34-40;
- 4 • **No Claim Form:** No claim form is required (Settlement, ¶ 26(f));
- 5 • **Class Release:** The Settlement will release specified wage-and-hour claims for Class
- 6 Members (those Class Members who do not opt out of the Settlement) as defined by the
- 7 First Amended Complaint and LWDA notice (Settlement, ¶ 37);
- 8 • **PAGA Release:** The Class Members will release the PAGA Claims set forth in this
- 9 Action, that were identified in the Complaint and Plaintiff's LWDA Notice Letter,
- 10 regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 15
- 11 and 37(c)(2));
- 12 • **Release Effective Date:** The Release is not active until Defendant tenders all payments
- 13 required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- 14 • **Net Settlement Amount Available to the Class:** After deducting Class Counsel's
- 15 attorneys' fees and costs, service payment to Plaintiff, administration costs, and the
- 16 payment to the LWDA, the remainder will be available for distribution to Class Members
- 17 who do not opt out, with each Class Member receiving a share based on the number of
- 18 workweeks each Class Member worked for a Defendant within the Class Period. The Net
- 19 Settlement Amount is estimated to be at least **\$72,216.67**, resulting in an average **net**
- 20 payment per Class Member of at least **\$372.25**, before any tax withholdings. (Settlement, ¶
- 21 26(g));
- 22 • **Tax Allocation:** The amounts distributed to Class Members will be characterized as 20%
- 23 alleged unpaid wages, 40% as unpaid penalties and 40% as unpaid interest, and PAGA
- 24 Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- 25 • **Employer's Portion of Payroll Taxes Paid Separately:** Defendant's portion of payroll
- 26 taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
- 27 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 28 • **Settlement Administrator:** The notice portion of the Settlement and distribution of funds

will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of administration should not reasonably exceed \$15,000.00. ILYM Group, Inc.'s low bid for settlement administration services in the amount of \$ 6,950 was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));

- **Class Data for Administration:** The Settlement Administrator will receive the Class List within 15 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit and objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶ 26(s)).
- **Notice Language:** Notice will issue in English and Spanish (Settlement, ¶ 26(t));
- **Objections:** Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator (Settlement, ¶ 26(x));
- **Exclusion Requests:** The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a writing objection (Settlement, ¶ 26(w));
- **PAGA Allocation:** From the GSA, \$10,000 will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* ("PAGA"), and seventy-five percent (75%), or \$7,500, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 9.)
- **Notice to LWDA:** Notice was provided prior to the filing of this Motion. Evidence is attached to Tunyan Declaration.
- **Service Payment to Plaintiff:** Defendant will not oppose the application for Class Representative Service Payment of \$10,000 for Plaintiff, to be paid from the GSA (Settlement, ¶ 26(n));
- **Fees and Costs:** Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA (\$58,333.33), and actual costs, in an amount not to exceed \$22,000, to be paid out of the GSA (Settlement, ¶ 26(m)).

- 1 • **Check Void Period:** Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- 2 • **Uncashed Checks:** Any settlement checks that are mailed to the Class Members and
- 3 remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys
- 4 shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of
- 5 California Code of Civil Procedure § 384(b) (the “Cy Pres Recipient”) (Settlement, ¶ 35);
- 6 • **Judgment Notice:** Judgment will be posted on the Settlement Administrator’s website
- 7 after entry (Settlement, ¶ 30);
- 8 • **Confidentiality Provisions:** The Settlement permits Class Counsel to discuss the
- 9 Settlement with Class Members (Settlement ¶ 58).

10 NATURE OF THE CLAIMS AND ESTIMATE OF THE VALUE OF THE CLAIMS EVIDENCING
11 THAT THE SETTLEMENT IS FAIR AND REASONABLE

12 10. Plaintiff and counsel have diligently investigated the claims of the Class Members.
13 Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues
14 involved in this Action, the substantial risks attending further prosecution, including risks related to the
15 outcome of certification and possible summary judgment efforts, and the substantial benefits to be
16 received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that
17 settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair
18 and reasonable. Plaintiff’s counsel brought to bear a great deal of experience with class actions in
19 negotiating the settlement of this case.

20 11. One fundamental purpose of the class action device is to promote efficiency. Resolution
21 at this time will forestall the need for additional expensive and time-consuming litigation that could very
22 well result in an outcome less satisfactory than that proposed under this settlement. But, before any other
23 consideration, we have agreed to this settlement because it is objectively reasonable. The potential for
24 resolution benefits the class members, since they do not have to wait additional years for a similar
25 recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide
26 resolution is the most realistic method for addressing the claims raised in this matter.

27 12. We have engaged in the necessary investigation in this case that made it possible for us to
28 exercise informed judgment in those aspects of the settlement process in which we were involved. The

1 exchange of time and wage data, wage and hour policy documents, and data about the composition of the
2 Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than
3 enough information upon which to evaluate a fair and reasonable settlement amount.

4 13. In this action Plaintiff contended that Defendant failed to pay for the off-the-clock work class
5 members performed since they were engaged in pre-shift and post-shifts activities as Defendant required
6 Plaintiff and Class Members to perform work before clocking-in and after clocking-out of their
7 scheduled shifts and during meal and rest periods. Plaintiff contended that Defendant discouraged the
8 recordation of overtime hours and required Class Members to perform work off-the-clock. Plaintiff also
9 contended that Defendant required class members to clock out for meal periods and continue working
10 and did not allow to leave work premises for rest and meal periods. Plaintiff also contended that
11 Defendant did not provide uninterrupted duty-free first, second or third rest periods. Plaintiff also
12 contended that Plaintiff and Class Members were also required to use their personal cellular telephones
13 to communicate with supervisors and coworkers regarding work schedules and assignments as well as to
14 purchase tool and PPE necessary for work and use their personal vehicles for work without
15 reimbursement. Additionally, Plaintiff alleged that Defendant intentionally and willfully failed to pay
16 Plaintiff and Class Members all wages due to them while they were employed by Defendant, within the
17 time period permissible under California law, and that Defendant failed to pay all wages due upon
18 termination, within the time period permissible under California law, thereby triggering waiting-time
19 penalties under California Labor Code section 203. Plaintiff contended that, based on the violations
20 described herein, the wage statements provided by Defendants and the payroll records kept by Defendant
21 were inaccurate.

22 14. Defendant denies Plaintiff's claims. Plaintiff's Counsel considered defense arguments, e.g.,
23 that the employer's written policies, practices and procedures complied with the law, that employees
24 worked off-the-clock without knowledge of a supervisor or Defendant, if they did, that Defendant
25 correctly paid overtime for all hours worked, that Defendant provided and recorded meal periods and that
26 was the reason the produced records showed only 3.4% unique meal period violation rate, that use of
27 cell phone was voluntary, that no waiting-time penalties were due because waiting time penalties only
28 arise from "willful" failure to pay wages due and owing at the time of termination or resignation, that

1 Plaintiff and Class Members suffered no actual injury from the alleged wage statement violations and
2 that this alleged violation and the alleged recordkeeping violation are entirely derivative of the other
3 causes of action. Plaintiff's Counsel also considered that it could be determined that individual liability
4 issues predominate (e.g. due to purported variation in shifts, job duties, and other circumstances which
5 could raise individualized questions of fact) and could pose challenges to class certification and
6 manageability, and the merits of Plaintiff's claims.

7 15. **CMO ¶¶ G (3) (a) (iii).** Plaintiff's Counsel considered information obtained through
8 investigations and from Plaintiff, as well as class data and information obtained from Defendant and
9 other sources, and created violation, damages, and penalties valuations and models prior to reaching the
10 settlement. Based thereon, Plaintiff calculated the potential value of the claims. However, the potential
11 value of each claim assumed an exposure based on the Plaintiff having proven all elements of the claims
12 and entitlement to monetary recovery, despite risks associated with class certification, and establishing
13 liability and any underlying California Labor Code violations and damages, and significant additional
14 costs that would have to be incurred in order to certify the case and establish liability and damages. We
15 believe that the case was viable through to a trial. However, while Plaintiff asserts a belief that this is a
16 viable case for trial, we realize that there are always significant risks associated with certification and
17 trials, and those risks cannot be eliminated in this case. Continued litigation of this lawsuit presented
18 Plaintiff and Defendant with substantial legal risks and costs that were (and continue to be) difficult to
19 assess. The risks in this matter include:

- 20 • the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight or
21 overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014)
22 ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014);
- 23 • the risk that Defendant's meal and rest period policies might not ultimately support class
24 certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing
25 Court of Appeal decisions favorable on class certification issue without expressing opinion
26 as to ultimate viability of proposition);
- 27 • the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and
28 practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203

and 226(e);

- the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, see *Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, see Labor Code § 2699(e)(1);
- the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes;
- the risk that Defendant can wind down its legal entity and/or not be financially viable to continue litigation since it ceased its operation and sold assets on August 31, 2023;
- the risk that lengthy appellate litigation could ensue.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

16. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the approximately **194** members of the Class, the average **gross** recovery is at least **\$902.06** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$372.25**. Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period.

17. **CMO ¶¶ G (3) (a) (ii) (iii).** The Gross Settlement Amount of **175,000.00** is about 75% of the **\$232,627.16** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. While Plaintiff would certainly have preferred to recover more (and Defendant would have preferred to pay less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On that basis, it would be unwise to pass up this settlement opportunity. My maximum calculated reasonable exposure is **\$2,316,776.15, including** PAGA penalties.

- A reasonably estimated exposure for unpaid wages (overtime) for the off-the clock work was calculated, with the assistance of an expert, to be approximately **\$315,640.35** (10,469 workweeks x 1 hour of unpaid wage per workweek, which is based on the overtime rate of \$30.15 (hourly average rate is \$20.10 per hour)). However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$37,876.84**, assuming certification probability of 40% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$210,426.90** (10,469 workweeks x 1 rest period premium per workweek x \$20.10), but with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **\$42,085.38**.
- A reasonably estimated exposure for meal break violations over the class period was calculated at **\$210,426.90** (10,469 workweeks x 1 meal period premium per workweek x \$20.10), with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$42,085.38**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (30% and 20% respectively) were estimated to be approximately **\$19,050.00** and **\$19,136.67**, respectively, on maximum exposures of **\$355,050.00** (165 initial violations x \$50 statutory penalty) + [3,468 subsequent violations x \$100 statutory penalty]) and **\$935,856.00** (194 employees

terminated during the three-year statute of limitation (all employees since the company ceased its operation due to assets sale) x (30 days x hourly rate of \$20.10 x 8 hours), or approximately \$4,824 per individual, respectively).

- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **\$41,876.00** (10,469 workweeks x \$4 unreimbursed business expenses per workweek), with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$8,375.20**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$207,877.16**, excluding PAGA.¹ (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$247,500.00** (165 aggrieved employees estimated to have worked during one-year statutory period x \$1,500.00 civil penalties), but a risk adjusted value of **\$24,750.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

As required under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) and *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), the maximum plausible and realistic recoveries versus the current risk-adjusted value of the claims are discussed in additional detail below:

(a) Key Class Data Elements at Time of Mediation:

- 1) Class Members: approximately 194
- 2) Work Weeks: approximately 10,469.
- 3) PAGA Employees: approximately 165
- 4) Gross Settlement Amount: \$175,000

(b) KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Off-the-Clock Work

¹ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1) Plaintiff's claims for unpaid wages due to off-the-clock work is based on the argument that Defendant required Plaintiff and Class Members to arrive early to stay in line to clock in to work but refused to allow to clock in earlier than 5 minutes before the scheduled start of the shift as evidenced by their written policy and by requiring to perform post-shift activities after the scheduled end of the shift by requiring them to clock out at the end of the shift and continue working. Defendant to pay Plaintiff and Class Members for the off-the-clock work.

2) Defendant denies these allegations and contends that it paid for all time worked by Class Members.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$315,640.35
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$37,876.84

(c) **KULLAR/MUNOZ ANALYSIS: Meal Periods**

1) Plaintiff's claim for meal break violation is based on the argument that Defendant required Plaintiff and Class Members to clock out and continue working through their meal periods as well as required to stay in line to clock out and back in for meal periods cutting their meal periods short. Most importantly, Plaintiff alleged that Defendant did not allow Plaintiff and Class Members to leave premises during meal and rest periods. Since the meal period violation is mostly based on the allegation that Defendant required to record meal period and continue working the records produced by Defendant showed only **3.4%** facial unique meal period violation rate for shifts exceeding 5 hours, and 100% violation rate for shifts exceeding

1 10 hours but less than 12 hours. Therefor, the exposure is calculated based
2 on at least 1 missed meal period per week. Employees are entitled to meal
3 periods of at least 30 minutes before exceeding five hours of work and to
4 second meal periods of not less than 30 minutes before exceeding 10 hours
5 of work. For each meal period missed or taken late an employer must pay
6 the employee an additional one hour of compensation. Labor Code § 226.7.
7 This additional hour of compensation is referred to as “premium pay.”

- 8 2) Defendant maintains that the obligation is simply to “provide” meal
9 periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53
10 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard).
11 Furthermore, Defendant contends that any failure to take meal periods, or
12 to take late meal periods, was a result of employee choice, not of any policy
13 or practice of Defendant. Finally, Defendant asserts that Plaintiff’s meal
14 period claims would not be amenable to class treatment, since individual
15 inquires would need to be made with respect to each specific shift that each
16 employee missed a meal or rest period, to determine why that specific
17 employee missed that specific meal or rest period on that specific shift.

18
19 3) **Risk-adjusted Exposure Analysis:**

20 Calculated maximum recovery:	\$210,426.90
21 Estimated certification probability	50%
22 Estimated chance of prevailing on merits	40%
23 Max recovery × certification risk × chance or success 24 on merits = Present Settlement Value	\$42,085.38

25
26 (d) **KULLAR/MUNOZ ANALYSIS: Rest Breaks**

- 27 1) Plaintiff’s claim for rest break violation is based on the argument that
28

Defendant did not allow Plaintiff and Class Members to leave premises during rest periods and did not provide uninterrupted and duty free rest periods. Employees are entitled to a rest period of at least 10 minutes every four hours worked, or major fraction thereof. For each rest period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as “premium pay.”

- 2) Defendant maintains that the obligation is simply to “authorize and permit” rest periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard). Defendant also contends that it does not have a requirement to remain on the premises during rest breaks. Furthermore, Defendant contends that any failure to take rest breaks was a result of employee choice, not of any policy or practice of Defendant and denies that it ever had a policy of combining meal periods and rest breaks. Finally, Defendant asserts that Plaintiff’s rest breaks claims would not be amenable to class treatment, since individual inquiries would need to be made with respect to each specific shift that each employee missed a rest period, to determine why that specific employee missed that specific rest break on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$210,426.90
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance of success on merits = Present Settlement Value	\$42,085.38

(e) **KULLAR/MUNOZ ANALYSIS: Late Pay Penalties Under Labor Code § 203**

- 1) Labor Code § 203 provides that if an employer fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because class members stopped working for Defendant but again were not paid their full compensation for the reasons discussed above, class members did not receive all wages due upon termination of employment.
- 2) Defendant argues that a good-faith belief in the legality of its employment practices precludes a finding that any withholding of wages was "willful." See Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."].) Defendant further maintains that because of viable defenses in both law and fact that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b) and an arbitration agreement that would bar class treatment.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$935,856.00
Estimated certification probability	30%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$56,151.36

(f) **KULLAR/MUNOZ ANALYSIS: Wage Statement Violations**

1 1) Plaintiff also alleged a cause of action under Labor Code § 226(a). That
2 section states that an employer must provide an accurate itemized wage
3 statement twice a month or each time wages are paid, whichever is the
4 more frequent. Failure to do so entitles employees to recover the greater of
5 all actual damages or fifty dollars (\$50) for the initial pay period in which a
6 violation occurs and one hundred dollars (\$100) for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty of four
8 thousand dollars (\$4,000). *See* Labor Code § 226(e).

9 2) Defendant contends that Labor Code § 226(e) penalties are not automatic.
10 Rather, the employee must show (1) that he or she “suffered injury” from
11 the employer’s failure to provide compliant wage statements, *see Elliot v.*
12 *Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181 (2008) (applying
13 California law) (holding employee was not entitled to penalties because no
14 injury was shown), and (2) Defendant’s noncompliance was “knowing and
15 intentional.” Defendant contends that class members suffered no injury
16 from any failure to issue compliant wage statements and, furthermore, that
17 any noncompliance was not knowing and intentional. Further, because the
18 damages for this cause of action are penalties, the statute of limitations only
19 runs from one year prior to the filing of the original complaint. *See* Code
20 Civ. Proc. § 340. Moreover, Defendant maintains that Plaintiff’s derivative
21 claim for wage statement penalties would fail for the same reasons that
22 Plaintiff’s underlying claims would fail. The parties discussed these issues,
23 and in light of these and other considerations Class Counsel factored in a
24 reduction of liability and damages for this cause of action.

25 3) **Risk-adjusted Exposure Analysis:**

26 Calculated maximum recovery:	\$355,050.00
27 Estimated certification probability	30%

Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$21,303.00

(g) **KULLAR/MUNOZ ANALYSIS: Unreimbursed Expenses Under Labor Code § 2802**

- 1) Plaintiffs also alleged a cause of action under Labor Code § 2802 for failure to reimburse all necessary expenses. Under Labor Code § 2802, “an employer shall indemnify his or her employee for all necessary expenditures... incurred by the employee in direct consequence of the discharge of his or her duties.” Lab. Code § 2802. Plaintiff’s claims for unreimbursed expenses are based upon claims that class members were required to use their personal cell phones to communicate with supervisors and coworkers regarding work schedules and assignments as well as to purchase additional uniforms (aprons) and masks mandated to wear at work without reimbursement.
- 2) Defendant contends that Plaintiff and most employees did not incur any business expenses, and that they were not required to use their personal cell phones.
- 3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$41,876.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$8,375.20

(h) **QUASI- KULLAR/MUNOZ ANALYSIS: PAGA**

- 1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*,

allows plaintiffs to obtain civil penalties on behalf of herself and other class members for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period is one year prior to the filing of the complaint.

2) The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.7, and 510. Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA penalties].) Defendant here maintains that they have a strong argument that it would be unjust to award maximum PAGA penalties.

3) Furthermore, PAGA penalties are also completely derivative of each and

every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157(2008), it can be argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.*, at 1208, 1209.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$247,500.00
Discount reduction factor for risk of Court reduction and uncertainty of proof for all aggrieved employees	10%
Max recovery × risk reduction = Present Settlement Value	\$24,750.00

With the assistance of Class Counsel’s retained damages expert, Class Counsel estimated Defendant’s maximum total exposure on the PAGA claim at approximately **\$274,500.00**. This number presupposes underlying claims are proven at a plausible rate and that the Court awards the full base penalties for each. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court’s power to award “a lesser amount than the maximum civil liability.” Accordingly, due to the speculative nature of a valuation for this claim, a discount of **90%** was applied to account for the difficulty of prevailing on this claim.

- (i) **Kullar Summary:** Indulging the most optimistic estimates and improbably favorable outcomes, the maximum reasonable recovery is estimated to be approximately **\$2,316,776.15**, including PAGA. The settlement amount is about **8%** of that amount. The calculated current settlement value is **\$232,627.16** (calculated by adding the risk-adjusted amounts in the charts above together), and the settlement is **75%** of the current risk-adjusted settlement value. The bottom

1 line is that the settlement is about 8% of the maximum plausible recovery for the
2 194 Class Members, and it is a reasonable settlement, given that the full amount is
3 very unlikely to be recovered due to the compliant written policies and risks
4 described above.

5 18. This result here is fully supportable as reasonable. First, it is important to recognize the
6 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. Second, rest
7 break and meal period claims have been challenging to certify for many years, even after Brinker. Many
8 risks are eliminated through settlement. And, with respect to those risks, certification rates in California
9 are **lower** than conventional wisdom holds. See, e.g., H. Scott Leviant, *Second Interim Report on class*
10 *actions in California sheds new light on certification* (February 19, 2010),
11 www.thecomplexlitigator.com, available at [http://www.thecomplexlitigator.com/post-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
12 [data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of*
13 *the Study of California Class Action Litigation*, 2000-2006, available at
14 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in
15 Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement **or** as
16 part of a contested certification motion). Here, the estimated certification probabilities are **above** the
17 average rate at which cases were certified in California over the study years, based upon data available
18 through the California Courts websites. In sum, well *under* 20% of all cases filed as proposed class
19 actions are ultimately certified by way of a *contested* motion. Since the recovery is roughly 8% of the
20 maximum theoretical recovery (estimated to be approximately \$2,316,776.15, including PAGA), it meets
21 the expected outcome under that metric. This Settlement achieves the goals of the litigation.

22 19. CMO ¶¶ G (3) (a) (vii) To the best of my knowledge, there are no other like claims
23 asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from
24 bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or
25 otherwise, and who thus might be prejudiced by dismissal of the Action.

26 ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS

27 20. CMO ¶¶ G (3) (a) (iv) (v) The Net Settlement Amount is estimated to be at least **\$72,216.67**
28 **including** \$2,500.00 as the aggrieved employees' share of PAGA allocation, resulting in an average net

1 payment per Class Member of at least **\$372.25**, before any tax withholding and in an estimated average
2 gross payment per Class Member of approximately **\$902.06**. The Net Settlement Amount is estimated
3 to be at least **\$69,716.67 excluding** \$2,500.00 as the aggrieved employees' share of PAGA allocation,
4 resulting in an average net payment per Class Member of at least **\$359.4**, before any tax withholding and
5 in an estimated average gross payment per Class Member of approximately **\$889.2**. The amount to be
6 designated as PAGA Penalties is \$10,000, which will be distributed as 75% (\$7,500.00) to the LWDA
7 and 25% (\$2,500.00) to the Aggrieved Employees. The Aggrieved Employees group consists of 165
8 non-exempt employees who are or were employed by Defendant within the State of California from
9 March 27, 2022 through August 31, 2023 (the date when Defendant ceased its operation). It is estimated
10 that there are approximately 3,633 pay periods during the PAGA period. As a result, each Aggrieved
11 Employee will receive an estimated average amount of \$15.15. The amount to each Class Member and
12 Aggrieved Employee will vary based on each individual's duration of employment during the Class and
13 PAGA Period. Thus, those who worked longer for Defendant during the relevant Class or PAGA period
14 will receive a benefit greater than the average estimated amount. The high and low ranges of class and
15 PAGA individual payments to Class Members and Aggrieved Employees at this time are unknown, as
16 these amounts will be calculated by the Settlement Administrator following approval and the receipt and
17 processing of the employee data.

18 OTHER PENDING ACTIONS

19 21. **CMO ¶¶ G (3) (a) (vii)** I made reasonable inquiry of other members at Tunyan Law,
20 APC, and I am not aware of any class, representative or other collective actions which assert claims
21 similar to those asserted in the above-captioned matter, on behalf of a class or group of individuals some
22 or all of whom would be members of the class defined in this action during the same class period. There
23 is another class action that precedes this action entitled *Perez v. Walker Evans*, Riverside Superior Court
24 Case No. RIC1906144 ("*Perez*"). However, the class release period in *Perez* action ends on September
25 21, 2021, while the class period in this action starts on September 22, 2021. Therefore, there are no
26 pending class actions with overlapping claims within the same class period.

27 THE EXPERIENCE OF CLASS COUNSEL

28 22. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of

1 employment and labor law for about four and a half years and focused exclusively on plaintiffs'
2 employment law and wage-and-hour class actions and more than twenty-four years in practice of law in
3 general. I have handled hundreds of wage-related class actions.

4 23. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and
5 Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly
6 on labor and employment class action lawsuits involving California and federal labor laws. Along with
7 those firm's other attorneys I have successfully settled more than 50 class action and PAGA matters
8 during that time span and was routinely appointed lead or co-lead class counsel in courts in California
9 including by way of motion for class certification.

10 24. I received my Juris Doctorate from the State Yerevan University and my LL.M. from
11 University of Minnesota Law School. Prior to moving to California and starting to practice law in
12 California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general
13 counsel and head of legal department for big telecommunication and financial corporations in Armenia
14 for the last 12 years prior to moving to California. I managed corporate legal department and corporate
15 legal and regulatory affairs and handled complex litigation matters as well as complex transactions for
16 many years.

17 25. I am a current member of the California Employment Lawyers Association (CELA) and
18 the California Consumer Attorneys Association of Los Angeles (CAALA). I have been an active
19 member of the State Bar of California in good standing.

20 26. I am experienced in prosecuting employment matters, particularly class actions, and I focused
21 a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to
22 the present case, I represented plaintiffs and the class members and have extensively worked on many
23 wage-and-hour class cases and have been appointed as class or PAGA counsel along with other counsel
24 and co-counsel for wage-and-hour class action lawsuits in various counties throughout California such as:
25 *Rocke v. Pink Chicku LLC*, Santa Clara County Superior Court, Case N23CV41357, *Galvan v. Western*
26 *Sky Dairy, LLC*, Kern County Superior Court, Case N BCV-23-100992, *Oregel v. Diablo Range*
27 *Framing, Inc.*, Contra Costa County Superior Court, Case N C23-00697, *Gonzalez v. RV Retailer San*
28 *Diego, LLC, et al.*, Riverside County Superior Court, Case N CVRI2301403, *Evans, et al. v. Downtown*

1 *Women's Center*, Los Angeles County Superior Court, Case N 22STCV06578 (class certification
2 motion granted in part); *Sanchez v. Anodizing Industries, Inc.*, Los Angeles County Superior Court,
3 Case N 21STCV30722; *Godoy v. Intertrade Industries, LTD*, Orange County Superior Court, Case No.
4 30-2020-01151921-CU-OE-CXC; *Fuentes v. Actron Manufacturing Inc.*, Los Angeles Superior Court,
5 Case N 20STCV31099; *Gonzalez v. Community Health Systems, Inc.*, San Bernardino County Superior
6 Court, Case N CIVDS2015678; *Rodriguez v. Progress Lighting, Inc. et al.*, San Bernardino County
7 Superior Court, Case N CIVDS2023894; *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior
8 Court, Case N CIVDS2022537; *Mumphrey v. People's Care Northern California, Inc. et al.*, San
9 Joaquin County Superior Court, Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring*
10 *Corp*, Los Angeles Superior Court, Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles
11 Superior Court, Case N 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior
12 Court, Case N 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163;
13 *Mata v. Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home*
14 *&Body*; Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v.*
15 *Quinn Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los
16 Angeles Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior
17 Court, Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court,
18 Case N 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N
19 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N
20 CIVDS2006967; *Lopez v. Fairway Staffing Services, et al.*, Los Angeles Superior Court, Case N
21 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No.
22 20STCV00728; *Salter v. U.S. Reports, et al.*, Los Angeles Superior Court, Case N 19STCV30384;
23 *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya*
24 *Ice Cream Distributing Co., Inc*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v.*
25 *Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia*
26 *v. San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v.*
27 *Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N
28 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-

1 cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*, Fresno County Superior Court, Case N
2 22CECG00591; *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court, Case N
3 BCV-22-100465; *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego Superior Court, Case
4 N37-2019-00070151-CU-OE-CTL.

5 27. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris
6 Doctorate from the State Yerevan University and his LL.M. from the American University of Armenia
7 and University of Illinois Chicago, School of Law. Prior to moving to California and starting to practice
8 law in California he practiced law in Armenia for about twenty-five years. He oversaw international
9 donor-funded projects for the judiciary and managed public-private partnership initiatives in sectors such
10 as energy, banking, finance, and aviation. He managed complex transactions and litigation matters for
11 many years.

12 28. My current contingent billing rate is consistent with my practice area, legal market and
13 accepted hourly rates considering also that I practiced law in another country for additional 20 years
14 which brings a total of almost 25 years of experience practicing law. The 2023-2024 Adjusted Laffey
15 Matrix states that an attorney with 4 to 7 years experience can reasonably charge \$538 per hour. See
16 <http://www.laffeymatrix.com/see.html>.

17 REASONABLENESS OF THE REQUESTED FEE AWARD

18 29. When this case was taken on a contingent fee basis, with the firm agreeing to assume
19 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
20 Tunyan Law, APC, paid filing fees, Westlaw fees, mailing, telephone and express mail charges, expert
21 and mediation fees. There was never a guarantee that Tunyan Law, APC, would recoup those
22 expenditures. The firm took on this case, which necessarily required the firm to forego other
23 opportunities, given finite resources to devote to cases.

24 30. Because of the uncertainty of the outcome in this and other wage and hour litigation
25 undertaken by Tunyan Law, APC, we took this case with the expectation that a risk enhancement, either
26 in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
27 available if we prevailed.

28 31. Class Counsel's experience in employment class actions was integral in evaluating the

1 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
2 Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the
3 rapidly evolving substantive law (state and federal), as well as the procedural law of class action
4 litigation.

5 32. In the past four years, I have settled many wage-and-hour class actions. Just as the
6 Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been my
7 experience, that attorney fee awards of one-third of a common settlement fund are the rule, rather than
8 the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement
9 amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice,
10 consistent with California law approving the percentage of the fund method to award fees from a
11 common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in
12 light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and
13 after the filing of this matter. That work includes:

- 14 (a) Numerous interviews with our client, Plaintiff, and review of documents provided
15 by Plaintiff;
- 16 (a) Investigation of the matter and exploring the corporate structure of Defendant;
- 17 (b) Legal research regarding the claims in this action;
- 18 (c) Legal research and investigation regarding the Defendant's practices at numerous
19 points in the litigation;
- 20 (d) Preparation of multiple drafts of the original class action complaint and finalization
21 and filing of the original class action complaint;
- 22 (e) Review of an amended complaint that added Plaintiff's PAGA claim, and
23 finalization of that complaint;
- 24 (f) Drafting joint statements and joint stipulations;
- 25 (g) Review of payroll and time data;
- 26 (h) Extensive "meet and confer" efforts with Defendant's counsel regarding the
27 sample size and to obtain relevant documents and information through informal
28 discovery;

- (i) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (j) Research and preparation of the mediation brief;
- (k) Attendance at mediation;
- (l) Communicating with Plaintiff who requested updates or other information regarding this matter;
- (m) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments; and
- (n) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

33. I anticipate that Class Counsel will spend an additional 40 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs of \$22,000, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap.

THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
SERVICE PAYMENT

34. Here, Plaintiff seeks an Enhancement Award of up to **\$10,000.00**. This amount is very reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided information to counsel before the filing of this matter; assisted with informal discovery, the settlement process (which included conferring with counsel during the preparation of Plaintiff's mediation brief);

1 and, regularly conferred with counsel regarding the case whenever questions arose. I estimate that
2 Plaintiff contributed dozens of hours of time to the prosecution of this matter. Plaintiff's declaration also
3 confirms that Plaintiff was an active participant in the filing and settlement of this case. The enhancement
4 also recognizes the considerable risks Plaintiff undertook on behalf of the Class as well as the personal
5 risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former
6 employer, making future employment prospects uncertain and that Plaintiff gives up his right to sue
7 Defendant for non-wage related claims and releases claims beyond wage-and-hour claims released by
8 Class Members.

9 THE SETTLEMENT ADMINISTRATOR

10 35. **CMO ¶¶ G (3) (d) (i)** The parties have agreed that administration will be handled by a
11 third-party administrator. In counsel's experience as class counsel in similar wage-and-hour actions with
12 a similar number of employees, ILYM Group, Inc. is fully capable of administering the Settlement at a
13 competitive and reasonable cost and should be approved by the Court to administer the Settlement notice
14 process. ILYM Group, Inc. was selected because it submitted a low bid in the amount of not-exceed bid
15 of **\$6,950.00** for administration services. After obtaining competing bids from four potential settlement
16 administrators (Simpluris, Inc., CPT Group class action administrators, Phoenix Class Action
17 administrators and ILYM Group, Inc.) ranging from \$6,950.00 to \$10,000.00, the Parties have agreed to
18 retain ILYM Group, Inc. ("Settlement Administrator"), which quoted **\$6,950.00** flat fee, to handle the
19 notice and settlement administration process. The Parties respectfully request that the Court appoint
20 ILYM Group, Inc. to handle these procedures and serve as the Settlement Administrator. Within 15
21 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall
22 provide to the Settlement Administrator a class database containing the following information for each
23 Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of
24 employment at Defendant's location in California. This database shall be based on Defendant's payroll
25 and other business records and shall be provided in a format acceptable to the Settlement Administrator.
26 Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that
27 the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a
28 check of the Class Members' addresses against those on file with the U.S. Postal Service's National

1 Change of Address List; this check will be performed only once per Class Member by the Settlement
2 Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement
3 Administrator will keep this database confidential and secure and use it only for the purposes described
4 herein, and will return this database to Defendant upon final approval of the settlement or destroy
5 electronic records containing the database after the Settlement is final and all payments are distributed as
6 required under this Agreement. Within 14 calendar days after the Class database is provided to the
7 Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by
8 First Class United States mail. Notices returned to the Settlement Administrator as non-deliverable on or
9 before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned
10 envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a
11 forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement
12 Administrator will do a computer search for a new address using the Class Member's social security
13 number or other information. In any instance where a Notice is re-mailed, that Class Member will have
14 until the extended Response Deadline as described above. A letter prepared by the Settlement
15 Administrator will be included in the re-mailed Notice in that instance, stating the extended Response
16 Deadline if different than the original Response Deadline. Upon completion of these steps by the
17 Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied
18 their obligations to provide the Notice to the affected Class Member. The affected Class Member shall
19 remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the
20 Court's Final Order and Final Judgment. within fourteen (14) calendar days of receipt of the Gross
21 Settlement Amount from Defendant, the Settlement Administrator will issue and send out the Settlement
22 Payment checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth
23 herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement
24 Administrator's performance of its duties shall be referred to the Court, if necessary, which will have
25 continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations
26 contemplated by this Settlement have been fully carried out. Within fourteen (14) calendar days of
27 receipt of the Gross Settlement Amount from Defendant the Settlement Administrator will also distribute
28 the Service Payment to Plaintiff, attorney's fees and costs to Class counsel, PAGA penalty payment to

1 LWDA and the Settlement Administrator's fees. The Settlement Administrator will post the court orders
2 granting preliminary and final approval of the Settlement and final judgment approving the Settlement on
3 the Settlement Administrator's website for a period of not less than 90 calendar days after the final
4 judgment is entered. The address of that website will be included in the Notice.

5
6 CLASS CERTIFICATION

7 36. The class is ascertainable by objective criteria. The Class Members are: All individuals
8 employed by Defendant in California and classified as "non-exempt" at any time during the Class
9 Period (the "Class Period" is September 22, 2021 to August 31, 2023). "Settlement Class Members"
10 are those Class Members who do not submit timely exclusion requests to the Settlement Administrator.
11 (Settlement, ¶¶ 3-4.)

12 37. The class is sufficiently numerous. Based upon Defendant's records, Defendant
13 represented that there are approximately 194 Class Members as of the date of mediation. Plaintiff's
14 counsel believes that the data is reliable.

15 38. Plaintiff is typical of the Class. Plaintiff was an employee of Defendant. Plaintiff
16 worked during the class period. Plaintiff's claims are typical of the claims of the Class proposed in this
17 settlement. Like other class members, Plaintiff experienced work under policies and procedures
18 impacting wage and hour compliance. No unique defenses applicable to Plaintiff have been identified
19 that do not also exist as to other Class Members.

20 39. Common *issues* exist. Here, Class Members have shared a common interest in
21 determining whether Defendant violated wage and hour requirements under state and related federal
22 law, including the following issues: i. Whether or not Defendant paid proper wages to the Class; ii.
23 Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided
24 rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of
25 employment to former Class Members; v. Whether or not Defendant paid compensation timely
26 throughout Class Members' employment; vi. Whether or not Defendant provided accurate itemized
27 wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for
28 violation of California Labor Code § 203; viii. Whether or not Defendant reimbursed for necessary

1 business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendant engaged in
2 unlawful or unfair business practices affecting the Class in violation of California Business and
3 Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to
4 penalties pursuant to PAGA.

5 40. From our review of the documentation provided, we determined that for purposes of
6 these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the
7 same questions of liability, and applied to all Class Members. Because Class Members would have to
8 prove the same issues of law and fact to prevail, and because their potential legal remedies are identical,
9 it would be preferable to resolve all Class Members' claims by means of the Settlement than to require
10 each Class Member to litigate his or her individual claims. Therefore, common questions predominate
11 over any questions that may be unique to individual Class Members, and class-wide settlement is
12 superior to any other method of resolution.

13 41. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes
14 its adequacy to represent the Class. Plaintiff's counsel has no known conflicts of interest with absent
15 Class Members. Plaintiff has demonstrated, through participation in this action, a willingness to serve
16 as a representative for the Class. Plaintiff has no known conflicts of interest with absent Class
17 Members and has agreed to place the class's interests above Plaintiff's own. Plaintiff's actions also
18 demonstrate adequacy.

19 42. By consolidating all of these potential individual actions into one proceeding, this
20 Court's use of the class action device enables it to manage this litigation in a manner that serves the
21 economics of time, effort and expense for the litigants and the judicial system. Absent class treatment,
22 similarly-situated employees with small but potentially meritorious claims for damages would, as a
23 practical matter, have no means of redress because of the time, effort and expense required to prosecute
24 individual actions. Moreover, in the context of settlement, superiority concerns are almost non-
25 existent, since case management is controlled and a methodology for trial need not be identified.

26
27 RELATION TO PROPOSED CY PRES RECIPIENT

28 43. **CMO ¶¶ G (3) (c) (i-iv)** I made reasonable inquiry of Plaintiff and other members at

1 Tunyan Law, APC, and to the best of my knowledge, neither I, Plaintiff, nor other members at Tunyan
2 Law, APC have any relationship with the proposed *Cy Pres* recipient Legal Aid Society of San
3 Bernardino. I believe that redistributing the uncashed funds to this *Cy Pres* recipient will serve justice
4 since in addition to class members who will get their portion of settlement, the undistributed funds will
5 serve low-income families who need free legal services. Consistent with the purpose of Section 384,
6 Legal Aid Society of San Bernardino was selected because its mission is to provide free legal services to
7 low-income families in San Bernardino and Riverside Counties.

8
9 EXHIBITS

10 44. As noted above, a true and correct copy of the JOINT STIPULATION OF CLASS AND
11 PAGA REPRESENTATIVE ACTION SETTLEMENT is attached hereto as **Exhibit “1.”** The
12 Settlement includes Exhibit B. Exhibit B and Exhibit D (the “Notice Packet”).

13 45. Attached hereto as **Exhibit “2”** is a true and correct copy of the submission of the
14 settlement to the Department of Industrial Relations, through its online submission portal.

15 PAGA SETTLEMENT NOTIFICATION TO DIR

16 46. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement
17 through the online submission portal.

18 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
19 true and correct. Executed this 29th day of April 2024, at Glendale, California.

20
21 

22
23 _____
LILIT TUNYAN, “Declarant”

Exhibit “1”

Lilit Tunyan (SBN 329351)
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Artur Tunyan (SBN 349174)
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Attorneys for Defendant WALKER EVANS ENTERPRISES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a California
Corporation; and DOES 1 through 50, inclusive,

Defendants

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. 1]

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: March 27, 2023
Trial: Not Set

**JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

This Joint Stipulation of Class and PAGA Representative Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff SCOTT ALLEN ATHEY, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representatives”), and Defendant WALKER EVANS ENTERPRISES (“Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is the First Amended Complaint.

2. For purposes of this Settlement, this matter, entitled *Athey v. Walker Evans Enterprises*, Case No. CVRI2301534, is referred to herein as the “Action.”

3. For purposes of this Settlement, the “Class Period” is September 22, 2021 to August 31, 2023.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked in California during the Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. Defendant’s best estimate is that the Class included approximately 194 individuals.

5. For purposes of this Settlement, “Class Counsel” means TUNYAN LAW, APC.

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.

7. For purposes of this Settlement, “Response Deadline” means forty-five (45) days after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of forty-five (45) calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be

1 extended only as expressly described herein.

2 8. For purposes of the Settlement, "Defendant's Counsel" means VARNER & BRANDT
3 LLP.

4 9. For purposes of this Settlement, "PAGA Allocation" means the amount that the Parties
5 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
6 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The Parties have agreed that the PAGA
7 Allocation will be \$10,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five
8 Percent (75%), or \$7,500.00, of the PAGA Allocation will be paid to the LWDA ("PAGA Penalty
9 Payment"), and Twenty Five Percent (25%), or \$2,500.00, of the PAGA Allocation will be included in the
10 Net Settlement Amount for PAGA Employees ("PAGA Settlement Payment").

11 10. For purposes of this Settlement, "PAGA Period" means the period between March 27,
12 2022 to August 31, 2023.

13 11. For purposes of this Settlement, "PAGA Employee" means all Class Members that worked
14 at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all
15 PAGA Employees are "aggrieved employees" as defined pursuant to PAGA. PAGA Employees cannot
16 opt out of the settlement of the PAGA claim.

17 12. For purposes of this Settlement, "PAGA Pay Periods" means the number of pay periods
18 each PAGA Employee worked during the PAGA Period.

19 13. For purposes of this Settlement, "PAGA Representatives" means Plaintiff.

20 14. For purposes of this Settlement, "Released PAGA Claims" means all claims asserted
21 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representatives in the
22 Notice to the LWDA and are alleged in the Complaint. Plaintiff's Notice to the LWDA is attached hereto
23 as **Exhibit "A"**.

24 15. For purposes of this Settlement, "Released PAGA Claims Period" means the period
25 between March 27, 2022 through August 31, 2023.

26 16. For purposes of this Settlement, "Settlement Payments" means all of the payments to
27 Settlement Class Members (the "Settlement Class Payments") and all of the payments to the PAGA
28 Employees (the "PAGA Settlement Payment").

STIPULATED BACKGROUND

17. On March 27, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On May 30, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA") and limiting class period to start from September 22, 2021. (The "Action.").

18. The parties agree that Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA") by submission of the notice to the LWDA and Defendant on March 24, 2023.

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, the Parties stipulate and agree that:

(a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.

(b) There are common questions of law and fact including, but not limited to, the following:

- 1) Whether or not Defendant paid proper wages to the Class;
- 2) Whether or not Defendant provided meal periods to the Class;
- 3) Whether or not Defendant provided rest periods to the Class;
- 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
- 5) Whether or not Defendant paid compensation timely throughout Class

Members' employment;

- 6) Whether or not Defendant provided accurate itemized statements to the Class;
- 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
- 8) Whether or not Defendant maintained requisite records;
- 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
- 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

20. Should, for whatever reason, the Settlement not become effective, class certification as part of the Settlement shall have no bearing on and shall not be admissible in connection with whether the Class Members and/or the class claims should be certified in a non-settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose class certification in this or any other action should this Settlement not become effective.

21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this

lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class and PAGA employees in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

- (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Settlement Class, PAGA Employees, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

- 1 (b) Effective Date: The "Effective Date" of the Settlement will be the last to
2 occur of the following: (a) if there are no objections to the settlement,
3 then the date of final approval by the Court; (b) if there are objections to
4 the settlement, and if an appeal, review or writ is not sought from the
5 order granting final approval of the settlement, the 31st day after service
6 of notice of entry of the order; or (c) if an appeal, review or writ is
7 sought from the order, the day after the order is affirmed or the appeal,
8 review or writ is dismissed or denied, and the order is no longer subject
9 to further judicial review. Prior to the Effective Date of the settlement,
10 Defendant will not be required to fund this settlement, in whole or in
11 part, through the claims administrator or any third party.
- 12 (c) Gross Settlement Amount: Defendant's maximum total payment under the
13 Settlement, including all attorney's fees and costs, the Service Payment to the
14 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
15 any other payments provided by this Settlement, is One Hundred and Seventy-Five
16 Thousand Dollars and Zero Cents (\$175,000.00) ("Gross Settlement Amount"),
17 subject to the Escalator Clause and except that, to the extent that any portions of the
18 Class Members' Settlement Payments constitute wages, Defendant will be
19 separately responsible for any employer payroll taxes required by law, including
20 the employer FICA, FUTA, and SDI contributions.
- 21 (d) Escalator Clause: The Gross Settlement Amount is based on Defendant's
22 approximations referenced in Paragraph 26 (c) above and an extrapolation that the
23 Class Members worked a total of approximately 10,469 workweeks for 194
24 employees (i.e., estimated through August 31, 2023.) Should the qualifying
25 Workweeks worked by the Class Members during the Class Period ultimately
26 increase by more than 10% (i.e., by more than 1,047 Workweeks), Defendant shall
27 have the option to either: (1) increase the Gross Settlement Amount on a pro-rata
28 basis equal to the percentage increase in the number of Workweeks worked by the

1 Class Members above 10%; or (2) choose to have the Release Period end on the
2 date on which the qualifying Workweeks worked by the Class Members during the
3 class period reached 11,516, whichever is sooner (the "Escalator Clause").

4 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
5 revert to Defendant.

6 (f) No Claims Required: Class Members will not be required to submit a claim to
7 receive their Settlement payment.

8 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
9 deducting from the Gross Settlement Amount (\$175,000.00) the following sums,
10 subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of
11 the Gross Settlement Amount, or \$58,333.33); (2) reasonable litigation costs (not to
12 exceed \$22,000.00); (3) the Service Payment to Plaintiff in the amount of
13 \$10,000.00; (4) the PAGA Penalty Payment in the amount of \$10,000.00 (which is
14 75% of the PAGA Allocation); and (5) costs of settlement administration
15 (estimated not to exceed \$15,000). Settlement Payments to the Class Members and
16 PAGA Employees will be calculated by the Settlement Administrator and paid out
17 of the Net Settlement Amount as set forth below.

18 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
19 Settlement Class Members' Settlement Payments constitute wages, Defendant will
20 be separately responsible for any **employer** payroll taxes required by law,
21 including the employer FICA, FUTA, and SDI contributions. Except for any
22 employer payroll taxes, it is understood and agreed that Defendant's maximum
23 total liability under this Settlement shall not exceed the Gross Settlement Amount.
24 The Settlement Administrator will calculate and submit the Defendant's employer
25 share of payroll taxes after advising Defendant of the total amount owed, in
26 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
27 Defendant in that amount when the Gross Settlement Amount is delivered to the
28 Settlement Administrator.

1 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
2 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
3 Member (i.e., those Class Members who do not opt out of the Class Settlement, as
4 defined above) will be paid a pro-rata share of the Net Settlement Amount, less the
5 PAGA Settlement Payments totalling \$2,500, as calculated by the Settlement
6 Administrator. The pro-rata share will be determined by comparing the individual
7 Settlement Class Member's Covered Workweeks employed during the Class
8 Period in California to the total Covered Workweeks of all the Settlement Class
9 Members during the Class Period as follows: [Workweeks worked by a Settlement
10 Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class
11 Members] × [Net Settlement Amount – all PAGA Settlement Payments] =
12 individual Settlement Payment for a Settlement Class Member. Settlement Class
13 Payments in the appropriate amounts will be distributed by the Settlement
14 Administrator by mail to the Settlement Class Members.

15 (j) PAGA Payments: PAGA Settlement Payments will be paid out of the
16 Net Settlement Amount. Each PAGA Employee will be paid a pro-rata
17 share of the PAGA Employees' PAGA Settlement Payment, as
18 calculated by the Settlement Administrator. Class Members will not be
19 permitted to exclude themselves from this portion of the Settlement. The
20 pro-rata share will be determined by comparing the individual PAGA
21 Employees' PAGA Pay Periods during the PAGA Period to the total
22 PAGA Pay Periods of all the PAGA Employees during the PAGA Period
23 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum
24 of all PAGA Pay Periods worked by all PAGA Employees] × [PAGA
25 Settlement Payment to Employees, i.e. \$2,500.00] = individual PAGA
26 Employee's portion of the PAGA Settlement Payment. PAGA
27 Settlement Payments to PAGA Employees in the appropriate amounts
28 will be distributed by the Settlement Administrator by mail to the PAGA

1 Employees at the same time Settlement Class Payments issue to the
2 Settlement Class. The LWDA's PAGA Penalty Payment will issue to
3 the LWDA at the same time Settlement Payments issue to the Settlement
4 Class.

5 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
6 Payments will be allocated as follows: 20% to wages, 40% to penalties and 40% to
7 interest. The PAGA Settlement Payment shares to PAGA Employees will be
8 entirely allocated to penalties. Appropriate federal, state and local withholding
9 taxes will be taken out of the wage allocations, and each Class Member will
10 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
11 The employer's share of payroll taxes and other required withholdings will be paid
12 as set forth above, including but not limited to the Defendant's FICA and FUTA
13 contributions, based on the payment of claims to the Class Members. IRS Forms
14 1099 will be issued to each Class Member reflecting the payments for penalties and
15 interest. Class Members are responsible to pay appropriate taxes due on the
16 Settlement Payments they receive. To the extent required by law, IRS Forms 1099
17 and W-2 will be issued to each Class Member with respect to such payments. All
18 PAGA Settlement Payments will be allocated as 100% penalties.

19 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
20 Payments to individual Class Members shall be deemed to be paid to such Class
21 Member solely in the year in which such payments actually are received by the
22 Class Member. It is expressly understood and agreed that the receipt of such
23 Settlement Payments will not entitle any Class Member to additional compensation
24 or benefits under any company bonus, contest or other compensation or benefit
25 plan or agreement in place during the period covered by the Settlement, nor will it
26 entitle any Class Member to any increased retirement, 401(k) benefits or matching
27 benefits or deferred compensation benefits. It is the intent that the Settlement
28 Payments provided for in this Settlement are the sole payments to be made by

1 Defendant to the Class Members, and that the Class Members are not entitled to
2 any new or additional compensation or benefits as a result of having received the
3 Settlement Payments (notwithstanding any contrary language or agreement in any
4 benefit or compensation plan document that might have been in effect during the
5 period covered by this Settlement).

6 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
7 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
8 of the Gross Settlement Amount (\$58,333.33) and reimbursement of litigation
9 costs and expenses not to exceed \$22,000.00. Approved attorney's fees and
10 litigation costs shall be paid at the same time Settlement Payments issue to the
11 Settlement Class.

12 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
13 Defendant will not object to Class Counsel's application for a payment of
14 \$10,000.00 to Plaintiff for service as a Class Representative ("Service Payment").
15 It is understood that the Service Payment is in addition to the individual Settlement
16 Payment to which a Class Representative is entitled to along with the other Class
17 Members. In exchange, Plaintiff have agreed to release all claims, demands,
18 rights, liabilities and causes of action of every nature and description
19 whatsoever, known or unknown, asserted or that might have been asserted,
20 whether in tort, contract, or for violation of any state or federal statute, rule or
21 regulation arising out of, relating to, or in connection with any act or omission
22 by or on the part of any of the Released Parties committed or omitted prior to
23 the execution hereof ("Plaintiff's Released Claims"). Plaintiff and Defendant
24 both stipulate and agree that each of them have expressly waived and
25 relinquished, to the fullest extent permitted by law, the provisions, rights and
26 benefits of Section 1542 of the California Civil Code, or any other provision
27 under federal or state law, which provides:

28 A general release does not extend to claims which the creditor or releasing party

1 does not know or suspect to exist in his or her favor at the time of executing the
2 release, which if known by him or her must have materially affected his or her
3 settlement with the debtor or released party.

4 The Parties understand that the General Release does not release any claims that
5 they cannot lawfully release. It is also understood and agreed by Defendant that
6 by this release Plaintiff is not waiving unemployment and/or any state disability
7 insurance benefits pursuant to the terms of applicable state law, workers'
8 compensation claims, any rights which are not subject to waiver as a matter of
9 law.

10 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
11 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
12 correctly characterizing this compensation on personal income tax returns for tax
13 purposes and for paying any taxes on the amounts received. Plaintiff agrees not to
14 opt out or object to the Service Payment as the Class Representative.

15 (p) Settlement Administrator: The Settlement Administrator will be ILYM Group,
16 Inc. Settlement Administration Costs are estimated not to exceed \$15,000. ILYM
17 Group, Inc.'s low bid for settlement administration services in the amount of
18 \$ 6,950 was selected as the lowest bid from a competitive bidding process.

19 (q) Funding of Settlement Account: Defendant will fund the settlement
20 account and distribute Gross Settlement Amount to the Settlement
21 Administrator within twenty-one (21) days of the Effective Date.

22 (r) Distribution and Mailing of Settlement Payments: The Settlement
23 Administrator shall mail the Settlement Payments to the Class Members within
24 fourteen (14) calendar days of receipt of the Gross Settlement Amount from
25 Defendant, provided that the Settlement Administrator has delivered to the
26 Parties an accounting of the amounts to be paid by Defendant pursuant to the
27 terms of this Settlement.

28 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the

1 material terms of the proposed Settlement, along with instructions about how to
2 object or request exclusion from the proposed class action Settlement ("Notice").
3 For each Class Member, there will be pre-printed information on the mailed
4 Notice, based on Defendant's records, stating the Class Member's Covered
5 Workweeks during the Class Period and the estimated total Settlement Payment
6 under the Settlement, including the Settlement Class Payment and the PAGA
7 Settlement Payment that will be distributed irrespective of any exclusion request.
8 The pre-printed information based on Defendant's records shall be presumed to be
9 correct. A Class Member may dispute the pre-printed information on the Notice as
10 to his or her Covered Workweeks during the Class Period. Class Members must
11 submit any dispute regarding the information on the Notice as to his or her
12 Covered Workweeks within the Response Deadline.

13 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

14 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
15 Class Members submitting a request for exclusion will nevertheless receive their
16 pro-rata share of the PAGA Settlement Payment. If the Court approves the
17 compromise of the PAGA Claim, all Class Members are bound by the Court's
18 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
19 California Labor and Workforce Development Agency at or before the time
20 Plaintiff files the motion for preliminary approval.

21 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
22 Defendant's records used to calculate Covered Workweeks, the Parties' counsel
23 and the Settlement Administrator will review Defendant's records and any
24 information or documents submitted by the Class Member in an attempt to resolve
25 the dispute informally. If the dispute cannot be resolved informally by the Parties'
26 counsel and the Settlement Administrator, the dispute, and all documents
27 pertaining to the dispute, will be submitted to the Court for final resolution. The
28 Class Member must submit information or documents supporting his or her

1 position to the Settlement Administrator prior to the expiration of the Response
2 Deadline. Information or documents submitted after the expiration of the
3 Response Deadline will not be considered by the Settlement Administrator, unless
4 otherwise agreed to by the Parties.

5 (w) Right of Class Member to Request Exclusion from the Settlement: Any
6 Class Member may request to be excluded from the Class by returning a
7 request for exclusion to the Settlement Administrator within the
8 Response Deadline. The form of Request for Exclusion that will accompany
9 the Notice is attached hereto as **Exhibit "C."** The Request for Exclusion form
10 accompanying the Notice will be pre-printed with the Class Member's name
11 and address to facilitate identification by the Settlement Administrator. The
12 Class Member must sign the Request for Exclusion Notice and include the last
13 four digits of their social security number to confirm identity or Employee ID.
14 If the Class Member does not have a social security number and Employee ID,
15 the Class Member must contact the Settlement Administrator to arrange for an
16 alternative method of verifying identity. The Notice will advise Class Members
17 of these requirements. Any Class Member who timely requests exclusion in
18 compliance with these requirements (i) shall not have any rights under this
19 Settlement other than a right to receive a pro-rata share of the portion of the
20 PAGA payment allocated to the Class Members if the Class Member is also
21 PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments
22 under this Settlement other than as stated in (i) in this paragraph; and (iii) shall
23 not be bound by this Settlement or the Court's Order and Final Judgment other
24 than as it applies to the PAGA Claim.

25 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
26 Member may object to the Settlement. To object, the Class Member may (1)
27 appear in person (including through an audio or video call appearance as allowed
28 by the Court) at the Final Approval Hearing to explain any objection, (2) have an

1 attorney object for the Class Member, or (3) submit a simple written brief or
2 statement of objection to the Settlement Administrator in the form attached hereto
3 as **Exhibit “D”**. If any Class Member chooses to submit a written objection not in
4 the form attached hereto as **Exhibit “D”**, the written objection should contain
5 sufficient information to confirm the identity of the objector and the basis of the
6 objection, including (1) the full name of the Settlement Class Member; (2) the
7 signature of the Settlement Class Member; (3) the grounds for the objection; and
8 (4) be postmarked within the Response Deadline to permit adequate time for
9 processing and review by the Parties of the written statement or objection. Class
10 Counsel shall ensure that any written objections are transmitted to the Court for the
11 Court’s review (either by Class Counsel or as an attachment to declaration from the
12 Settlement Administrator). Regardless of the form, an objection alone will not
13 satisfy the requirement that a Settlement Class Member must either make a timely
14 complaint in intervention before final judgment or by file a motion to set aside and
15 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
16 appeal entry of judgment approving this Settlement, as is required under the
17 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.
18 5th 260 (2018). A Class Member who does not object prior to or at the Final
19 Approval Hearing, will be deemed to have waived any objections and will be
20 foreclosed from making any objections (whether at the Final Approval Hearing, by
21 appeal, or otherwise) to the Settlement. If the objecting Class Member does not
22 formally intervene in the action or move to set aside any judgment and/or the Court
23 rejects the Class Member’s objection, the Class Member will still be bound by the
24 terms of this Agreement. Class Counsel and Defendant’s Counsel may, at least
25 five (5) calendar days (or some other number of days as the Court shall specify)
26 before the final approval hearing, file responses to any written objections submitted
27 to the Court.

28 (y) Notice to LWDA: Plaintiff will provide notice of the settlement and submit

1 Settlement Agreement to the LWDA on or before the date Plaintiff files the motion
2 seeking preliminary approval pursuant to Cal. Lab. Code 2699(1)(2), (1)(4) and
3 provide proof of submission to the court.

4 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

5 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
6 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
7 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
8 both in English and Spanish, to the Class Members.

9 28. The Settlement Administrator will independently review the Covered Workweeks
10 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
11 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
12 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
13 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
14 duties.

15 29. In accordance with the terms of this Settlement, and within fourteen (14) calendar days of
16 receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send
17 out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will
18 be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the
19 Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will
20 have continuing jurisdiction over the terms and conditions of this Settlement until all payments and
21 obligations contemplated by this Settlement have been fully carried out. Within fourteen (14) calendar
22 days of receipt of the Gross Settlement Amount from Defendant the Settlement Administrator will also
23 distribute the Service Payment to Plaintiff, attorney's fees and costs to Class counsel, PAGA penalty
24 payment to LWDA and the Settlement Administrator's fees.

25 30. The Settlement Administrator will post the court orders granting preliminary and final
26 approval of the Settlement and final judgment approving the Settlement on the Settlement Administrator's
27 website for a period of not less than 90 calendar days after the final judgment is entered. The address of
28 that website will be included in the Notice.

ATTORNEY'S FEES AND COSTS

31. In consideration for resolving this matter and in exchange for the release of all claims by the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount (\$58,333.33 of \$175,000.00) and litigation costs not to exceed \$22,000.00. The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and administration of the Settlement.

THE NOTICE PROCESS

32. A Notice in approximately the form attached hereto as **Exhibit “B”**, the Request for Exclusion in approximately the form attached hereto as **Exhibit “C”** and the Objection Form in approximately the form attached hereto as **Exhibit “D”** (referred to jointly below as the “Notice packet”) and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice packet shall be translated into Spanish so that Spanish and English language versions of the Notice packet are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

(a) Within 15 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's location in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written

1 agreement of counsel for the Parties or Court order, the Settlement Administrator
2 will keep this database confidential and secure and use it only for the purposes
3 described herein, and will return this database to Defendant upon final approval of
4 the settlement or destroy electronic records containing the database after the
5 Settlement is final and all payments are distributed as required under this
6 Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized
7 data showing the workweeks worked by each Class Member, with Class Member
8 identity concealed through use of an employee number or number assigned by the
9 Settlement Administrator.

- 10 (b) Within 14 calendar days after the Class database is provided to the Settlement
11 Administrator, the Settlement Administrator will mail the Notices to the Class
12 Members by First Class United States mail.
- 13 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
14 the initial Response Deadline shall be resent to the forwarding address, if any, on
15 the returned envelope. A returned Notice will be forwarded by the Settlement
16 Administrator any time that a forwarding address is provided with the returned
17 mail. If there is no forwarding address, the Settlement Administrator will do a
18 computer search for a new address using the Class Member's social security
19 number or other information. In any instance where a Notice is re-mailed, that
20 Class Member will have until the extended Response Deadline as described above.
21 A letter prepared by the Settlement Administrator will be included in the re-mailed
22 Notice in that instance, stating the extended Response Deadline if different than the
23 original Response Deadline. Upon completion of these steps by the Settlement
24 Administrator, Defendant and the Settlement Administrator shall be deemed to
25 have satisfied their obligations to provide the Notice to the affected Class Member.
26 The affected Class Member shall remain a member of the Settlement Class and
27 shall be bound by all the terms of the Settlement and the Court's Order and Final
28 Judgment.

(d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

33. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

35. Funds from unclaimed, uncashed or abandoned Settlement Payment checks, based on a 180-day void date, shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient"). Consistent with the purpose of Section 384, Legal Aid Society of San Bernardino was selected because its mission is to provide equal access to justice by offering legal education, counsel, and advocacy services for those in need, irrespective of their financial capabilities. The Parties, Class Counsel and Defense Counsel represent, by their signatures hereon, that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to

1 be made to Class Members (to be identified anonymously by employee number or other identifier). A
2 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
3 Defendant's Counsel and filed with the Court by Class Counsel.

4 **RELEASE BY THE CLASS**

5 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
6 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
7 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
8 and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- 9 (a) **Identity of Released Parties.** The released parties are Defendant and its past,
10 present and/or future officers, directors, managers, employees, and agents,
11 including, but not limited to, Walker R. Evans, Phyllis E. Evans, and Randal C.
12 Anderson (collectively "Releasees").
- 13 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
14 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
15 obligation to provide to the Settlement Administrator a sum in the amount required
16 to satisfy all required payments and distributions pursuant to this Settlement and
17 the Order and Judgment of final approval. Class Members will not release the
18 Released Claims or Released PAGA Claims until both the Effective Date of the
19 Settlement has occurred, and Defendant has paid all amounts owing under the
20 Settlement.
- 21 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
22 himself and each of their heirs, assigns and successors, unless he or she has
23 submitted a timely and valid Request for Exclusion (which will not effectuate an
24 opt-out from the release of Released PAGA Claims), hereby releases Releasees
25 from the following claims for the entire Class Period:
- 26 1) any and all claims that were either alleged, or that reasonably could have
27 been alleged based on the factual allegations contained in Plaintiff's
28 operative complaint, including, but not limited to, claims pursuant to

California Labor Code sections 201, 202, 203, 204, 210, 226, et seq., 226.2, 226.3, 226.7, 510, 512, 1174, et seq., 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2100, 2101, 2102, 2103, 2104, 2109, 2800, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6409.6, 2698, et seq., 2699, et seq., 2699.3, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, Business & Professions Code § 17200, et seq., and/or which are alleged in the First Amended Complaint and Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit A**) within the Class Period ("Released Claims"),

2) as to *all* Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit A**) and the First Amended Complaint in this matter ("Released PAGA Claims").

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class and PAGA Representative Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class

Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;

- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

39. Defendant and its their counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

40. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and

1 related issues;

- 2 (g) Adjudging that notwithstanding the submission of a timely request for exclusion,
3 Class Members are still bound by the settlement and release of the Released PAGA
4 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
5 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
6 the Released PAGA Claims, and further affirms that the State's claims for civil
7 penalties pursuant to PAGA are also extinguished;
- 8 (h) Directing the posting of the settlement documents provided in Paragraph 30 and
9 final judgment on a website maintained by the Settlement Administrator for a
10 period of not less than 90 calendar days after entry of final judgment.

11 Any revised final judgments will also be provided to Defendant's Counsel for review and approval before
12 they are submitted to the Court.

13 **NULLIFICATION AND TERMINATION**

14 41. This Settlement will be null and void if any of the following occur: (a) the Court should for
15 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
16 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
17 adjustments made to the attorney's fees and costs or granting of Service Payment or settlement money
18 distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final
19 judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final
20 for any other reason.

21 42. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole
22 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
23 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
24 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
25 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than fifteen
26 (15) days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant,
27 Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the
28 settlement administration.

43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

44. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

45. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

46. The Parties and their respective counsel represent, covenant, and warrant that they have 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 except as set forth herein.

NO ADMISSION OF LIABILITY

47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

48. The Parties agree that following entry of the Final Approval Order and Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

49. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

Class Counsel:

Lilit Tunyan
ltunyan@tunyanlaw.com
 Artur Tunyan
atunyan@tunyanlaw.com
TUNYAN LAW, APC
 535 N. Brand Blvd., Suite 285
 Glendale, California 91203
 Telephone: (323) 410-5050

Counsel for Defendant:

Richard D. Marca
Richard.Marca@varnerbrandt.com
 Alisha Maline
Alisha.Maline@varnerbrandt.com
VARNER & BRANDT LLP
 3750 University Avenue, Floor 6
 Riverside, CA 92501
 Telephone: (951) 274 -7777
 Facsimile: (951) 274- 7770

CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

51. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees.

BINDING ON ASSIGNS

55. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS COUNSEL SIGNATORIES

56. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

57. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be

deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

CONFIDENTIALITY & PUBLIC COMMENT

58. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members who are allowed to discuss the terms or the fact of the settlement with their immediate family members, their respective accountants or lawyers as necessary for tax purposes; or other Class Members, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings.

FINAL JUDGMENT

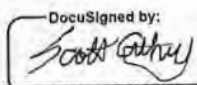
59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

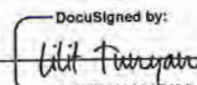
Plaintiff & Class Representative:

Dated: 4/4/2024 | 7:31 PM PDT

By: 
SCOTT ALLEN ATHEY

Plaintiff's Counsel:

Dated: 4/4/2024 | 7:33 PM PDT

TUNYAN LAW, APC
By: 
Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff SCOTT ALLEN ATHEY

1 **Defendant:**

2 Dated: April 25, 2024

WALKER EVANS ENTERPRISES

3
4 By: Victoria Lee
5 Print Name
6 Victoria Lee
7 Signature
8 Finance Manager
9 Title

10 **Defendant's Counsel:**

11 Dated: April 25, 2024

VARNER & BRANDT LLP

12
13 By: 
14 Richard D. Marca
Alisha Maline
15 Attorneys for Defendant
16 WALKER EVANS ENTERPRISES
17
18
19
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21
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23
24
25
26
27
28

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.

1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 24, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

VIA ONLINE SUBMISSION

Department of Industrial Relations
Division of Occupational Safety and Health
464 West 4th Street, Suite 332
San Bernardino, CA 92401
DOSHSB@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Walker Evans Enterprises
Agent for Service of Process
Phyllis E. Evans
2304 Fleetwood Drive
Riverside, CA 92509

VIA CERTIFIED MAIL

Return Receipt Requested

Attorneys for Walker Evans Enterprises
VARNER & BRANDT LLP
Richard Marca
3750 University Avenue, Floor 6
Riverside, CA 92501

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698, 2699 ET SEQ.**

Re: *Scott Allen Athey v. Walker Evans Enterprises*

To Whom It May Concern:

Please be advised that my office has been retained by Scott Allen Athey ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against his former employer Walker Evans Enterprises (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a quality controller from approximately April 12, 2021 to February 12, 2022, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and over 8 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including straight time wages and overtime wages). Throughout the statutory period, Plaintiff and the Aggrieved Employees received additional remuneration in the form of bonuses. However, Defendant has not compensated Plaintiff and the Aggrieved Employees at the proper overtime and sick pay rate. Defendant did not include the bonuses paid to Plaintiff and the Aggrieved Employees in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Defendant required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shift or continue working after the scheduled shift. Plaintiff was required to arrive at least 10-15 minutes earlier than his scheduled shift to perform preparatory work prior to clocking in to work such as turning on the computer, setting things to prepare for work. Additionally, Plaintiff and the Aggrieved Employees were also required to arrive earlier than their scheduled time to stay in line with other employees to use the timeclock machine to clock in to work on time. Defendant failed to compensate Plaintiff and the Aggrieved Employees for that time. Plaintiff and the Aggrieved Employees were also required to clock out at the end of their shifts and continue working to clean up the workplace since Plaintiff and the Aggrieved Employees were not always authorized for overtime work and had to do the cleanup work off-the-clock. Defendant also required Plaintiff and the Aggrieved Employees to clock out but continue working through meal periods. Plaintiff and the Aggrieved Employees were required to communicate with their supervisors using their personal cellular telephones for work purposes at home after their scheduled work time. Lastly, Defendant would modify Plaintiff's and the Aggrieved Employees' time records to reflect that they worked 5 hour shifts instead of 6 hours by implementing unlawful time shaving as well as to reflect on the records that meal periods were taken when they were not actually taken. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees

are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not allow Plaintiff and the Aggrieved Employees to leave the warehouse premises, and thus prevented duty-free meal periods for the Aggrieved Employees. Plaintiff's meal periods were always interrupted by Defendant's owner and co-workers, taken late or missed. Often times Defendant required Plaintiff and the Aggrieved Employees to clock out for meal periods but continue working so that it appears on the records as they took their meal periods. In those occasions when Plaintiff or the Aggrieved Employees did not clock out for meal periods as they did not actually take those meal periods, Defendant would manually alter the records of the Aggrieved Employees to reflect the meal periods which were not actually taken. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would often times miss their first and second rest periods. Most importantly, Plaintiff and the Aggrieved Employees were not authorized and allowed to leave the warehouse premises to take their rest periods outside. Hence, Plaintiff and the Aggrieved Employees were prevented from taking duty-free rest periods. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to

dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to use their personal cell phones for work to receive and make work related calls and receive work related text messages from supervisors, managers and co-workers. Further, Plaintiff and the Aggrieved Employees were required to use their personal vehicles for work to drive to Defendant's second location to pick up supplies. Plaintiff and the Aggrieved Employees were also required to purchase tools and safety equipment necessary to perform their work. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for usage of personal cell phones, mileage for using their personal vehicles as well as tools. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Take All Feasible Means to Reduce Excessive Heat in Workplace

In accordance with the Section 15 (a) of the applicable wage order issued by the Industrial Welfare Commission ("IWC"), The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. Further Section 15 (b) of IWC states that if excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

However, Defendant has not taken feasible means to reduce such excessive heat. Defendant did not have proper air conditioning and air ventilation, and temperature during summer times in the warehouse became as hot as 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat.

Labor Code § 1199 (c) provides that employers, persons, officers, agents, or other employees are guilty of a misdemeanor and subject to a fine of at least \$100 for violating, refusing or neglecting to comply with any provision of the particular Labor Code chapter or any order or ruling of the Commission.

Section 20 of IWC provides that in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of initial violation - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages, and subsequent violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

Failure to Provide Safe and Healthful Work Environment

Labor Code § 6400 provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

Labor Code § 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6402 provides that no employer shall require or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Labor Code § 6403 provides no employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful.

Defendant failed to furnish employees with safety devices and implement necessary processes and practices necessary to prevent exposure to COVID-2019. Defendant failed to necessitate the use of and provide the appropriate personal protective equipment.

Defendant failed to establish infection prevention measures such as encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces. Defendant failed to take safety measures for COVID pre-screening prior to entering the premises.

Defendant failed to take individual measures and screening to provide illness prevention training.

Defendant failed to provide all the protective equipment necessary for the work performed in the warehouse.

Defendant failed to provide training to employees on how to use personal protective equipment and safety resources. Defendant failed to provide training materials and conduct training for employees regarding health and safety measures and usage and maintenance of equipment. As a result, employees were exposed to the risk of injuries. There was an incident when Defendant's employee injured her finger as she was not trained how to use the press equipment.

Defendant failed to establish proper safety procedures and take proper health and safety measures. Defendant used to keep racks in the warehouse which were not bolted down exposing employees to the risk of injuries. Defendant also exposed employees to work in the areas that contained acetone. Defendant mandated employees to wash the shocks in acetone and alcohol and blow dry them in the warehouse with no ventilation and air conditioning. As a result, employees had chemical burns caused by the acetone.

Defendant also failed to establish and properly supervise employees on enforcement of safety and injuries reporting procedures.

Failure to Implement and Maintain an Effective Written Injury Prevention Program

Labor Code § 6401.7 provides that every employer shall establish, implement, and maintain an effective injury prevention program.

Defendant failed to establish and maintain a program that will prevent Plaintiff and Aggrieved Employees from injuries that might be caused by exposure to COVID-2019 as well as other health and safety hazards in the workplace. Specifically, Defendant failed to establish adequate injury prevention program as well infection prevention measures such as properly training employees how to use safety equipment, reporting on hazards, encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces.

Failure to Provide Notice of a Potential COVID-19 Workplace Exposure

Labor Code § 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.
- (2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).
- (3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- (4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

Despite the fact that, based on information and belief, Defendant was notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019, Defendant failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019. In opposite, Plaintiff, who contracted COVID, was required to arrive to work and was disciplined for staying home for three days when he tested positive for COVID.

Failure to Provide Access to Shade and Failure to Implement Heat Illness Prevention Plan

California Code of Regulations title 8, Section 3395(d) provides that shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.

California Code of Regulations. title 8, Section 3395(d) also provides that employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.

California Code of Regulations title 8, Section 3395(i) provides that the employer shall establish, implement, and maintain, an effective heat illness prevention plan.

However, Defendant failed to maintain proper ventilation and air conditioning at the warehouse and has not taken feasible means to sufficiently reduce such excessive heat. The temperature in the warehouse was often times more than 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat, and Defendant failed to provide shade and to establish and maintain a heat illness prevention plan.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Retaliation for Complaining About Occupational Safety Hazards

Labor Code § 6310 provides that no person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges they have been retaliated against because they have filed or made known their intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

However, Defendant, on information and belief, retaliated against Aggrieved Employees for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

Labor Code § 6427 provides that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars (\$12,471) for each violation.

Labor Code § 6428 that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

Labor Code § 6429 that any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars (\$8,908) for each willful violation.

Failure to Provide Warehouse Quotas

Labor Code § 2100 provides that each employee of a warehouse that employs 100 employees, or a group of related warehouses that employ at least 1,000 employees may request and receive a written description of applicable quotas and work speed data. In fact, employers must give written quota descriptions to all new hires and current employees upon request. Further, pursuant to Labor Code § 2101 an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time to and from bathrooms), or compliance with occupational health and safety standards.

Defendant failed to provide a written description of applicable quotas and work speed data to employees.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.
9. IWC applicable order for failure to take all feasible means to reduce excessive heat in the workplace and provide suitable seats;
10. Labor Code § 640, 6401, 6402, 6403, 6404 for failure to provide safe and healthful work environment;
11. Labor Code § 6401.7 for failure to implement and maintain an effective written injury prevention program;
12. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure;
13. California Code of Regulations title 8, Section 3395(d) and (i) for failure to provide access to shade and failure to implement heat illness prevention plan;
14. Labor Code § 6310 for retaliation for complaining about occupational safety hazards.
15. Labor Code § 2100 for failure to provide warehouse quotas.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 1401, 2109, 2802, and 2699(f)(2), 6423, 6427, 6428, 6429.

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by the Aggrieved Employees or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new

claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Athey v. Walker Evans Enterprises
Riverside County Superior Court Case No. CVRI2301534

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF WALKER EVANS ENTERPRISES (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN SEPTEMBER 22, 2021 AND AUGUST 31, 2023 (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class and PAGA action lawsuit entitled *Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534 (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Harold W. Hopp, on <<FA DATE>>, at <<FA TIME>>, in Department 1 of the Riverside County Superior Court, 450 Main Street, Riverside, CA 92501, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion Form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator by completing and submitting the objection form (“Objection Form”), appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

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

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is September 22, 2021 to August 31, 2023.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$2,500 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you **ARE/ARE NOT** also a PAGA Employee who worked in the State of California at any time during the PAGA Period of March 27, 2022 through to August 31, 2023.

What is this case about?

In the Action, Plaintiff Scott Allen Athey (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failed to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Lilit Tunyan

ltunyan@tunyanlaw.com

Artur Tunyan

atunyan@tunyanlaw.com

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Telephone: (323) 410-5050

Defendant’s Counsel

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Riverside, CA 92501

Telephone: (951) 274 -7777

Facsimile: (951) 274- 7770

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$175,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff (\$10,000.00); (c) the Court-approved attorneys’ fees and costs to Class Counsel

("Class Counsel's Fees and Expenses") (\$58,333.33 in fees and up to \$22,000.00 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties (the "PAGA Penalty Payment") (\$10,000.00 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services ("Administrative Expenses") (estimated to be no more than \$6,950.00).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the "Settlement Class Members") will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$2,500.00 from the PAGA Settlement allocated to PAGA Employees (the "PAGA Settlement Payment"), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their "Individual Settlement Payment").

The "Net Settlement Amount" will be calculated by deducting from the Gross Settlement Amount the Class Counsel's Fees and Expenses, the Class Representative Service Payment, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the "Settlement Class Payments") and each PAGA Employee (the "PAGA Settlement Payments").

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$2,500.00 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$2,500.00 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The estimated average Settlement Share is approximately: \$[estimated average Settlement Share]
The estimated highest Settlement Share is approximately: \$[estimated average Settlement Share]
The estimated lowest Settlement Share is approximately: \$[estimated average Settlement Share]

According to Defendant's records:

- From September 22, 2021 to August 31, 2023 (i.e., the Class Period), you are credited as having worked [] Workweeks.
- From March 27, 2022 to August 31, 2023 (i.e., the PAGA Period), you are credited as having worked [] Pay Periods.

If you wish to dispute the Workweeks credited to you, you must submit a written letter ("Workweeks Dispute"), which must: (a) contain your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (b) contain the case name and number of the Action (Athey v. Walker Evans Enterprises, Case No. CVRI2301534; (c) contain a clear statement explaining the basis for your dispute; (d) attach any documentation that you have to support the dispute; and (e) be mailed or delivered to the Settlement Administrator, postmarked or delivered on or before [Response Deadline] at:

You must produce documentary evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution.

Settlement Share and Individual PAGA Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Settlement Share is estimated to be \$[]. The Settlement Share is subject to reduction for the employees share of taxes and withholdings with respect to the wages portion of the Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$.

The settlement approval process may take multiple months. Your Settlement Share and Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

For tax reporting purposes, the payments to Class Members will be allocated 20 as wages, 40% as penalties and 40% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient") which was selected because its mission is to provide equal access to justice by offering legal education, counsel, and advocacy services for those in need, irrespective of their financial capabilities. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement will be will be the last to occur of the following: (a) if there are no objections to the settlement, then the date of final approval by the Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the order granting final approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Defendant will fund the settlement account and distribute the Gross Settlement Amount to the Settlement Administrator within twenty-one (21) days of the Effective Date. The Settlement Administrator shall mail the Settlement Payments to the Class Members only AFTER the payment by Defendant of the Gross Settlement Amount.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Service Payment, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$58,333.33 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$22,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Payment made to Plaintiff in the amount of \$10,000.00, for his efforts in bringing the Action on behalf of the Class and for general release of his known and unknown claims in addition to claims released by each class member. The Parties estimate the cost of administering the Settlement will not exceed \$ 6,950.00. The PAGA Penalty Payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$10,000.00 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative,

the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) **Identity of Released Parties.** The released parties are Defendant and its past, present and/or future officers, directors, managers, employees, and agents, including, but not limited to, Walker R. Evans, Phyllis E. Evans, and Randal C. Anderson (collectively "Releasees").

(b) **Date Release Becomes Effective.** The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and their successors, assigns, and/or agents, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in Plaintiff's operative complaint, including, but not limited to, claims pursuant to California Labor Code sections 201, 202, 203, 204, 210, 226, et seq., 226.2, 226.3, 226.7, 510, 512, 1174, et seq., 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2100, 2101, 2102, 2103, 2104, 2109, 2800, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6409.6, 2698, et seq., 2699, et seq., 2699.3, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, Business & Professions Code § 17200, et seq., and/or which are alleged in the First Amended Complaint and Plaintiff's administrative exhaustion letter submitted to the LWDA within the Class Period ("Released Claims"),

2) as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA and the First Amended Complaint in this matter ("Released PAGA Claims").

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly submit a Request for Exclusion form. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections in the Objection Form should be sent to the Settlement Administrator at _____, _____. If you choose not to submit a written objection using the Objection Form, the written objection in any form should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

If you wish to attend the Final Approval Hearing remotely, you can do so via Zoom link provided on the court's website <https://riverside.courts.ca.gov/general-information/remote-appearances/remote-appearance-meeting-numbers>. If you wish to attend the Final Approval Hearing in person, you can attend it at Riverside County Superior Court, 450 Main Street, Riverside, CA 92501.

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion form to the Settlement Administrator at [REDACTED]. In order to be valid, your Request for Exclusion form must be signed and include the last four digits of your social security number or Employee ID (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number and do not know your Employee ID, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity.

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement, except for any payment you may receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Service Payment, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department 1 of the Riverside County Superior Court, 450 Main Street, Riverside, CA 92501. As described above, if you wish to attend the Final Approval Hearing remotely, you can do so via Zoom link provided on the court's website <https://riverside.courts.ca.gov/general-information/remote-appearances/remote-appearance-meeting-numbers>. If you wish to attend the Final Approval Hearing in person, you can attend it at Riverside County Superior Court, 450 Main Street, Riverside, CA 92501. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<website>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Riverside County Superior Court. Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=user/login&destination=node/379>. You may need the case number to access and view case documents (CVRI2301534) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT].

Exhibit “C”

REQUEST FOR EXCLUSION FORM

**Superior Court of California for the County of Riverside
*Athey v. Walker Evans Enterprises, Case No. CVRI2301534***

If you want to receive an Individual Settlement Award, you should not fill out this form; you are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you exclude yourself from the Settlement: (1) you will not receive any payments or benefits under the Settlement; (2) you will not be able to object to the Settlement; (3) you will not be bound by the class settlement if it is ultimately approved by the Court.

To be excluded from the Settlement, complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than **[Response Deadline-45 days following the date of mailing].**

[ILYM GROUP, INC.]
[INSERT INFO]

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between September 22, 2021 and August 31, 2023.

I have received the Notice of Class Action Settlement ("Notice") in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the release of Released Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the Individual PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the release of the PAGA claims regardless of whether I exclude myself from the Individual Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (_____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “D”

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible]

Are you represented by an attorney? ☐ Yes ☐ No

If yes, please provide your attorney's name and contact information:

Do you plan to appear at the Final Approval Hearing? ☐ Yes ☐ No

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: () _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “2”

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendant Walker Evans Enterprises

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 29, 2024 at Glendale, California.

Thurs

Signature