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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated,

Plaintiff,

vs.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

Defendants.

Case No. 23CV410264

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: August 28, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: January 19, 2023
Trial Date: Not set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) in
4 this matter. As such, I am fully familiar with the facts, pleadings and history of this matter. The
5 following facts are within my own personal knowledge, and if called as a witness, I could testify
6 competently to the matters stated herein.

7 2. This declaration is being submitted in support of the Plaintiffs’ unopposed motion by
8 for preliminary approval of the proposed class action settlement with Defendant Mobile-Med Work
9 Health Solutions, Inc. (“Defendant”), which motion seeks entry of an order: (1) preliminarily
10 approving the proposed settlement of this class action; (2) for settlement purposes only,
11 conditionally certifying the Class, which is comprised of “all on-exempt employees who are
12 employed or have been employed by Defendant in California at any time during the Class Period”,
13 which is January 1, 2019 through June 13, 2024; (3) provisionally appointing Plaintiff as the
14 representatives of the Class; (4) provisionally appointing Blumenthal Nordrehaug Bhowmik De
15 Blouw LLP, Kingsley & Kingsley, APC, and Aegis Law Firm, PC as Class Counsel for the Class;
16 (5) approving the form and method for providing notice to the Class of the proposed settlement;
17 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM
18 Group, Inc. as the Administrator; and (8) scheduling a final approval hearing date for January 22,
19 2025 to consider the Plaintiffs’ motion for final approval of the settlement and for approval of
20 attorneys’ fees, expenses and the service awards. Plaintiffs and Defendant have reached a full and
21 final settlement of the above-captioned action, which is set forth in the Class Action and PAGA
22 Settlement Agreement (the “Agreement”) filed concurrently with the Court. Attached hereto as
23 Exhibit #1 is a copy of the fully executed Class Action and PAGA Settlement Agreement
24 (“Agreement”) along with exhibits thereto. The form of the Agreement is based upon the Los
25 Angeles County Superior Court model form for a class and PAGA settlement. This Declaration
26 incorporates by reference the definitions in the Agreement, and all terms defined therein shall have
27 the same meaning as set forth in the Agreement.

1
2 Fairness of Settlement

3 3. As consideration for this Settlement, the Gross Settlement Amount is One Million
4 Two Hundred Thousand Dollars (\$1,200,000) to be paid by Defendant, as set forth in the
5 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
6 Parties and will be made in full and final settlement of the released claims. The Gross Settlement
7 Amount includes all payments of Individual Class Payments to the Participating Class Members, the
8 Administration Expenses Payment to the Administrator, the Class Counsel Fees Payment and Class
9 Counsel Litigation Expenses Payment to Class Counsel, the Class Representative Service Payments
10 to Plaintiffs, and the PAGA Penalties payment to the California Labor and Workforce Development
11 Agency (the "LWDA") and the Aggrieved Employees. The Gross Settlement Amount does not
12 include the employer's share of payroll taxes which will be separately paid by Defendant. The
13 Settlement is all-in with no reversion to Defendant and no need for Class Members to submit claim
14 forms. The following is a table of the key financial terms of the Settlement and the proposed
15 deductions:

16 **\$1,200,000** (Gross Settlement Amount)

- 17 - \$37,500 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
18 - \$45,000 (Class Counsel Litigation Expenses - not to exceed \$15,00 per firm)
19 - \$400,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
20 - \$25,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
21 - \$19,745 (Administration Expenses Payment - not to exceed amount)

22 **\$672,755** (Net Settlement Amount)

23 4. The relief provided in the Settlement will benefit all members of the Class. The
24 Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way.
25 Payments to the Class Members are all determined under a neutral methodology. Each Participating
26 Class Member will receive the same opportunity to participate in and receive payment through a
27 neutral formula that is based upon the Workweeks worked by that individual.
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1 5. On December 13, 2023, the Parties participated in an all-day mediation session
2 presided over by Tripper Ortman, Esq., a respected and experienced mediator of wage and hour
3 class actions. In preparation for the mediation, Defendant provided Class Counsel with necessary
4 information, including the Class payroll and timekeeping data. Plaintiff analyzed the data with the
5 assistance of a damages expert, Berger Consulting, and prepared and submitted a mediation brief
6 and damage valuation to the Mediator. Following the all-day mediation, the Parties agreed to the
7 Settlement, which was memorialized in the form of a Memorandum of Understanding. The final
8 terms of the Settlement were negotiated and set forth in the Agreement now presented for this
9 Court's approval. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair,
10 reasonable and adequate.

11 6. Based upon 1,569 Class Members who collectively worked 36,687 Workweeks
12 (Agreement at ¶ 4.1), the Gross Settlement Amount provides a value of \$764 per Class Member and
13 \$32 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery
14 of \$428.77 per Class Member and \$18.33 per Workweek. The calculations to compensate for the
15 amount due to the Class Members at the time the Settlement was negotiated were calculated by
16 Plaintiffs' expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for
17 putative class members and determined the potential maximum damages for the class claims. For
18 the Class, the maximum value of the claim for unpaid wages due to the alleged miscalculation of the
19 regular rate applicable to overtime pay was \$2,803, the maximum value of the claim for unpaid
20 wages due to the alleged miscalculation of the regular rate applicable to sick pay and meal
21 premiums was \$2,591, the maximum potential damages for alleged off-the-clock work at one half
22 hour per week was \$483,219, the maximum potential damages for alleged meal period violations
23 were estimated to be \$344,990 based upon a 19.7% violation rate observed in the time records and
24 after deduction of meal premiums (\$468,602) already paid by Defendant, the maximum potential
25 damages for alleged rest period violations were estimated to be \$966,438 based upon a similar one
26 violation per week rate, and the maximum potential damages for the alleged failure to reimburse
27 business expenses were calculated to be \$187,950 based upon \$20 per month. In total, the damages
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1 for the Class were calculated to have a maximum potential total value of \$1,987,991. In addition,
2 Plaintiff calculated that the maximum value of the potential waiting time penalties were \$7,466,125
3 if applied to all 1,292 terminated employees, and the maximum value of the potential wage
4 statement penalties were between \$86,650 and \$1,876,250, depending on the predicate violation.¹
5 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Consequently, the
6 Gross Settlement Amount represents more than 60% of Plaintiffs' calculation of the potential
7 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
8 full at trial.² Importantly, the recent decision that good faith belief of compliance by the employer in
9 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the
10 claims for waiting time and wage statement penalties, even if wages were owed to the class. The
11 maximum calculations should then be realistically risk rated in consideration for both the risk of
12 class certification and the risk of establishing class-wide liability on all claims. Given the amount of
13 the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair
14 and reasonable.

15 16 Procedural History of the Litigation

17 7. On January 19, 2023, Plaintiff Martinez filed with the LWDA and served on
18 Defendant a notice under Labor Code section 2699.3 identifying the alleged Labor Code violations
19 to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations. On
20 March 2, 2023, Plaintiff Ortega filed with the LWDA and served on Defendant a notice under Labor

21
22 ¹ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate
24 defenses asserted by Defendant, including but not limited to, a good-faith dispute defense as to
25 whether any premium wages for meal or rest periods or other wages were owed given Defendant's
26 position that Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission*
27 *Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer
28 and employee have a good faith dispute as to whether and when the wages were due.").

29 ² Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
30 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the
31 Decl. Nordrehaug at ¶ 33.

Code section 2699.3 identifying the alleged Labor Code violations to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations. On June 5, 2023, Plaintiff Saelor filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations. A true and correct copy of the Plaintiffs' PAGA Notices are attached hereto as Exhibit #3.

8. The Actions -

a. **Martinez Action:** On January 19, 2023, Plaintiff Gina Martinez commenced an Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (hereinafter "Martinez Action"). The Martinez Action asserted class claims against Defendant for: (1) failure to to pay wages and/or overtime under California Labor Code §§ 510, 1194, 1194.2 and 1199; (2) failure to provide required meal periods in violation of Cal. Labor Code §§ 226.7 and 512; (3) failure to provide required rest periods in violation of Cal. Labor Code §§ 226.7 and 512; (4) failure to reimburse employees for required expenses in violation of California Labor Code § 2802; (5) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (6) penalties for violation of California Labor Code §§ 201, 202 and 203; and, (7) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq. On May 10, 2023, Plaintiff Martinez filed a First Amended Class and Representative Action Complaint in the Martinez Action, which alleges additional Penalties Pursuant to Labor Code § 2699, et seq.

b. **Ortega Actions:** On March 6, 2023, Plaintiff Ismael Ortega commenced an Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (hereinafter "Ortega Class Action"). The Ortega Class Action asserted class claims against Defendant for: (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code §§ 510, 1194 & 1198; (4) failure to provide required meal periods in violation of Cal. Labor Code

1 §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§
2 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California
3 Labor Code § 226; (7) failure to reimburse employees for required expenses in violation of
4 California Labor Code § 2802; (8) failure to provide wages when due in violation of California
5 Labor Code §§ 201, 202 and 203; and (9) failure to pay sick pay wages in violation of California
6 Labor Code §§ 201-204, 233, and 246. On August 11, 2023, Plaintiff Ortega filed a Representative
7 Action Complaint against Defendant in the Superior Court of the State of California, County of San
8 Mateo, asserting a single cause of action for violation of the Private Attorney General Act, Cal.
9 Labor Code §§ 2698, et seq. ("PAGA"), Case No. 23-CIV-03767 (hereinafter "Ortega PAGA
10 Action") predicated upon the same Labor Code violations alleged in the Ortega Class Action.

11 c. **Saelor Action:** On June 5, 2023, Plaintiff Jessica Saelor commenced an
12 Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of
13 California, County of Santa Clara (hereinafter "Saelor Action"). The Saelor Action asserted class
14 claims against Defendant for: (1) failure to pay minimum wages; (2) failure to pay overtime wages;
15 (3) failure to provide meal periods; (4) failure to to permit rest breaks; (5) failure to reimburse
16 business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages
17 timely during employment; (8) failure to pay all wages due upon separation of employment, and, (9)
18 violation of Business and Professions Code §§ 17200, et seq. On September 8, 2023, Plaintiff
19 Saelor filed a First Amended Class Action Complaint in the Saelor Action, which alleges additional
20 Penalties Pursuant to Labor Code § 2699, et seq.

21 9. As part of this Settlement, the Parties stipulated to the filing of a Second Amended
22 Consolidated Class and Representative Action Complaint in the Martinez Action consolidating the
23 claims alleged in the Martinez Action, the Ortega Class Action, the Ortega PAGA Action and the
24 Saelor Action, and adding Ismael Ortega and Jessica Saelor as named Plaintiffs. The Second
25 Amended Consolidated Class and Representative Action Complaint was filed on June 25, 2024 and
26 is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the
27 allegations in the Operative Complaint, denies any failure to comply with the laws identified in the
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1 Operative Complaint and denies any and all liability for the causes of action alleged.

2 10. Over the course of litigation, the Parties engaged in the investigation of the claims,
3 including production of documents, class data, and other information, allowing for the full and
4 complete analysis of liabilities and defenses to the claims in the Action. Plaintiffs obtained informal
5 discovery, which included the production and analysis of hundreds of pages of documents. The
6 information for mediation obtained by Plaintiffs included: (1) data concerning the composition of
7 the Class; (2) payroll data for the Class and a sampling time punch data for the Class which covered
8 9,253; (3) Defendant's wage and hour policies and job descriptions; (4) the employment files for the
9 Plaintiffs; and, (5) samples of wage statements provided by Defendant. As such, Class Counsel
10 received the data and information for the Class, which was sufficient for Plaintiffs' expert to prepare
11 the valuations of the claims for the Class.

12 11. Class Counsel has extensive experience in litigating wage and hour class actions in
13 California. The Parties have vigorously litigated the Action since inception. During the course of
14 litigation, the Parties each performed analysis of the merits and value of the claims. Plaintiffs and
15 Defendant have engaged in substantial research and investigation in connection with the Action.
16 Class Counsel has thoroughly analyzed the value of the claims during the prosecution of this Action
17 and utilized an expert to perform an analysis of the data and valuation of the claims.

18 12. Plaintiffs and Defendant agreed to discuss resolution of the Action through a
19 mediation. Prior to mediation, the Parties engaged in the above investigation and the exchange of
20 documents and information in connection with the Action. On December 13, 2023, the Parties
21 participated in an all-day mediation presided over by Tripper Ortman, a respected and experienced
22 mediator of wage and hour class actions. Following the mediation, each side, represented by its
23 respective counsel, were able to agree to settle the Action based upon a mediator's proposal which
24 was memorialized in a memorandum of understanding. The Parties then negotiated the final terms
25 of the settlement as set forth in the Agreement. At all times, the negotiations were arm's length and
26 contentious.

27 13. Although a settlement has been reached, Defendant denies any liability or
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1 wrongdoing of any kind associated with the claims alleged in the Action and further deny that, for
2 any purpose other than settlement, the Action is appropriate for class and/or representative
3 treatment. Defendant contends, among other things, that it has properly compensated the Class
4 Members and complied at all times with the California Labor Code, applicable Wage Order, and all
5 other laws and regulations. Further, Defendant contends that class certification is inappropriate for
6 any reason other than for settlement. Plaintiffs contend that Defendant violated California wage and
7 hour laws. Plaintiffs further contend that the Action is appropriate for class certification on the
8 basis that the claims meet the requisites for class certification. Without admitting that class
9 certification is proper, Defendant has stipulated that the above Class may be certified for settlement
10 purposes only. (Agreement at ¶ 2.12.) The Parties agree that certification for settlement purposes is
11 not an admission that class certification is proper. Further, the Agreement is not admissible in this
12 or any other proceeding as evidence that the Class could be certified absent a settlement. Solely for
13 purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing
14 class certification with respect to the Class are satisfied.

15 14. Class Counsel has conducted a thorough investigation into the facts of the class
16 action. Over the course of more than a year, Class Counsel diligently evaluated the Class Members'
17 claims against Defendant. Prior to the settlement negotiations, counsel for Defendant provided
18 Class Counsel with access to necessary documents and information for the Class. In addition, Class
19 Counsel has previously negotiated settlements with other employers in actions involving nearly
20 identical issues and analogous defenses. Based on the informal discovery and their own
21 independent investigation, evaluation and experience, Class Counsel believes that the settlement
22 with Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and is in
23 the best interest of the Class in light of all known facts and circumstances, including the risk of
24 significant delay, the risk that the claims would not be allowed to proceed on a class or
25 representative basis, the defenses asserted by Defendant, and potential appellate issues.

1 Settlement Terms and Plan of Allocation

2 15. The Gross Settlement Amount is One Million Two Hundred Thousand Dollars
3 (\$1,200,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists
4 of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the
5 LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation
6 Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration
7 Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include
8 Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be
9 all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)

10 16. Within sixty (60) days of the Effective Date, Defendant shall deposit the Gross
11 Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual
12 Class Payments to Participating Class Members along with the other Court-approved distributions
13 shall be made by the Administrator within fourteen (14) days after Defendant fully funds the Gross
14 Settlement Amount. (Agreement at ¶ 5.1.)

15 17. The amount remaining in the Gross Settlement Amount after the deduction of
16 Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class
17 Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation
18 Expenses Payment, and the Administration Expenses Payment (the "Net Settlement Amount") shall
19 be allocated to Participating Class Members as their Individual Class Payments. (Agreement at ¶¶
20 1.28 and 3.2(e).) From the Net Settlement Amount, the Individual Class Payment for each
21 Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the
22 total number of Workweeks worked by all Participating Class Members during the Class Period and
23 (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement at ¶
24 3.2(e).) Workweeks will be calculated based on Defendant's records; however, Class Members will
25 have the right to challenge their number of Workweeks.

26 18. Class Members may choose to opt-out of the Settlement by following the directions
27 in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be
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1 deemed Participating Class Members and will be bound by the Settlement and will be entitled to
2 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
3 any who submit an opt-out request, still will receive an Individual PAGA Payment and will release
4 the Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and
5 8.5(d)) Finally, the Class Notice will advise the Class Members of their right to object to the
6 Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)

7 19. A Participating Class Member must cash the check for his or her Individual Class
8 Payment (and, if applicable, Individual PAGA Payment) within 180 days after it is mailed.
9 (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any
10 funds represented by such checks will be allocated as follows: twenty five percent (25%) to the State
11 Treasury for deposit in the Trial Court Improvement and Modernization Fund established in Section
12 77209 of the Government Code, and subject to appropriation in the annual Budget Act for the
13 Judicial Council to provide grants to trial courts for new or expanded collaborative courts or grants
14 for Sargent Shriver Civil Counsel; and Seventy-Five percent (75%) to Free To Thrive, a nonprofit
15 organization helping survivors of human trafficking by providing restorative justice by expunging
16 their criminal records to enable them to become gainfully employed and rejoin the community ("Cy
17 Pres Recipient"). (Agreement at ¶ 5.4.)

18 20. Subject to Court approval, the Parties have agreed on ILYM Group, Inc. to
19 administer the settlement in this action (the "Administrator"). (Agreement at ¶ 1.2.) The
20 Administrator will be paid for settlement administration in an amount not to exceed \$19,745.
21 (Agreement at ¶ 3.2(c).) A Declaration from ILYM Group is submitted herewith.

22 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
23 a sum not to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment.
24 (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel
25 Litigation Expenses Payment in an amount not to exceed \$45,000 (not to exceed \$15,000 per firm).
26 (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no
27 more than \$12,500 each to Plaintiffs as the Class Representative Service Payments. (Agreement at
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¶ 3.2(a).)

22. Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the Gross Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as follows: 75% (\$18,750) shall be allocated to the LWDA as its share of the civil penalties and 25% (\$6,250) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement.

Risks of Continued Litigation and Standards for Approval

23. Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendant and then litigating a possible appeal that could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.

24. Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class Members' work time was properly recorded and compensated and that there was no miscalculation of the regular rate. Defendant contends that its meal and rest period policies and practices provide Class Members with meal and rest periods and could argue that the payment of significant meal premiums is evidence of Defendant's legal compliant practices. As to expense reimbursement, Defendant maintains that it did not fail to provide reimbursement for necessary business expenses because,

1 among other things, the alleged expenses were convenient and voluntary, and therefore not were
2 required expenses giving rise to reimbursement. Defendant could argue that the decisions in *Brinker*
3 *v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th
4 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened
5 Plaintiffs' claims in terms of liability and value, and preclude claims from proceeding on a class or
6 representative basis. Defendant also maintains that a good faith dispute and absence of willfulness
7 would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage
8 statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an
9 employer reasonably and in good faith believed it was providing a complete and accurate wage
10 statement in compliance with the requirements of section 226, then it has not knowingly and
11 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses
12 could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these
13 defenses could be overcome, Defendant maintains these defenses have merit and therefore present a
14 serious risk to recovery by the Class.

15 25. There was also a significant risk that, if the Action was not settled, Plaintiffs would
16 be unable to obtain class certification and thereby not recover on behalf of any employees other than
17 themselves Defendant argued that the individual experience of each putative class member varied
18 with respect to the claims, which would preclude the claims from proceeding on a class basis. For
19 instance, Plaintiffs' meal and rest period claims would require individualized inquiries into whether
20 each employee took a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are
21 aware of other cases where class certification of similar claims was denied. See e.g. *Cacho v.*
22 *Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Defendant
23 also argued that the existence of arbitration agreements would bar and/or limit class certification.
24 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
25 decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014), there are significant
26 hurdles to overcome for a class-wide recovery even where a class has been certified. While other
27 cases have approved class certification of wage and hour claims, class certification in this Action
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1 would have been hotly disputed and was by no means a foregone conclusion.

2 26. This settlement is therefore certainly entitled to preliminary approval. Were this
3 case to go to trial, the Plaintiffs and the other class members would need to prove, among other
4 things, that wages were owed on a class-wide basis. This was and is a substantial risk. This
5 Settlement provides a recovery to all non-exempt employees of the Defendant, which is a result that
6 would not be possible if liability was not imposed on a class-wide basis.

7 27. Plaintiffs will apply to the Court for Class Representative Service Payments in
8 consideration for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶
9 3.2(a).) Plaintiffs performed their duties admirably by working with Class Counsel. The
10 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
11 purposes of this preliminary approval stage, the not to exceed amount is well within the accepted
12 range of awards for purposes of preliminary approval, subject to the Court's final determination of
13 the amount at final approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist.
14 LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each
15 are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D.
16 Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018
17 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment
18 was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06,
19 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v.*
20 *UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
21 overtime class action and a pool of \$100,000 in enhancements). Below, I provide a long list of
22 similar Court-approved service awards.

23 28. The stage of the proceedings at which the Settlement was reached also militates in
24 favor of preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has
25 conducted a thorough investigation into the facts of the class action. Class Counsel began
26 investigating the Class Members' claims before the Action was filed. Class Counsel engaged in an
27 investigation of the claims and conducted a review and analysis of the relevant documents and data.
28 Class Counsel was also experienced with the claims at issue here, as Class Counsel previously

1 litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not
2 occur until Class Counsel possessed sufficient information to make an informed judgment regarding
3 the likelihood of success on the merits and the results that could be obtained through further
4 litigation.

5 29. Based on the informal discovery of data and documents, and their own independent
6 investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for
7 the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is
8 in the best interest of the Class in light of all known facts and circumstances, including the risk of
9 significant delay, defenses asserted by Defendant, and numerous potential appellate issues. There
10 can be no doubt that counsel for both Parties possessed sufficient information to make an informed
11 judgment regarding the likelihood of success on the merits and the results that could be obtained
12 through further litigation.

13
14 Class Certification Issues

15 30. Plaintiffs contend that the Settlement meets all of the requirements for certification
16 of a settlement class under California Code of Civil Procedure § 382 as demonstrated below, and
17 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
18 should conditionally certify the Class, for settlement purposes only, defined as follows:

19 All non-exempt employees who are employed or have been employed by Defendant
20 in California at any time during the Class Period.

21 (Agreement at ¶ 1.5.)

22 The “Class Period” is from January 1, 2019 through June 13, 2024. (Agreement at ¶ 1.13.)

23 a. **Ascertainability And Numerosity** - Here, Plaintiffs assert that the 1,569
24 individuals who comprise the Class can be identified based on Defendant’s records and are
25 sufficiently numerous for class certification.

26 b. **Predominance of Common Issues Of Law and Fact** - Here, Plaintiffs
27 contend that common questions of law and fact are present, and specifically the common questions
28 of whether Defendant’s practices were lawful, whether Class members were lawfully compensated

1 for all hours worked, whether Defendant properly calculated wages, whether the Defendant failed to
2 provide all legally required meal and rest periods to Class Members, whether Defendant failed to
3 provide required expense reimbursement, and whether Class Members are entitled to damages and
4 penalties as a result of these alleged practices. Plaintiffs contend that certification of this Class is
5 appropriate because Defendant allegedly engaged in uniform practices with respect to the Class
6 Members. As a result, these common questions of liability could be answered on a class wide basis.

7 c. **Typicality** - In the Action, Plaintiffs contend that there can be little doubt
8 that the typicality requirement is satisfied. Plaintiffs worked for Defendant as non-exempt employee
9 during the Class Period. Plaintiffs contend that, like every other member of the Class, they was
10 subjected to the same practices and policies of Defendant and is subject to the same defenses. Thus,
11 Plaintiffs assert that the claims of Plaintiffs and the Class Members arise from the same course of
12 conduct by the Defendant, involve the same employment policies and practices of Defendant, and
13 are based on the same legal theories.

14 d. **Adequacy** - Plaintiffs contend that the Class Members are adequately
15 represented here because Plaintiffs and Class Counsel (a) do not have any conflicts of interest with
16 other Class members, and (b) will prosecute the case vigorously on behalf of the Class. First,
17 Plaintiffs are well aware of their duties as the representatives of the Class and have actively
18 participated in the prosecution of this case to date. Plaintiffs effectively communicated with
19 counsel, provided documents to counsel, and participated in the investigation and negotiations in the
20 Action. Second, Plaintiffs retained competent counsel who are experienced in employment class
21 actions and who have no conflicts Third, there is no antagonism between the interests of the
22 Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief under
23 the same set of facts and legal theories.

24 31. Class Counsel's Adequacy of Representation and Absence of Conflict: Blumenthal
25 Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting class action lawsuits and can
26 competently represent the Class. Other lawyers at my firm and I have extensive class litigation
27 experience. We have handled a number of class actions and complex cases and have acted both as
28 counsel and as lead and co-lead counsel in a variety of these matters. We have successfully

1 prosecuted and obtained significant recoveries in numerous class action lawsuits and other lawsuits
2 involving complex issues of law and fact. My firm is particularly experienced in wage and hour
3 employment law class actions, including claims for misclassification, overtime, expense
4 reimbursement, unlawful deduction of wages, and missed rest and meal periods. Blumenthal
5 Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over hundreds of wage
6 and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has been found to be
7 adequate counsel by the courts throughout California. We have been approved as experienced class
8 counsel by both state and federal courts in California in contested class certification proceedings. A
9 true and correct copy of the resume of my firm is attached hereto as Exhibit #2. The Class in this
10 settlement is defined as “all non-exempt employees who are employed or have been employed by
11 Defendant in California at any time during the Class Period.” I have reviewed my firm’s cases and
12 representation of other plaintiffs and there is no conflict or representation which would prevent my
13 firm from representing the interests of the Class this case. My firm only represents employees, and
14 not employers. My firm has never represented Defendant nor any affiliate of the Defendant. My
15 firm’s only interest in the subject matter of this litigation is to ensure a recovery to the Class and to
16 maximize that recovery. Finally, our allegiance to the Class and the claims of the Class is not
17 inconsistent with our allegiance to pursue the claims on behalf of other employees and classes as the
18 claims are all against different and distinct employers. I can think of no conflict that would arise in
19 our representation of the Class and our adequate representation of the Class is evidenced by the
20 successful prosecution of the class claims to reach an excellent recovery for the Class. Moreover,
21 neither the Plaintiffs nor Class Counsel have any affiliation with the Administrator for this
22 settlement. Thus, the adequacy requirement for my firm is satisfied.

23 32. The Class Notice, drafted jointly and agreed upon by the Parties through their
24 respective counsel and to be approved by the Court, is based upon the Los Angeles County Superior
25 Court’s model form and includes all relevant information. (See Exhibit “A” to the Agreement.)
26 The Class Notice Packet will include a Spanish translation. (Agreement at ¶ 1.11.) The Class
27 Notice will include, among other information: (i) information regarding the Action; (ii) the impact
28 on the rights of the Class Members if they do not opt out, including a description of the applicable

1 release; (iii) information to the Class Members regarding how to opt out and how to object to the
2 Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
3 Payment) for each of the Class Members and how to dispute the information used to calculate the
4 payment; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the
5 Plaintiffs' service award request; and (vi) the anticipated expenses of the Administrator. The Class
6 Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice
7 is mailed to them (the "Response Deadline") to request exclusion (opt-out), and that the Response
8 Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42, 8.5(a).)
9 Class Members shall be given the opportunity to object to the Settlement and/or requests for
10 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.)
11 Class Members who do not submit a timely and proper request to opt out will automatically receive
12 a payment of their Individual Class Payment (and, if applicable, their Individual PAGA Payment).
13 This notice program was designed to meaningfully reach the Class Members and it advises them of
14 all pertinent information concerning the Settlement.

15
16 33. The PAGA Claim -

17 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
18 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
19 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
20 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the
21 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
22 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on
23 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
24 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
25 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
26 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
27 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
28 class members." (LWDA Response at p.4).

1 b. **Valuation of the PAGA Claim.** For mediation, Plaintiff calculated the
2 value of the alleged PAGA claim as to the Aggrieved Employees for civil penalties to be between
3 \$741,150 and \$1,482,300 for a single violation in every one of the estimated 14,823 pay periods at
4 issue in the PAGA Period, depending on whether the violation was \$50 per pay period as in the case
5 of Labor Code § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor
6 Code § 1198. This valuation assumed that PAGA civil penalties would be awarded at the maximum
7 rate per pay period but without stacking.³ The PAGA allocation in the Settlement is \$25,000. This
8 allocation is justified by several important considerations. First, the PAGA claim was subject to the
9 same risks as the underlying class claims. Second, Defendant asserted additional defenses to the
10 PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could
11 also argue that no penalties prior to the PAGA notification should be awarded, and I am aware of
12 one Court which has so ruled. These additional defenses present a risk to the PAGA claim and the
13 potential that some or all of the PAGA penalties sought may not be awarded. Second, in *Carrington*
14 *v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court affirmed a judgment which only
15 provided for a PAGA penalty of \$5 per violation. Therefore, at trial, any PAGA penalties awarded
16 could be significantly less than Plaintiffs' calculation even where Plaintiff prevailed on the PAGA
17 claim. Even if we assume that violations for all 14,823 pay periods were established, using the
18 valuation from *Carrington* results in a potential recovery of only \$74,115 under PAGA. This means
19 that the PAGA allocation in the Agreement is a reasonable percentage of this potential PAGA
20 recovery. Fourth, the interests of PAGA are also served by the Class recovery under the reasoning
21 of the LWDA in *O'Connor v. Uber*.

22 c. **Comparable PAGA Settlements.** In reaching the settlement of the PAGA
23 claim, Class Counsel was also aware of what allocations other Courts have approved for similar
24

25 ³ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
26 The valuation of between \$741,150 and \$1,482,300 is the civil penalty amount without stacking. If
27 stacking is permitted, then the valuation increases with each additional penalty added to each pay
28 period. Plaintiffs, however, are not aware of any PAGA award which permitted stacking and in the
cases cited herein, only one penalty per pay period was assessed. Notably, the new amendment to
PAGA would seem to expressly prohibit stacking in many circumstances.

1 PAGA settlements as compared to the total settlement amount. A class settlement that allocates
2 approximately 2% of the total settlement value to resolve the PAGA claims applicable to the class is
3 also supported by what has been approved in other wage-and-hour class settlements. Indeed, Courts
4 typically approve PAGA settlement amounts in the range of between 0.27 to 2 percent of the total
5 settlement. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA
6 Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated Logistics, Inc.*,
7 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for PAGA on a \$1.5
8 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)
9 (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist
10 Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA for PAGA out of
11 \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D.
12 Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9 million common-fund
13 settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13 (E.D. Cal. 2012)
14 (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million common-fund settlement);
15 *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009) (approving PAGA allocation
16 that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon Trucking, Inc.*,
17 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement of \$3,700,000,
18 with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*, CV 10-02420
19 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount of \$8.25
20 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay*, 8:10-cv-00112-DOC
21 (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000 allocated to PAGA);
22 *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties
23 or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive Educational Services Inc.*,
24 Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000 allotted as PAGA penalties or
25 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell Banker Residential Brokerage*
26 *Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000 allotted as PAGA
27 penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los Robles Medical Center*, No.
28 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.40% of \$3,775,000

1 settlement amount); *Scott-George v. PVH Corporation*. No., 2:13CV00441 (E.D. Cal. 2017)
2 (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount); *Nehrlich v. RPM*
3 *Mortgage Inc.*, Orange County Superior Court Case No. 30-2013-00666783-CU-OE-CXC (2017)
4 (\$10,000 allotted as PAGA penalties or 0.40% of \$2,500,000 settlement amount); *Rubio v. KTI*
5 *Incorporated*, San Bernardino Superior Court Case No. CIVDS-14-06132 (2015) (\$1,000 allotted as
6 PAGA penalties or 0.18% of \$550,000 settlement amount); *Gray v. Mountain View Child Care Inc.*,
7 San Bernardino Superior Court Case No. CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA
8 penalties or 0.37% of \$675,000 settlement amount); *Perez v. West Coast Liquidators Inc. d/b/a Big*
9 *Lots*, San Bernardino Superior Court Case No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA
10 penalties or 0.33% of \$900,000 settlement amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles
11 Superior Court No. BC471369 (2013) (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000
12 settlement amount); *Mejia v. DHL Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000
13 allotted as PAGA penalties or 0.34% of \$1,450,000 settlement amount).

14
15 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
16 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
17 reasonable, and at the time of final approval, my firm will present lodestar to further support the
18 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
19 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
20 of the class action awards obtained by Class Counsel in similar employment actions throughout the
21 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total
22 settlement value: On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles
23 Superior Court, Case No. JCCP 4919), Judge Carolyn Kuhl awarded Class Counsel a one-third fee
24 award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage and Hour*
25 *Cases* (San Mateo Superior Court, Case No. JCCP 4945), Judge Marie Weiner awarded Class
26 Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in *Erickson v.*
27 *John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307), Judge Edward Weil
28 awarded Class Counsel a one-third fee award in a wage and hour class settlement. On December

1 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case No.
2 BC672235), Judge William Highberger awarded Class Counsel a one-third fee award in a wage and
3 hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
4 County Superior Court Case No. JCCP 4957), Judge William Claster awarded Class Counsel a one-
5 third award in a wage and hour class settlement. On October 23, 2020, in *Ontiveros v. Baker*
6 *Concrete*, (Santa Clara Superior Court Case No. 18CV328679), Judge Brian Walsh awarded Class
7 Counsel a one-third fee award in a wage and hour class settlement. On December 3, 2020, in
8 *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court Case No. 34-2018-
9 00245842), Judge Christopher Krueger awarded BNBD a one-third fee award in a wage and hour
10 class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles Superior Court Case
11 No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee award in a wage and
12 hour class settlement. On September 24, 2021, in *Prologistics Wage and Hour Cases* (Los Angeles
13 Superior Court Case No. JCCP 4881), Judge William Claster awarded Class Counsel a one-third fee
14 award in a wage and hour class settlement. On November 8, 2021, in *Securitas Wage and Hour*
15 *Cases* (Los Angeles Superior Court Case No. JCCP4837), Judge David Cunningham awarded a
16 one-third fee award in a wage and hour class settlement. On March 17, 2022, in *See's Candies*
17 *Wage and Hour Cases* (Los Angeles Superior Court Case No. JCCP5004), Judge Maren Nelson
18 awarded a one-third fee award in a wage and hour class action settlement. On April 12, 2022, in
19 *O'Donnell v. Okta, Inc.*, (San Francisco Superior Court Case No. CGC-20-587665), Judge Richard
20 Ulmer awarded a one-third fee award in a wage and hour class action settlement. On May 23, 2022,
21 in *Ettedgui v. WB Studio Enterprises Inc.*, (United States District Court, Central District of
22 California Case No. 2:20-cv-08053-MCS-JDE), District Judge Mark C. Scarsi awarded a one-third
23 fee award in a wage and hour class action settlement. On June 30, 2022, in *Armstrong, et al. v.*
24 *Prometric LLC* (Los Angeles Superior Court Case No. 20STCV29967), Judge Maren E. Nelson
25 awarded a one-third fee award in a wage and hour class action. On July 13, 2022, in *Crum v. S&D*
26 *Carwash Management LLC*, (Sacramento Superior Court Case No. 2019-00251338), Judge
27 Christopher E. Krueger awarded a one-third fee award in a wage and hour class action settlement.
28 On August 10, 2022, in *Spears, et al. v. Health Net of California, Inc.*, (Sacramento Superior Court

1 Case No. 34-2017-00210560-CU-OE-GDS), Judge Christopher E. Krueger awarded a one-third fee
2 award in a wage and hour class action settlement. On September 7, 2022, in *Lucchese, et al. v.*
3 *Kone, Inc.*, (San Francisco Superior Court Case No. CGC-20-588225), Judge Richard B. Ulmer, Jr.
4 awarded a one-third fee award in a wage and hour class action settlement. On November 4, 2022, in
5 *Infinity Energy Wage and Hour Cases* (San Diego Superior Court, Case No. JCCP5139), Judge Keri
6 Katz awarded a one-third fee award in a wage and hour class action settlement. On February 1,
7 2023, in *Hogan v. AECOM Technical Services, Inc.* (Los Angeles Superior Court Case No.
8 19STCV40072), Judge Stuart Rice awarded a one-third fee award in a wage and hour class
9 settlement. On February 28, 2023, in *Farthing v. Milestone Technologies* (San Francisco Superior
10 Court Case No. CGC-21-591251), Judge Richard B. Ulmer, Jr. awarded a one-third fee award in a
11 wage and hour class action settlement. On March 2, 2023, in *Leon v. Calaveras Materials* (Kings
12 County Superior Court Case No. 21C-0105), Judge Melissa D'Morias awarded a one-third fee
13 award in a wage and hour class settlement. On June 20, 2023, in *Gonzalez v. Pacific Western Bank*
14 (San Bernardino County Superior Court Case No. CIVSB2127657) Judge David Cohn awarded a
15 one-third fee award in a wage and hour class settlement, On June 30, 2023, in *Aguirre v. Headlands*
16 *Ventures* (Sacramento County Superior Court Case No. 34-2021-00297290), Judge Jill Talley
17 approved a one-third fee award in a wage and hour class settlement. On September 15, 2023, in
18 *Moran v. Sharp Healthcare* (San Diego County Superior Court Case No. 37-2019-00050203), Judge
19 Richard Whitney awarded a one-third fee award in a wage and hour class settlement. On October
20 10, 2023, in *Arango v. Schlumberger Technology*, (Orange County Case No.
21 30-2019-01056839-CU- OE-CXC), Judge William Claster approved a one-third fee award in a
22 wage and hour class action. On October 16, 2023, in *Flores v. Walmart*, (San Bernardino County
23 Superior Court Case No. CIVDS2023061) Judge Joseph T. Ortiz awarded a one-third fee award in a
24 wage and hour class settlement. On November 17, 2023, in *Silva v. Woodward HRT* (Los Angeles
25 County Superior Court Case No. 21STCV42692), Judge Maren Nelson awarded a one-third fee
26 award in a wage and hour class settlement. On November 29, 2023, in *Ochoa-Andrade v. See's*
27 *Candies* (San Mateo County Superior Court Case no. 22-CIV-02481), Judge Marie Weiner
28 approved a one-third fee award in a wage and hour class settlement. A fee award equal to one-third

1 of the common fund is therefore reasonable in light of the fees that have been awarded in other
2 similar cases.

3
4 35. Class Representative Service Payment - The reasonableness of the requested service
5 award is also established by reference to the amounts that other California courts have found to be
6 reasonable in wage and hour class action settlements since 2010: *Zamora v. Balboa Life &*
7 *Casualty, LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding
8 \$25,000 service award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP
9 (AJWx)(C.D. Cal. Mar. 17, 2011)(awarding \$14,767 service award); *Magee v. American*
10 *Residential Services, LLC*, Case No. BC423798, Los Angeles County Superior Court (Apr. 21,
11 2011)(awarding \$15,000 service award); *Mares v. BFS Retail & Commercial Operations, LLC*,
12 Case No. BC375967, Los Angeles County Superior Court (June 24, 2010)(awarding \$15,000
13 service award); *Baker v. L.A. Fitness Int'l, LLC*, Case No. BC438654, L.A. County Superior Court
14 (Dec. 12, 2012)(awarding \$10,000 service awards to three named plaintiffs); *Blue v. Coldwell*
15 *banker Residential Brokerage Co.*, Case No. BC417335, Los Angeles County Superior Court (Mar.
16 21, 2011)(awarding \$10,000 service award); *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795,
17 Los Angeles County Superior Court (June, 11, 2010)(awarding \$10,000 service awards); *Coleman*
18 *v. Estes Express Lines, Inc.*, Case No. BC429042, Los Angeles County Superior Court (Oct. 3,
19 2013)(awarding \$10,000 service award); *Ethridge v. Universal Health Services, Inc.*, Case No.
20 BC391958, Los Angeles County Superior Court (May 27, 2011)(awarding \$10,000 service award);
21 *Hickson v. South Coast Auto Ins. Marketing, Inc.*, Case No. BC390395, Los Angeles County
22 Superior Court (Mar. 27, 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*,
23 Case No. BC422934, Los Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service
24 award); *Kambamba v. Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County
25 Superior Court, (Aug. 19, 2011)(awarding \$10,000 service award together with additional
26 compensation for their general release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los
27 Angeles County Superior Court (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose*
28 *Hills Mortuary, L.P.*, Case No. BC386500, Los Angeles County Superior Court, (Mar. 19,

2010)(awarding \$10,000 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The Industrial Company*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug. 1, 2018) (awarding \$10,000 service award).

36. Potentially Related Other Actions - I am unaware of any other related cases pending against Defendant which would be impacted by this settlement. (Agreement at ¶ 2.13.) I have search the LWDA database, which does not show any other PAGA notices with respect to Defendant other than the Plaintiffs' PAGA Notices.

37. Administration - The estimate from ILYM Group is was selected, as it provided for a capped estimate of \$17,950 to perform settlement administration for a class of 1,600, with any difference between the actual expenses and the budget of \$19,745 to be retained in the Net Settlement Amount for distribution to the Class. Submitted herewith is a true and correct copy of the Declaration of Anthony Rogers from ILYM Group, which includes their estimate for administration along with the other issues required by paragraph 7.2 of the Agreement. I have used ILYM Group successfully as the administrator in more than twenty class settlements in the last couple years and know them to be competent and experienced. My firm has no relationship or connection with ILYM Group, and thus no conflict of interest exists.

Service on the LWDA:

38. At the same time as the filing and service of this declaration, I am also serving the LWDA with the entire motion for preliminary approval which includes the Class Action and PAGA Settlement Agreement. This service is verified by the accompanying proof of service.

Defendant's Declaration:

39. Defendant's Declaration required by paragraph 7.1 of the Agreement is attached hereto as Exhibit #4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of August, 2024, at La Jolla, California.

/s/ Kyle Nordrehaug
Kyle Nordrehaug

EXHIBIT #1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) and defendant Mobile-Med Work Health Solutions, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

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

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant, which is captioned *Gina Martinez v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23CV410264, initiated on January 19, 2023, and pending in Superior Court of the State of California, County of Santa Clara, and which is to incorporate by way of a consolidated complaint all parties and claims asserted in the separately filed actions *Ismael Ortega v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23CV411830, initiated on March 6, 2023, and pending in Superior Court of the State of California, County of Santa Clara; *Ismael Ortega v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23-CIV-03767, initiated on August 11, 2023, and pending in Superior Court of the State of California, County of San Mateo; and *Jessica Saelor v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23CV416864, initiated on June 5, 2023, and pending in Superior Court of the State of California, County of Santa Clara;
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all non-exempt employees who are employed or have been employed by Defendant in California at any time during the PAGA Period.
- 1.5. “Class” means all non-exempt employees who are employed or have been employed by Defendant in California at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley, APC; Benjamin J. Smith, of Smith Law; and Samuel A. Wong, Kashif Haque, Jessica L. Campbell, and Lisa B. Iturriaga of Aegis Law Firm, PC

- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendant), dates of employment and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, if applicable in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from January 1, 2019 through June 13, 2024.
- 1.14. “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representatives.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiffs as Class Representatives in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiffs.

- 1.16. "Court" means the Superior Court of California, County of Santa Clara.
- 1.17. "Defendant" means Mobile-Med Work Health Solutions, Inc.
- 1.18. "Defense Counsel" means Joshua M. Henderson, Lara P. Besser and Marco A. Garcia of Jackson Lewis, P.C.
- 1.19. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the last date for filing a request for further review of the Court of Appeal's decision passes and no further review is requested; or (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (iv) if review is accepted, the day after the California Supreme Court affirms the Final Judgment and final approval or order approving the Settlement.
- 1.20. "Final Approval" means the Court's order granting final approval of the Settlement consistent with the terms of this Agreement as binding upon the Parties.
- 1.21. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. "Gross Settlement Amount" means One Million Two Hundred Thousand Dollars (\$1,200,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer-side payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval and shall constitute a judgment respecting the Parties within the meaning and for purposes of Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). The Final Approval shall be substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from March 6, 2022, through June 13, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff Martinez’s January 19, 2023 letter to Defendant and the LWDA; Plaintiff Ortega’s March 2, 2023 letter to Defendant and the LWDA; and Plaintiff Saelor’s June 5, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties of \$25,000 to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees

(\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.

- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiffs” means Gina Martinez, Ismael Ortega, and Jessica Saelor, the named plaintiffs in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement consistent with this Agreement, and substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means all claims alleged, or could have been alleged, based facts stated in the Operative Complaint, which arose during the Class Period, including all claims and/or causes of action under any federal, state, local law or administrative order that were or which could have been plead based on the facts alleged in the operative class action complaint, whether known or unknown, including the failure to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the failure to maintain records, the failure to timely pay wages, the failure to pay wages due to discharged or quitting employees, the failure to reimburse for necessary business expenses, the failure to provide suitable seating, the failure to pay sick wages, and any other claims whatsoever that were or could have been alleged in this case, including all reasonably related claims for restitution and other equitable relief under Business and Professions Code § 17200, the Fair Labor Standards Act, 29 U.S.C. sections 201, et seq. conversion, liquidated damages, punitive damages, and waiting-time penalties. The Released Class Claims exclude all other claims for vested non-wage benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and California class claims outside of the Class Period.
- 1.39. “Released PAGA Claims” means claims alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint for civil penalties under the Labor Code Private Attorneys General Act of 2004 and Labor Code sections 200, 201, 202, 203, 204, 206.5, 210, 218, 218.5, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802; related California Code of Regulations, Title 8, Sections 11040(5), (14); the applicable IWC Wage orders; and any other related claims and/or penalties of any nature reasonably based on the facts of the Operative Complaint which occurred during the PAGA Period. The Released Class Claims exclude all other claims for vested non-wage benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and California class claims outside of the Class Period.

- 1.40. “Released Parties” means: Defendant and each of its affiliates, joint ventures, predecessors, successors, and related parties and all of their past and present directors, officers, shareholders, members, managers, joint employers, co-employers, integrated enterprises, representatives, employees, insurers, and anyone else, acting for any of them.
- 1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. “Response Deadline” means forty-five (45) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. “Workweek” means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

2. RECITALS

- 2.1. On January 19, 2023, Plaintiff Gina Martinez commenced an Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (hereinafter “Martinez Action”). Plaintiff Martinez’s Complaint asserted claims that Defendant:
- (a) Failed to pay wages and/or overtime under labor code §§ 510, 1194, 1194.2 and 1199;
 - (b) Failed to provide meal breaks pursuant to Labor Code §§ 226.7 and 512;
 - (c) Failed to provide rest breaks pursuant to Labor Code § 226.7;
 - (d) Failed to reimburse expenses pursuant to Labor Code § 2802;
 - (e) Violation of Labor Code § 226(a);
 - (f) Penalties pursuant to Labor Code § 2023;
 - (g) Violation of Business & Professions Code § 17200
- 2.2. On May 10, 2023, Plaintiff Martinez filed a First Amended Class and Representative Action Complaint in the Martinez Action, which alleges additional Penalties Pursuant to Labor Code § 2699, *et seq.*
- 2.3. On March 6, 2023, Plaintiff Ismael Ortega commenced an Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (hereinafter “Ortega Class Action”). Plaintiff Ortega’s

Complaint asserted claims that Defendant:

- (a) Violated California Business and Professions Code § 17200 *et seq.*;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
- (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
- (i) Failed to pay sick wages in violation of California Labor Code §§ 201-204, 233, 246.

2.4. On August 11, 2023, Plaintiff Ortega filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Mateo, asserting a single cause of action for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq.* ("PAGA"), Case No. 23-CIV-03767 (hereinafter "Ortega PAGA Action") predicated upon the same Labor Code violations alleged in the Ortega Class Action.

2.5. On June 5, 2023, Plaintiff Jessica Saelor commenced an Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (hereinafter "Saelor Action"). Plaintiff Saelor's Complaint asserted claims that Defendant:

- (a) Failed to pay minimum wages;
- (b) Failed to pay overtime wages;
- (c) Failed to provide meal periods;
- (d) Failed to permit rest breaks;
- (e) Failed to reimburse business expenses;
- (f) Failed to provide accurate itemized wage statements;
- (g) Failed to pay wages timely during employment;
- (h) Failed to pay all wages due upon separation of employment, and
- (i) Violation of Business and Professions Code §§ 17200, *et seq.*

2.6. On September 8, 2023, Plaintiff Saelor filed a First Amended Class Action Complaint in the Saelor Action, which alleges additional Penalties Pursuant to Labor Code § 2699, *et seq.*

- 2.7. As part of this Settlement, Plaintiffs are filing a Second Amended Consolidated Class and Representative Action Complaint in the Martinez Action consolidating the claims alleged in the Martinez Action, the Ortega Class Action, the Ortega PAGA Action and the Saelor Action, and adding Ismael Ortega and Jessica Saelor as named Plaintiffs.
- 2.8. The Second Amended Consolidated Class and Representative Action Complaint is the operative complaint in the Action (the “Operative Complaint”).
- 2.9. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.10. On December 13, 2023, the Parties participated in an all-day mediation presided over by Tripper Ortman, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- 2.11. Prior to mediation, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.12. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, this Agreement will be void and the Parties will be restored to their respective positions as if the Class had never been certified. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that: (i) a class action should be certified or not decertified; (ii) either matter may proceed as a representative action; or (iii) Defendant has any obligation or liability to Plaintiff or any Class Member other than according to the Settlement’s terms. In the event the Settlement is not approved or otherwise voided, Defendant expressly reserves all rights to challenge certification of a class, or Plaintiff’s ability to maintain a representative action, for all purposes.
- 2.13. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$ 1,200,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.
- (a) To Plaintiff: Class Representative Service Payment to the Class Representatives of not more than \$12,500 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$400,000, and a Class Counsel Litigation Expenses Payment of not more than \$15,000 each to Blumenthal Nordrehaug Bhowmik De Blouw LLP; Kingsley & Kingsley, APC; Smith Law; and Aegis Law Firm, PC. The Class Counsel Fees Payment awarded shall be allocated thirty-four percent (34%) to Blumenthal Nordrehaug Bhowmik De Blouw LLP, fifty-one percent (51%) to Kingsley & Kingsley, APC and fifteen percent (15%) to Aegis Law Firm, PC. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel

Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

- (c) To the Administrator: An Administration Expenses Payment not to exceed \$19,745 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$19,745, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (\$18,750) allocated to the LWDA PAGA Payment and 25% (\$6,250) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 15% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 85% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class

Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that the Class consists of 1,569 Class Members who collectively worked a total of 36,687 Workweeks, and 1,204 Aggrieved Employees who worked a total of 14,823 PAGA Pay Periods.
- 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of employer-side payroll taxes by transmitting the funds to the Administrator no later than 60 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The

Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.

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

5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks as follows: twenty five percent (25%) to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund established in Section 77209 of the Government Code, and subject to appropriation in the annual Budget Act for the Judicial Council to provide grants to trial courts for new or expanded collaborative courts or grants for Sargent Shriver Civil Counsel; and Seventy-Five percent (75%) to Free To Thrive, a nonprofit organization helping survivors of human trafficking by providing restorative justice by expunging their criminal records to enable them to become gainfully employed and rejoin the community ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

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

6. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer-side payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,

release and discharge Released Parties from all known and unknown claims against the Released Parties, including without limitation any Released Claims as well as other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the PAGA, and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Plaintiff's relationship, or termination of relationship, with any Released Party through the date of Final Approval for any type of relief ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs further covenant that they will not become a member of any other legal actions against the Released Parties, as that term is defined, asserting any of Plaintiffs' released claims, and will opt out of any such actions if necessary. For the avoidance of doubt, this is a complete and general release to the maximum extent permitted by law.

- (a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

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

- 6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.
- 6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from

the Released PAGA Claims. Class Members who were employed during the PAGA Period and opt out of the Settlement will still be bound by the PAGA Release.

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

- 7.1. Defendant’s Responsibilities. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and the Cy Pres Recipient. In the Declaration, Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. In this Declaration, Defendant shall also aver as to the number of Class Members and the number of Workweeks for the Class during the Class Period.
- 7.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and the proposed Cy Pres Recipient; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator and the proposed Cy Pres Recipient; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of

the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

- 8.3. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS")

mail, the Class Notice with Spanish translation, if applicable substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- (c) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.4. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall

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

- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

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

8.6. Objections to Settlement.

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

- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

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

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall contemporaneously provide to Class Counsel a redacted version of the Exclusion List with names and contact information of the Class members excluded, but containing the employee's identification numbers) or other applied unique identifier(s) for the individuals on the Exclusion list, along with the number of workweeks and/or PAGA Pay Periods at issue in the Request for Exclusion. Plaintiff will include in the Final Approval Order the employee identification numbers/unique identifiers of the individuals who duly opted out. The Administrator shall also email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The

Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator's Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), a list of the employee identification numbers of the Class Members who submitted a valid Request for Exclusion, and the number of written objections received. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, Defendant is providing a declaration as set forth in paragraph 7.1 above. The Gross Settlement Amount will increase proportionally with added Class Members and/or added Workweeks, whichever is greater, if the actual number of Class Members and/or Workweeks in the Class Period is more than 5% of the estimate stated herein in paragraph 4.1.

10. MOTION FOR FINAL APPROVAL. Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall

nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS

12.1. No Admission of Liability. Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8. Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be

governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant.
- 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Joshua M. Henderson (SBN 197435)
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
Email: Joshua.Henderson@jacksonlewis.com

Lara P. Besser (SBN 282289) JACKSON LEWIS P.C.
225 Broadway, 18th Floor
San Diego, CA 92104
Tel. (619) 573-4900
Fax. (619) 573-4901
Lara.Besser@jacksonlewis.com

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation on December 13, 2023, until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

12.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members and Aggrieved Employees, and Defendant have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: May 13, 2024

DocuSigned by:

28E24BDF48D44E5...
Plaintiff Gina Martinez

Dated: May 6, 2024


Ismael Ortega (May 6, 2024 14:23 PDT)
Plaintiff Ismael Ortega

Dated: _____

Plaintiff Jessica Saelor

Dated: _____

Dean Frieders
Chief Solutions Officer for Defendant Mobile-Med Work Health
Solutions, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

Eric B. Kingsley
KINGSLEY & KINGSLEY, APC
Attorney for Plaintiff Gina Martinez

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff Ismael Ortega

Dated: _____

Jessica Campbell
AEGIS LAW FIRM, PC
Attorney for Plaintiff Jessica Saelor

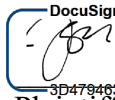
Dated: _____

Joshua M. Henderson
Lara P. Besser
JACKSON LEWIS, P.C.
Attorney for Defendant
Mobile-Med Work Health Solutions, Inc.

Dated: _____

Plaintiff Ismael Ortega

Dated: 6/14/2024

DocuSigned by:

3D4794635434486...

Plaintiff Jessica Saelor

Dated: _____

Dean Frieders
Chief Solutions Officer for Defendant Mobile-Med Work Health
Solutions, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

Eric B. Kingsley
KINGSLEY & KINGSLEY, APC
Attorney for Plaintiff Gina Martinez

Dated: 7/18/24


Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff Ismael Ortega

Dated: _____

Jessica Campbell
AEGIS LAW FIRM, PC
Attorney for Plaintiff Jessica Saelor

Dated: _____

Joshua M. Henderson
Lara P. Besser
JACKSON LEWIS, P.C.
Attorney for Defendant
Mobile-Med Work Health Solutions, Inc.

Dated: _____
Plaintiff Ismael Ortega

Dated: _____
Plaintiff Jessica Saelor

Dated: 5/23/2024


Dean Frieders
Chief Solutions Officer for Defendant Mobile-Med Work Health
Solutions, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____
Eric B. Kingsley
KINGSLEY & KINGSLEY, APC
Attorney for Plaintiff Gina Martinez

Dated: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff Ismael Ortega

Dated: _____
Jessica Campbell
AEGIS LAW FIRM, PC
Attorney for Plaintiff Jessica Saelor

Dated: June 18, 2024


Joshua M. Henderson
Lara P. Besser
JACKSON LEWIS, P.C.
Attorney for Defendant
Mobile-Med Work Health Solutions, Inc.

Dated: _____
Plaintiff Ismael Ortega

Dated: _____
Plaintiff Jessica Saelor

Dated: _____
Dean Frieders
Chief Solutions Officer for Defendant Mobile-Med Work Health
Solutions, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: May 14, 2024

Eric B. Kingsley
KINGSLEY & KINGSLEY, APC
Attorney for Plaintiff Gina Martinez

Dated: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff Ismael Ortega

Dated: _____
Jessica Campbell
AEGIS LAW FIRM, PC
Attorney for Plaintiff Jessica Saelor

Dated: _____
Joshua M. Henderson
Lara P. Besser
JACKSON LEWIS, P.C.
Attorney for Defendant
Mobile-Med Work Health Solutions, Inc.

Dated: _____
Plaintiff Ismael Ortega

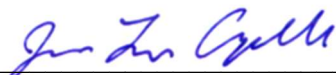
Dated: _____
Plaintiff Jessica Saelor

Dated: _____
Dean Frieders
Chief Solutions Officer for Defendant Mobile-Med Work Health
Solutions, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____
Eric B. Kingsley
KINGSLEY & KINGSLEY, APC
Attorney for Plaintiff Gina Martinez

Dated: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff Ismael Ortega

Dated: 6/15/2024

Jessica Campbell
AEGIS LAW FIRM, PC
Attorney for Plaintiff Jessica Saelor

Dated: _____
Joshua M. Henderson
Lara P. Besser
JACKSON LEWIS, P.C.
Attorney for Defendant
Mobile-Med Work Health Solutions, Inc.

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

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

***Martinez v. Mobile-Med Work Health Solutions, Inc., Superior Court of the State of
California, County of Santa Clara, Case No. 23CV410264***

The Superior Court for the State of California authorized this Notice.

READ IT CAREFULLY!

It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Mobile-Med Work Health Solutions, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) and seeks payment of (1) wages and other relief for the Class of all non-exempt employees who are employed or have been employed by Defendant in California at any time during the Class Period which is January 1, 2019 through June 13, 2024 (“Class Members”), and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees who are employed or have been employed by Defendant in California at any time during the PAGA Period which is March 6, 2022, through June 13, 2024 (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

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

The above estimates are based on Defendant’s records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected

whether you act or do not act. You will be deemed to have carefully read and understood this Notice. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and in exchange requires Class Members to give up their rights to assert certain claims against Defendant.

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

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendant as described in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Period wage claims against Defendant. If you are a Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.
- (3) **Object to the Settlement.** You may object to the Settlement, either in writing or verbally at the hearing. Instructions on how to object are provided below.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for the Individual Class Payment stated above. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice.
The Response Deadline is	However, you cannot opt-out of the PAGA portion of the proposed

_____.	Settlement. If you are a Aggrieved Employee and exclude yourself, you will still be paid your Individual PAGA Payment stated above and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at 1:30 p.m., at the Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, in Department 19 before Judge Theodore C. Zayner. This hearing may change as explained below in Section 9. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must	The amount of your Individual Class Payment and your share of the PAGA Penalties (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice.

be Submitted by the Response Deadline ()	
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1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Santa Clara (the “Court”), has been reached between Plaintiff and Defendant and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are employed or have been employed by Defendant in California at any time during the Class Period.

The “Class Period” is January 1, 2019 through June 13, 2024.

2. What is this class action lawsuit about?

On January 19, 2023, Plaintiff Gina Martinez filed a class action complaint against Defendant in the Superior Court of the State of California, County of Santa Clara Case No. 22CV394403 (hereinafter “Martinez Action”). Plaintiff asserted the following class claims against Defendant: unfair competition, failure to pay wages and/or overtime wages, failure to provide required meal periods and unpaid premiums, failure to provide required rest periods and unpaid premiums, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, and failure to pay wages when due. On May 10, 2023, Plaintiff Martinez filed a First Amended Class and Representative Action Complaint in the Martinez Action, which alleges additional penalties pursuant to Labor Code § 2699, *et seq.* (“PAGA”).

On March 6, 2023, Plaintiff Ismael Ortega filed a similar class action against Defendant in the Superior Court of the State of California, County of Santa Clara. On August 11, 2023, Plaintiff Ortega filed a representative action for civil penalties under PAGA.

On June 5, 2023, Plaintiff Jessica Saelor filed a similar class action against Defendant in the Superior Court of the State of California, County of Santa Clara. On September 8, 2023, Plaintiff Saelor filed a First Amended Class Action Complaint in the Saelor Action which alleges an additional claim for civil penalties under PAGA.

On [REDACTED], 2024, Plaintiffs filed a Second Amended Consolidated Class and Representative Action Complaint in the Martinez Action which consolidated the claims alleged in the Martinez Action, the Ortega Class Action, the Ortega PAGA Action and the Saelor Action, and added Ismael Ortega and Jessica Saelor as named Plaintiffs. The Second Amended Consolidated Class and Representative Action Complaint is the operative complaint in the Action (the “Operative

Complaint”).

Defendant denies that it has done anything wrong and disputes all the claims in the Action. Specifically, Defendant contends that Plaintiffs and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant did not fail to pay to Class Members any wages allegedly due at the time of their termination; that Defendant did not fail to reimburse Class Members for required expenses; that Defendant complied with California wage statement requirements; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant is not liable for any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of Blumenthal Nordrehaug Bhowmik De Blouw LLP, Kingsley & Kingsley, APC, and Aegis Law Firm, PC to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendant, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after mediation and arm’s-length negotiations between the Parties. The Plaintiffs and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, who expressly denies all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Million Two Hundred Thousand Dollars (\$1,200,000) (the “Gross Settlement Amount”) to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fully fund the Gross Settlement Amount no later than sixty (60) days after the Effective Date. The Effective Date is the date the Judgment is entered, unless there are objections or an appeal, in which case the Effective Date is the date the judgment is final and no longer subject to appeal. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion (“Participating Class Members”). At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- Administration Expenses Payment. Payment to the Administrator, estimated not to exceed \$19,745, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt-outs, and distributing settlement checks and tax forms.
- Attorneys’ Fees and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$400,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$60,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. Class Counsel Fees Payment awarded shall be allocated thirty-four percent (34%) to Blumenthal Nordrehaug Bhowmik De Blouw LLP, fifty-one percent (51%) to Kingsley & Kingsley, APC and fifteen percent (15%) to Aegis Law Firm, PC. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payments. Class Representative Service Payments in an amount not more than \$12,500 to each of the Plaintiffs, or such lesser amount as may be approved by the Court, to compensate for services on behalf of the Class in initiating and prosecuting the Action, and for the risks Plaintiffs undertook. The amount stated is what Plaintiffs will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$25,000 relating to Plaintiffs’ claim under PAGA, \$18,750 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”). The remaining \$6,250 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. “PAGA Pay Period” means any pay period during which a Aggrieved Employee worked for Defendant for at least one day during the PAGA Period (March 6, 2022, through June 13, 2024).

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

Calculation of Payments to Class Members. After all payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payments, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ _____. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Fifteen Percent (15%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Eighty-Five Percent (85%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged non-wages, expense reimbursement, interest and penalties (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks remitted to one or more non-profit charities as the cy pres beneficiary pursuant to California Code of Civil Procedure

section 384. The Parties have proposed 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund and 75% to Free To Thrive as the cy pres beneficiaries.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” are all claims alleged, or could have been alleged, based facts stated in the Operative Complaint, which arose during the Class Period, including all claims and/or causes of action under any federal, state, local law or administrative order that were or which could have been plead based on the facts alleged in the operative class action complaint, whether known or unknown, including the failure to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the failure to maintain records, the failure to timely pay wages, the failure to pay wages due to discharged or quitting employees, the failure to reimburse for necessary business expenses, the failure to provide suitable seating, the failure to pay sick wages, and any other claims whatsoever that were or could have been alleged in this case, including all reasonably related claims for restitution and other equitable relief under Business and Professions Code § 17200, the Fair Labor Standards Act, 29 U.S.C. sections 201, et seq. conversion, liquidated damages, punitive damages, and waiting-time penalties. The Released Class Claims exclude all other claims for vested non-wage benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and California class claims outside of the Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are all claims alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint for civil penalties under the Labor Code Private Attorneys General Act of 2004 and Labor Code sections 200, 201, 202, 203, 204, 206.5, 210, 218, 218.5, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802; related California Code of Regulations, Title 8, Sections 11040(5), (14); the applicable IWC Wage orders; and any other related claims and/or penalties of any nature reasonably based on the facts of the Operative Complaint which occurred during the PAGA Period. The Released Class Claims exclude all other claims for vested non-wage benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and California class claims outside of the Class Period.

Released Parties. The Released Parties are: Defendant and each of its affiliates, joint ventures, predecessors, successors, and related parties and all of their past and present directors, officers, shareholders, members, managers, joint employers, co-employers, integrated enterprises, representatives, employees, insurers, and anyone else, acting for any of them.

5. How much will my payment be?

Defendant's records reflect that you worked << ____ >> Workweeks during the Class Period (January 1, 2019 through June 13, 2024).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is << ____ >>.

[Defendant's records reflect that you worked << ____ >> PAGA Pay Periods during the during the PAGA Period (March 6, 2022, through June 13, 2024). Based on this information, your estimated Individual PAGA Payment is << ____ >>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is ____ [forty-five (45) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. The address for the Administrator is _____. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: ILYM Group, Inc., _____ (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiffs. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved

Employees who opt out will still be paid their Individual PAGA Payment and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Martinez v. Mobile-Med Work Health Solutions, Inc.* lawsuit. The request to opt-out should state the Class Member's full name. Please include the name and number of the case, which is *Martinez v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23CV410264. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and for Attorneys' Fees, Litigation Expenses and Service Award stating (a) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (b) the amount Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Martinez v. Mobile-Med Work Health Solutions, Inc.* or on the via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://cmportal.scscourt.org/Portal>) and entering the Case No. 23CV410264.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and for Attorneys' Fees, Litigation Expenses and Service Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [forty-five (45) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Martinez v. Mobile-Med Work Health Solutions, Inc.*, Case No. 23CV410264, and include your name. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group, Inc.

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANT:

Neda Dal Cielo
Jackson Lewis P.C.
160 W Santa Clara St., Suite 400
San Jose, CA 95113
Tel.: (408) 513-2251
E-Mail: Neda.DalCielo@jacksonlewis.com

Joshua M. Henderson
Jackson Lewis P.C.
50 California Street, 9th Floor
San Francisco, CA 94111
Tel.: (415) 796-5444
E-mail: Joshua.Henderson@jacksonlewis.com

Lara P. Besser
Jackson Lewis P.C.
225 Broadway, 18th Floor
San Diego, CA 92104

Tel.: (619) 573-4929
E-mail: Lara.Besser@jacksonlewis.com

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 19 of the Superior Court of California, County of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, before Judge Theodore C. Zayner. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

It is possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Martinez v. Mobile-Med Work Health Solutions, Inc.* In addition, hearing dates are posted on the Internet via the Case Query page for the California Superior Court for the County of Santa Clara (<https://www.sfsuperiorcourt.org/>) and entering the Case No. 23CV410264.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Martinez v. Mobile-Med Work Health Solutions, Inc.* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Martinez v. Mobile-Med Work Health Solutions, Inc.* You may get more details by examining the Court's file on the Internet via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://cmportal.scsccourt.org/Portal>) and entering the Case No. 23CV410264. If you wish to view the Court files in person, you should go to the Clerk's Office located at 191 North First Street, San Jose, CA 95113.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to one or more non-profit charities as the cy pres beneficiary. The Parties have proposed 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund and 75% to Free To Thrive as the cy pres beneficiaries to receive the unclaimed funds.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.
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EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

Defendants.

CASE NO.: **23CV410264**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed:
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter came before the Honorable Theordore C. Zayner of the Superior Court of the
2 State of California, in and for the County Santa Clara, on _____[DATE], for the motion by
3 Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) for preliminary approval
4 of the class settlement with Defendant Mobile-Med Work Health Solutions, Inc. (“Defendant”).
5 The Court, having considered the briefs, argument of counsel and all matters presented to the
6 Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of
7 Class Action Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement
10 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
11 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This
12 preliminary approval is based on the Court’s determination that the Settlement set forth in the
13 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
14 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is One Million Two Hundred Thousand Dollars
18 (\$1,200,000). It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
24 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
25 It further appears that the Agreement has been reached as the result of serious and non-collusive,
26 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
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1 adequate, and reasonable when balanced against the probable outcome of further litigation and the
2 significant risks relating to certification, liability, and damages issues.

3 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Forty-Five
5 Thousand Dollars (\$45,000), and proposed Class Representative Service Payments to the Plaintiffs
6 in an amount not to exceed Twelve Thousand Five Hundred Dollars (\$12,500) each. The Court
7 will not approve the amount of attorneys' fees and litigation expenses, nor the amount of any
8 service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence
9 supporting these requests prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the following Class: "all non-exempt employees
14 who are employed or have been employed by Defendant in California at any time during the Class
15 Period." The Class Period is January 1, 2019 through June 13, 2024.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class;
22 (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a
23 class action is superior to other available methods for the efficient resolution of this controversy;
24 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
25 adequate representatives of the Class.

26 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,

1 and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Eric B. Kingsley and
2 Kelsey M. Szamet of Kingsley & Kingsley, APC; Benjamin J. Smith, of Smith Law; and Samuel
3 A. Wong, Kashif Haque, Jessica L. Campbell, and Lisa B. Iturriaga of Aegis Law Firm, PC as
4 Class Counsel.

5 8. The Court hereby approves, as to form and content, the Court Approved Notice of
6 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as
7 Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and accurately
8 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
9 to be excluded from the Class by submitting a written opt-out request, and of each Class
10 Member’s right and opportunity to object to the Settlement. The Court further finds that the
11 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
12 and this Order meets the requirements of due process, is the best notice practicable under the
13 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
14 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
15 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
16 Administrator will promptly search for a more current address for the Class Member and re-mail
17 the Class Notice Packet to the Class Member.

18 9. The Court hereby appoints ILYM Group, Inc. as Administrator for the Settlement.
19 No later than twenty-one (21) calendar days after issuance of this Order, Defendant shall provide
20 to the Administrator an electronic spreadsheet with the Class Data. This information will
21 otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
22 taxing authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s
23 express written authorization or by order of the Court. The Administrator will perform address
24 updates and verifications as necessary prior to the mailing of the Class Notice. Using best efforts
25 to mail it as soon as possible, and in no event later than fourteen (14) calendar days after receiving
26 the Class Data spreadsheet, the Administrator will mail the Class Notice Packet to all Class
27 Members via first-class U.S. Mail.

1 10. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
3 from the Class as provided in the Class Notice by following the instructions set forth in the Class
4 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
5 than the Response Deadline, which is forty-five (45) calendar days after the Administrator initially
6 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
7 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
8 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
9 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
10 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
11 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
12 Members who have not requested exclusion shall be bound by all determinations of the Court, the
13 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
14 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
15 individuals (including a group, class, or subclass of individuals) is not permitted and will be
16 deemed invalid.

17 11. Any Class Member who has not opted-out may appear at the Final Approval
18 Hearing and may object or express the Class Member's views regarding the Settlement and may
19 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
20 heard and determined by the Court as provided in the Class Notice. Class Members will have
21 until the Response Deadline set forth in the Class Notice to submit their written objections to the
22 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
23 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
24 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
25 objection.

26 12. A Final Approval Hearing shall be held before this Court on _____
27 _____ at 1:30 p.m. in Department 19 at the of the Santa Clara County Superior Court
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PRELIMINARY APPROVAL ORDER

1 to determine all necessary matters concerning the Settlement, including: whether the proposed
2 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
3 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
4 Order and Judgment should be entered herein; whether the plan of allocation contained in the
5 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
6 finally approve attorneys' fees and costs, the service awards, and the expenses of the
7 Administrator. The motion for final approval of the class settlement and for award of attorneys'
8 fees, costs and service awards shall be filed with the Court and served on all counsel no later than
9 sixteen (16) court days before the hearing and shall be heard at the Final Approval Hearing.

10 13. Neither the Settlement nor any exhibit, document, or instrument delivered
11 thereunder shall be construed as a concession or admission by Defendant in any way that the
12 claims asserted have any merit or that this Action was properly brought as a class or representative
13 action, and shall not be used as evidence of, or used against Defendant as, an admission or
14 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
15 omission by Defendant or with respect to the truth of any allegation asserted by any person.
16 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
17 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
18 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
19 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
20 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
21 liability, fault, wrongdoing, omission, concession or damage.

22 14. In the event the Settlement does not become effective in accordance with the terms
23 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
24 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
25 and the Parties shall revert to their respective positions as of before entering into the Agreement,
26 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
27 including all available defenses and affirmative defenses, and arguments that no claim in the
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1 Action could be certified as a class action and/or managed as a representative action. In such an
2 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
3 referred to in litigation or otherwise for any purpose.

4 15. The Court reserves the right to adjourn or continue the date of the Final Approval
5 Hearing and all dates provided for in the Agreement without further notice to Class Members and
6 retains jurisdiction to consider all further applications arising out of or connected with the
7 proposed Settlement.

8 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
9 further orders of the Court at the Final Approval Hearing.

10 **IT IS SO ORDERED.**

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12 Dated: _____

HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

Defendants.

CASE NO.: 23CV410264

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed:
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) for
2 an order finally approving the class action settlement of this action between Plaintiff and
3 Defendant Mobile-Med Work Health Solutions, Inc. (“Defendant”) came on for hearing on
4 _____ before the Honorable Theodore C. Zayner.

5 The motion is GRANTED, as set forth below.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Class Action
11 and PAGA Settlement Agreement (the “Agreement”).

12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Santa Clara, and over all Parties to this litigation,
14 including the Class.

15 3. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of is One Million Two Hundred
17 Thousand Dollars (\$1,200,000) and the terms set forth in the Agreement are fair, reasonable, and
18 adequate.

19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

26 5. On _____, the Court granted preliminary approval of the Agreement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes
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1 only. The Court also approved the form and method of the Class Notice, appointed Plaintiffs as
2 the Class Representatives, appointed Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit
3 Bhowmik, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Eric B.
4 Kingsley and Kelsey M. Szamet of Kingsley & Kingsley, APC; Benjamin J. Smith, of Smith Law;
5 and Samuel A. Wong, Kashif Haque, Jessica L. Campbell, and Lisa B. Iturriaga of Aegis Law
6 Firm, PC as Class Counsel for the Class, and appointed ILYM Group, Inc. as the Administrator.

7 **Notice to the Class**

8 6. In compliance with the Preliminary Approval Order, the Class Notice Packet was
9 mailed by first class mail to members of the Class at their last known addresses on or about
10 _____. Mailing of the Class Notice to their last known addresses was the best notice
11 practicable under the circumstances and was reasonably calculated to communicate actual notice
12 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
13 Members fully and accurately informed the Class Members of all material elements of the
14 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
15 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
16 fully with the laws of the State of California, the United States Constitution, due process and other
17 applicable law. The Class Notice fairly and adequately described the Settlement and provided
18 Class Members adequate instructions and a variety of means to obtain additional information.

19 7. The Response Deadline for opting out of the Class or submitting written objections
20 to the Settlement was _____, which Response Deadline was extended by 14 days in the
21 event of a re-mailing. There was an adequate interval between notice and the deadline to permit
22 Class Members to choose what to do and act on their decision. A full opportunity has been
23 afforded to the Class Members to participate in this hearing, and all Class Members and other
24 persons wishing to be heard have been heard. Class Members also have had a full and fair
25 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
26 Court determines that all Class Members who did not timely and properly submit a request for
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1 exclusion in accordance with the Agreement are bound by the Settlement and this Final Approval
2 Order and Judgment.

3 **Fairness Of Settlement**

4 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
5 48 Cal.App.4th 1794, 1801 (1996).

6 a. The settlement was reached through arm's-length bargaining between the
7 parties during an all-day mediation before Tripper Ortman, a respected and experienced mediator
8 of wage and hour class actions. There has been no collusion between the parties in reaching the
9 proposed settlement.

10 b. Plaintiffs' investigation and discovery have been sufficient to allow the
11 Court and counsel to act intelligently.

12 c. Counsel for both Parties are experienced in similar employment class action
13 litigation. All counsel recommended approval of the Agreement.

14 d. [There were no objectors/the percentage of objectors and requests for
15 exclusion is small. ____ objections were received. ____ requests for exclusion were
16 received].

17 9. The consideration to be given to the Class Members under the terms of the
18 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
19 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
20 Members' claims, given the uncertainties and significant risks of the litigation and the delays
21 which would ensue from continued prosecution of the action.

22 10. The Agreement is approved as fair, adequate and reasonable and in the best
23 interests of the Class Members.

24 **Attorneys' Fees and Costs**

25 11. A Class Counsel Fees Payment award of \$_____, and Class Counsel
26 Litigation Expenses Payment award of \$_____ are reasonable, in light of the
27 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
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1 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
2 and billing statement.

3 **Class Representative Service Payments**

4 12. The Agreement provides for Class Representative Service Payments of not more
5 than \$12,500 each to the Plaintiffs, subject to the Court's approval. The Court finds that the Class
6 Representative Service Payments in the amount of \$_____ each to the Plaintiffs are reasonable in
7 light of the risks and burdens undertaken by the Plaintiffs in the litigation, for their time and effort
8 in bringing and prosecuting this matter on behalf of the Class, and for their execution of the
9 general release.

10 **Administration Expenses Payment**

11 13. The Administrator shall calculate and administer the payment to be made to the
12 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
13 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
14 Penalties, issue any required tax reporting forms, calculate withholdings and perform the other
15 remaining duties set forth in the Agreement. The Administrator has documented \$_____ for
16 the Administration Expenses Payment, and this amount is reasonable in light of the work
17 performed by the Administrator.

18 **PAGA Penalties**

19 14. The PAGA Penalties amount of \$25,000 is approved and shall be paid out of the
20 Gross Settlement Amount, 75% of which shall be allocated and paid to the LWDA and 25% of
21 which shall be distributed to the Aggrieved Employees as Individual PAGA Payments. The
22 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
23 Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Pay
24 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
25 result by each Aggrieved Employee's PAGA Pay Periods. The Aggrieved Employees are all non-
26 exempt employees who are employed or have been employed by Defendant in California at any
27 time during the PAGA Period which is March 6, 2022, through June 13, 2024. All Aggrieved
28

1 Employees will be sent their share of the PAGA Penalties and will be subject to the release of the
2 Released PAGA Claims as set forth below, whether or not they opt out of the Class Settlement.

3 **II.**

4 **ORDERS**

5 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

6 15. The certification of the Class for the purposes of settlement is confirmed. The Class
7 is defined as follows:

8 All employees who are employed or have been employed by Defendant in
9 California at any time during the Class Period (January 1, 2019 through June 13,
10 2024).

11 16. All persons who meet the foregoing definition are members of the Class, except
12 for those individuals who timely submitted a valid request for exclusion (“opt out”) from the
13 Class. [INSERT REFERENCE TO IDENTIFY ANY OPT OUTS].

14 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
15 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
16 the amounts necessary to fully pay Defendant’s share of payroll taxes in accordance with the
17 Agreement, by transmitting the funds to the Administrator no later than 60 days after the Effective
18 Date.

19 18. Class Counsel are awarded Class Counsel Fees Payment in the amount of \$ _____
20 _____ and Class Counsel Litigation Expenses Payment in the amount of \$ _____.
21 Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant,
22 Plaintiff or members of the Class.

23 19. The payment of the Class Representative Service Payments in the amount of \$ _____
24 _____ each to the Plaintiffs is approved.

25 20. The payment of \$ _____ to the Administrator as the Administration
26 Expenses Payment is approved.

27 21. The PAGA Penalties are approved and shall be allocated as set forth in the
28 Agreement.

FINAL APPROVAL ORDER AND JUDGMENT

1 22. A Participating Class Member must cash his or her Individual Class Payment check
2 within 180 days after the issuance of the checks. An Aggrieved Employee must cash his or her
3 Individual PAGA Payment check within 180 days after the issuance of the checks. If such checks
4 are not cashed within 120 days after the initial mailing of the checks, the Administrator will also
5 send the affected Participating Class Member and/or Aggrieved Employee a reminder notice
6 informing him or her that unless the check is cashed in the next 60 days, it will expire and become
7 non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the
8 check remains uncashed by the expiration of the 180 day period, the funds from such uncashed
9 checks shall be paid to _____ as the cy pres beneficiary in accordance with
10 California Code of Civil Procedure section 384(b).

11 23. The Agreement and this Settlement are not an admission by Defendant, nor is this
12 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
13 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
14 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
15 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
16 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
17 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
18 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
19 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
20 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
21 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
22 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
23 theory of claim or issue preclusion or similar defense as to the Released Class Claims and the
24 Released PAGA Claims.

25 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
26 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
27 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
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1 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
2 to individual Class Members.

3 25. If the Agreement does not become final and effective in accordance with the terms
4 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
5 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
6 revert to their respective positions as of before entering into the Agreement, and expressly reserve
7 their respective rights regarding the prosecution and defense of this Action, including all available
8 defenses and affirmative defenses, and arguments that any claim in the Action could not be
9 certified as a class action and/or managed as a representative action.

10
11 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

12 26. The Court hereby enters final judgment in this case in accordance with the terms of
13 the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment.

14 27. Except as set forth in the Agreement and this Final Approval Order and Judgment,
15 Plaintiff, and all members of the Class, shall take nothing in the Action.

16 28. Pursuant to California Code of Civil Procedure section 664.6, and without affecting
17 the finality of this Judgment in any way, the Court shall retain jurisdiction to construe, interpret,
18 implement and enforce the Agreement, to hear and resolve any contested challenge to a claim for
19 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with
20 the distribution of settlement benefits.

21 29. The Parties are authorized to agree to and to adopt such amendments, modifications
22 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
23 Final Approval Order and Judgment and do not limit the rights of the Parties or Class Members
24 under the Agreement, subject to Court approval.

25 30. Each party shall bear its own attorneys' fees and costs, except as otherwise
26 provided in the Agreement and in this Final Approval Order and Judgment.

1 31. As of the Effective Date and upon full finding of the Gross Settlement Amount by
2 Defendant, all Participating Class Members, on behalf of themselves and their respective former
3 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
4 release Released Parties from the Released Class Claims. The “Released Class Claims” are all
5 claims alleged, or could have been alleged, based facts stated in the Operative Complaint, which
6 arose during the Class Period, including all claims and/or causes of action under any federal, state,
7 local law or administrative order that were or which could have been plead based on the facts
8 alleged in the operative class action complaint, whether known or unknown, including the failure
9 to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the
10 failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the
11 failure to maintain records, the failure to timely pay wages, the failure to pay wages due to
12 discharged or quitting employees, the failure to reimburse for necessary business expenses, the
13 failure to provide suitable seating, the failure to pay sick wages, and any other claims whatsoever
14 that were or could have been alleged in this case, including all reasonably related claims for
15 restitution and other equitable relief under Business and Professions Code § 17200, the Fair Labor
16 Standards Act, 29 U.S.C. sections 201, et seq. conversion, liquidated damages, punitive damages,
17 and waiting-time penalties. The Released Class Claims exclude all other claims for vested non-
18 wage benefits, wrongful termination, violation of the Fair Employment and Housing Act,
19 unemployment insurance, disability, social security, workers’ compensation, and California class
20 claims outside of the Class Period. The “Released Parties” are Defendant and each of its affiliates,
21 joint ventures, predecessors, successors, and related parties and all of their past and present
22 directors, officers, shareholders, members, managers, joint employers, co-employers, integrated
23 enterprises, representatives, employees, insurers, and anyone else, acting for any of them.

24 32. As of the Effective Date and upon full funding of the Gross Settlement Amount by
25 Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
26 themselves and their respective former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

1 The “Released PAGA Claims” are all claims alleged, or reasonably could have been alleged,
2 based on the facts stated in the Operative Complaint for civil penalties under the Labor Code
3 Private Attorneys General Act of 2004 and Labor Code sections 200, 201, 202, 203, 204, 206.5,
4 210, 218, 218.5, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1174, 1174.5, 1182.12,
5 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802; related California Code of
6 Regulations, Title 8, Sections 11040(5), (14); the applicable IWC Wage orders; and any other
7 related claims and/or penalties of any nature reasonably based on the facts of the Operative
8 Complaint which occurred during the PAGA Period. The Released Class Claims exclude all other
9 claims for vested non-wage benefits, wrongful termination, violation of the Fair Employment and
10 Housing Act, unemployment insurance, disability, social security, workers’ compensation, and
11 California class claims outside of the Class Period.

12 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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14 Dated: _____

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HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT

EXHIBIT #2

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

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FIRM RESUME

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Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

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Admitted: 2024, California; 2014, Mexico

Educated: The Juarez University

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

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In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles,

75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua*

Sponte Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

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Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figuroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern District of California, Case No. 09-cv-1736; Francisco v. Diebold, U.S. District Court, Southern District of California, Case No. 09-cv-1889; Friend v. Wellpoint, Los Angeles Superior Court, Case No. BC345147; Frudakis v. Merck Sharp & Dohme, U.S. District Court, Central District California, Case No. SACV 11-00146; Fulcher v. Olan Mills, Inc., U.S. District Court, Northern District of California, Case No. 11-cv-1821; Gabisan v. Pelican Products, U.S. District Court, Southern District California, Case No. 08 cv 1361; Galindo v. Sunrun Installation Services Inc., San Diego County Superior Court, Case No. 37-2015-00008350-CU-OE-CTL; Gallagher v. Legacy Partners Commercial, Santa Clara County Superior Court, Case No. 112-cv-221688; Ghattas v. Footlocker Retail, Inc., U.S. District Court Central District of California, Case No. CV 13-0001678 PA; Gibson v. World Savings, Orange County Superior Court, Case No. 762321; Goerzen v. Interstate Realty Management, Co., Stanislaus County Superior Court, Case No. 679545; Gomez v. Enterprise Rent-A-Car, U.S. District Court, Southern District of California, Case No. 3:10-cv-02373; Gordon v. Wells Fargo Bank, U.S. District Court, Southern District of California, Case No. 3:11-cv-00090; Grabowski v. CH Robinson, U.S. District Court, Southern District of California, Case No. 10-cv-1658; Gross v. ACS Compiq Corporation, Orange County Superior Court, Case No. 30-2012-00587846-CU-OE-CXC; Gripenstraw v. Buffalo Wild Wings, U.S. District Court, Eastern District of California, Case No. 12-CV-00233; Gruender v. First American Title, Orange County Superior Court, Case No. 06 CC 00197; Guillen v. Univision Television Group, Inc. & Univision Management Co., San Francisco County Superior Court, Case No. CGC-12-526445; Gujjar v. Consultancy Services Limited, Orange County Superior Court, Case No. 30-2010-00365905; Gutierrez v. Five Guys Operations, LLC, San Diego County Superior Court, Case No. 37-2012-00086185-CU-OE-CTL; Handler v. Oppenheimer, Los Angeles Superior Court, Civil Action No. BC343542; Harley v. Tavistock Freebirds, LLC, Sacramento County Superior Court, Case No. 34-2014-00173010; Harrington v. Corinthian Colleges – Class Certification Granted, Orange Superior Court; United States Bankruptcy Court District of Delaware; Harvey v. PQ Operations, Inc., Los Angeles County Superior Court, Case No. BC497964; Henshaw v. Home Depot U.S.A., United States District Court, Central District of California, Case No. SACV10-01392; Heithold v. United Education Institute, Orange County Superior Court, Case No. 30-2013-00623416-CU-OE-CXC; Hibler v. Coca Cola Bottling, Settled U.S. District Court, Southern District of California, Case No. 11cv0298; Hildebrandt v. TWC Administration LLC & Time Warner NY Cable, LLC, U.S. District Court, Central District of California, Case No. ED-cv-13-02276-JGB; Hopkins v. BCI Coca-Cola Bottling Company of Los Angeles, United states District Court, Central District of California; U.S. Court of Appeals 9th Circuit; Howard v. Southern California Permanente

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Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lešević v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL, Azima v. CSI Medical Group, – Santa Clara County Superior Court, Case No. 19CV345450; Porrás v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v.

Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter’s Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cyctec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

EXHIBIT #3

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 19, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Mobile-Med Work Health Solutions, Inc.
2101 Forest Avenue, Suite 220A
San Jose, California 95128

Re: Gina Martinez v. Mobile-Med Work Health Solutions, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Gina Martinez (“Plaintiff”) and a proposed group of current and former employees working for Mobile-Med Work Health Solutions, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein 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 bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Mobile-Med Work Health Solutions, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked because Defendant fails to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and all aggrieved employees were required to routinely work “off the clock” and performed compensable activities before and after each working shift for which no pay was provided. First, Plaintiff and all aggrieved employees were required to arrive 15 to 30 minutes before their scheduled start time to set up computers, chairs, tables and prepare testing sites. Second, Plaintiff and the aggrieved employees were required to attend mandatory weekly meetings “off the clock”, after their scheduled shifts, for which no pay

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was provided. Third, Plaintiff and the aggrieved employees were required to drop off COVID-19 test results to FedEx locations. Again, these drops-offs were completed while “off the clock” and Plaintiff and all aggrieved employees were not compensated while completing these drop-offs. This time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though these activities and time are compensable.

Further, Plaintiff and all aggrieved employees were required to wear uniform and Personal Protective Equipment (PPE). Plaintiff and all aggrieved employees are required to put this clothing on and take this clothing off before and after every shift. As a result, Plaintiff and all aggrieved employees were not paid for all hours worked as a result of the amount of time required to take this clothing on and off before the start of each shift and after the end of each shift (donning and doffing) and the time they were required to work off the clock prior to the scheduled start time of their shift. The time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though these activities and time are compensable.

Additionally, Defendant had a consistent policy of failing to compensate Plaintiff and all aggrieved employees for time they were on-call or standby. Defendant places significant restrictions on Plaintiff and other aggrieved employees during on-call time, including restricting travel and barring activities that would make the employee unreachable. Employees are not free to use on-call time for their own purposes. Time spent on call constitutes “hours worked” under California law, but Defendant has not compensated Plaintiff and aggrieved employees for this time.

By their policy of requiring Plaintiff and all aggrieved employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a compliant manner.

Defendant failed to maintain a policy informing Plaintiff and all aggrieved employees of their rights associated with meal periods. In addition, Defendant has had a consistent policy of: (1) failing to provide Plaintiff and all aggrieved employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently

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interrupted because Defendant required Plaintiff and all aggrieved employees to be available by phone to respond to text messages or emails during meal periods. As such, when meal periods were provided, they were not a full thirty (30) minutes in length (short) and/or were interrupted.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and all aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a policy of informing Plaintiff and all aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fraction thereof) without being provided with a ten (10) minute uninterrupted rest period. Rest periods were frequently interrupted because Defendant required Plaintiff and all aggrieved employees to be available by phone to respond to text messages or emails during rest periods. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Because there was limited coverage for Plaintiff and other employees to be able to take their second breaks, Plaintiff and other aggrieved employees did not have the opportunity to take their breaks. If Plaintiff took a second rest break, then there would not be another employee available to cover the shift while Plaintiff was on break. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods.

Further, Plaintiff and all aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant required Plaintiff and all aggrieved employees to incur mileage on their personal vehicles for work purposes. This necessary travel included transporting COVID-19 tests to FedEx.

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Because Defendant did not provide a vehicle or other transportation to workers so they could complete this travel, Plaintiff and aggrieved employees used their own vehicles to travel from location to location in the middle of their scheduled shifts. Defendant did not reimburse Plaintiff and the aggrieved employees for their vehicle use for travel between Defendant's job site and FedEx facility during the course of a work shift, in violation of California law.

Defendant has also failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and computers for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones to perform their job duties. These computers were also necessary for the completion of Plaintiff and aggrieved employees' job duties and Defendant did not reimburse Plaintiff and the aggrieved employees for using their personal computers. Further, Plaintiff and other aggrieved employees were required to purchase their own uniforms, such as medical scrubs and shoes, for business related purposes. These cell phones, computers and uniforms were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones and computers and purchasing their own uniforms.

Labor Code §226(a) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§226(a)(2) and (9), respectively.) As a result of Defendant's failure to pay for all hours worked as described above, Plaintiff and the aggrieved employees are issued wage statements that do not accurately include the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and all aggrieved employees in violation of Labor Code §226(a). Further, Plaintiff and all aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the meal and rest claims alleged above and when they do, they are not the accurate rate.

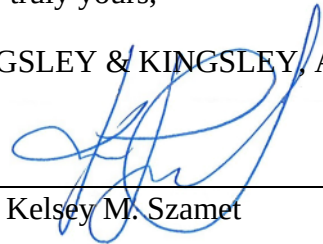
Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety

of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Mobile-Med Work Health Solutions, Inc. via USPS Certified Mail # 7022 3330 0002 1335 5072
 3. Smith Law, 4515 Van Nuys Blvd #302, Sherman Oaks, CA91403

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Phone: (858) 551-1223

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

March 2, 2023

CA 2915

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Mobile-Med Work Health Solutions, Inc.
Certified Mail #70223330000181663586
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Mobile-Med Work Health Solutions, Inc. in California, including any employees staffed with Mobile-Med Work Health Solutions, Inc. by a third party, and classified as non-exempt employees during the time period of March 2, 2022 until a date as determined by the Court. Our offices represent Plaintiff Ismael Ortega (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Mobile-Med Work Health Solutions, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2021 to February of 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.



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Facsimile: 949.379.6251
www.aegislawfirm.com

June 5, 2023

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for Mobile-Med Work Health Solutions, Inc.:
CT Corporation System
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203

Mobile-Med Work Health Solutions, Inc.:
2101 Forest Avenue, Suite 220A
San Jose, CA 95128

Re: Jessica Saelor v. Mobile-Med Work Health Solutions, Inc.

Dear Labor and Workforce Development Agency; Mobile-Med Work Health Solutions, Inc.:

Please allow this correspondence to serve as written notice required by California Labor Code § 2699.3(a)(1) of the specific provisions of the Labor Code allegedly violated by Mobile-Med Work Health Solutions, Inc. and any other employers or person(s) acting on behalf of the employer as such phrase is used under Labor Code sections 558 and 558.1 ("Respondent"), and the facts and theories in support of said allegations. This firm represents Jessica Saelor ("Claimant"); we hereby notify you that Claimant intends to seek penalties against Respondent under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*, on Claimant's own behalf and all other aggrieved employees.

Specific Provisions of the Labor Code Allegedly Violated by Respondent

The specific provisions of the Labor Code allegedly violated by Respondent and the provisions under which Claimant submits this correspondence include the following: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

Facts and Theories Supporting the Allegations Against Respondent

Claimant and other aggrieved employees worked for Respondent in California as non-exempt employees. Claimant was employed by Respondent in California within the past year.

During the past year, Respondent failed to provide 30-minute uninterrupted meal periods within the appropriate time intervals to Claimant and other aggrieved employees as required by Labor Code section 512 and section 11 of the applicable Wage Order. Claimant and other aggrieved employees frequently worked shifts over five hours and did not receive lawful meal periods because they were discouraged from taking meal periods, were interrupted during their meal periods, were required to remain on call during meal periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all lawful meal periods, among other reasons. As a result, their meal periods were missed, late, short, and/or interrupted.

When Claimant and other aggrieved employees missed meal periods or if the meal periods were late, short, and/or interrupted, Respondent violated Labor Code sections 226.7 and 512, as well as section 11 of the applicable Wage Order, by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees for every day in which they suffered a meal period violation.

Respondent failed to authorize or permit paid 10-minute rest periods for every four hours or major fraction thereof worked because Claimant and other aggrieved employees were required or incentivized to work through their rest periods, discouraged from taking their rest periods, required to remain on call during rest periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all rest periods.

When Claimant and other aggrieved employees did not receive rest periods, Respondent violated Labor Code section 226.7 and section 12 of the applicable Wage Order by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees.

Respondent failed to pay Claimant and other aggrieved employees at least the legal minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Respondent's policy and practice of requiring Claimant and aggrieved employees to work off-the-clock, failing to pay wages using the appropriate regular rate of pay or the required minimum wage, and/or failing to pay for all recorded time, among other reasons. Respondent failed to pay Claimant and other aggrieved all minimum, regular, and overtime wages for these hours.

Claimant and other aggrieved employees incurred necessary business-related expenses as a direct consequence of the discharge of their job duties for the benefit of Respondent, such as cell phone and personal vehicle use. As such, Respondent violated Labor Code §§ 2800 and 2802 by failing to reimburse Claimant and other aggrieved employees for such expenses.

As a result of, and in addition to, these actions, Respondent violated Labor Code sections 226, and 226.3 by failing to provide itemized wage statements that accurately reported the following: (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. Specifically, the wage statements failed to list the correct hours, rates, and pay due to the above unpaid wage violations, among other violations.

Respondent violated Labor Code sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the hours worked daily by the aggrieved employees and the wages paid to aggrieved employees (due to the same underpayment of wages referenced above).

Furthermore, Respondent violated the Labor Code by failing to properly pay all these wages owed throughout aggrieved employees' employment and following the end of these workers' employment with Respondent due to the above violations (in violation of Labor Code sections 201, 202, 203, 204).

Based on these violations, Claimant seeks attorneys' fees, interest, and penalties under the Labor Code. Enclosed and incorporated by reference is the class action complaint Claimant intends to file on behalf of herself and all other aggrieved employees against Respondent. Claimant intends to amend the complaint to include a cause of action pursuant to Labor Code §§ 2698, *et seq.*, after the minimum required review period elapses and will file a conformed copy of the complaint after it has been filed with the court.

Thank you for your assistance on this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,
AEGIS LAW FIRM, PC



Jessica L. Campbell

Enclosure: Class Action Complaint

EXHIBIT #4

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Tel: (619) 573-4900

Attorneys for Defendant
MOBILE-MED WORK HEALTH SOLUTIONS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated

PLAINTIFF,

vs.

MOBILE-MED WORK HEALTH
SOLUTIONS INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 23CV410264

**DECLARATION OF JOSHUA M.
HENDERSON IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
SETTLEMENT**

Complaint Filed: January 19, 2023
FAC Filed: May 10, 2023
SAC Filed: June 25, 2024
Trial Date: None Set

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I, Joshua M. Henderson, declare:

1. I am an attorney duly authorized to practice law before this Court and within the State of California. I am a principal with the law firm of Jackson Lewis P.C., attorneys of record for Defendants Mobile-Med Work Health Solutions, Inc. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

2. The following is based on my personal knowledge, and on information and belief based on my review of and familiarity with the files and the documents in the above-captioned matter. If called as a witness, I could and would competently testify to the facts contained herein.

3. Neither Defendant nor Defendants' counsel are aware of any conflict of interest with ILYM Group, Inc., the third-party administrator selected by the parties to administer the settlement agreement in this action.

4. Neither Defendant nor Defendants' counsel are aware of any other pending action asserting claims that will be extinguished or adversely affected by the settlement agreement in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of July 2024, at San Francisco, California.

Joshua M. Henderson