

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Peter Horton, Esq. (227678)
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571

Attorneys for MARK FRANKLIN, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

MARK FRANKLIN on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

DESERT HAVEN ENTERPRISES; and
DOES 1-100,

Defendants.

Case No. BCV-23-101153
(Consolidated with Case No. BCV-23-101829)

*[Assigned for All Purposes to the
Honorable Gregory A. Pulskamp; Div. J]*

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

Date: June 26, 2024
Time: 8:30 a.m.
Division: J
Location: 1215 Truxton Avenue
Bakersfield, California 93301

**Complaint Filed: April 13, 2023
Trial Date: None Set**

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the Class in
3 this matter. I am duly admitted to practice before all the courts of the state of California.
4 The following facts are within my personal knowledge and, if called to testify, I could and
5 would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor Code
9 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and
10 cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have
11 litigated over three hundred and fifty (350) class action and PAGA lawsuits over the course
12 of approximately 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
14 Superior Court, Case No. GIC834348) which was the underlying case in the California
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
17 obligations to provide, and employee rights to receive, meal and rest periods under
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The
22 California Supreme Court ruling that, like meal periods, employers must relieve employees
23 of all duty and relinquish all control to satisfactorily discharge its obligation to authorize
24 and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California
25 Supreme Court ruling that the time spent on the employer’s premises waiting for, and
26 undergoing, required exit searches of packages, bags, or personal technology devices
27 voluntarily brought to work is compensable hours worked within the meaning of the Wage
28 Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No. H049185

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

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

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

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

9. I have also been named as class counsel in numerous cases during the settlement process. Here is a non-exhaustive list of cases where I have been named as class counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior

1 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
2 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
3 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
4 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
5 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
6 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
7 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
8 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
9 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
10 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
11 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
12 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
13 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
14 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior
15 Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo
16 County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et*
17 *al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
18 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
19 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
20 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v.*
21 *Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No.
22 CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County
23 Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI*
24 *Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry*
25 *Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
26 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
27 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries,*
28 *Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua*

1 *Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior
2 Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern
3 County Superior Court, Case No. BCV-21-101357).

4 10. On April 13, 2024, Plaintiff filed a class action complaint against Defendant (the “Class
5 Action”). The complaint alleges the following causes of action against Defendant: (1)
6 Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide
7 Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a
8 Compliant Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply
9 with Itemized Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at
10 the Time of Termination; and (8) Violation of Unfair Competition Law.

11 11. On April 7, 2023, Plaintiff provided notice to the Labor and Workforce Development
12 Agency (“LWDA”) in accordance with the PAGA. Thereafter, on June 12, 2023, Plaintiff
13 filed an action against Defendant that alleges causes of action under the Private Attorneys
14 General Act of 2004 (the “PAGA Action”). This case was designated with Case Number
15 BCV-23-101829. The complaint sought civil penalties under the PAGA in relation to the
16 following alleged violations suffered by allegedly similar aggrieved employees: (1) Failure
17 to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal
18 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Pay all Wages Due
19 at the Time of Termination; (6) Knowing and Intentional Failure to Comply with Itemized
20 Employee Wage Statement Provisions; and (7) Failure to Adopt a Compliant Sick Pay
21 Policy.

22 12. On June 2, 2023, Defendant filed a notice of removal of the Class Action to the U.S. District
23 Court for the Central District of California. Thereafter, Plaintiff filed a motion to remand
24 the matter back to state court, which led to Defendant agreeing to stipulation to remand the
25 matter back to state court and the matter returned to the Superior Court of California, for
26 the County of Kern.

27 13. On September 28, 2023, the Parties filed a stipulation to consolidate the Class Action and
28 the PAGA Action. The Court granted this stipulation on October 3, 2023.

1 14. After filing, the Parties engaged in extensive informal discovery and Plaintiff conducted
2 investigation into the claims. As part of this discovery, Defendant produced hundreds of
3 documents and policies including, but not limited to, wage and hour policies – including
4 meal and rest period policies – that covered putative class members, Plaintiff’s time and
5 pay records, and a sampling of time and pay records for Class Members.

6 15. The Parties attended an all-day mediation with respected wage and hour mediator Mark
7 Rudy on January 16, 2024. This mediation was unsuccessful. Thereafter, the Parties
8 continued to engage in negotiations at arms-length, with Defendant producing additional
9 documents and data. The Parties engage in additional mediation conversations with Mr.
10 Rudy. As a result of these continued settlement discussions, all of which were facilitated
11 through the mediator, the Parties were able to reach a settlement, which was reduced to a
12 MOU that was executed on April 18, 2024. The Parties then met and conferred over all the
13 terms of the settlement and finalized their agreement in the Parties’ Agreement. The
14 Parties’ Agreement is attached hereto as **Exhibit 1**.

15 16. Plaintiff contends that Defendant does not provide employees with meal periods that
16 conform with California law. Employers have an obligation under California law to provide
17 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a),
18 “[a]n employer may not employ an employee for a work period of more than five hours
19 per day without providing the employee with a meal period of not less than 30 minutes . .
20 . .” Cal. Lab. Code § 512(a). An employer “satisfies this obligation [to provide meal
21 periods] if it relieves its employees of all duty, relinquishes control over their activities and
22 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does
23 not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court*
24 (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends that employees’ meal periods are
25 not duty-free.

26 17. Defendant asserts that its meal period practice is lawful and that it provides employees with
27 meal periods in compliance with California law. Further, Defendant alleges that if litigation
28 continues it would be able to show that it advised employees of the right to take a meal

1 period in compliance with California law. Defendant contends that employees either took
2 a lawful meal period or knowingly and voluntarily decided to skip the meal period or take
3 a late or short meal period. Defendant also asserts that the evidence in this case shows that
4 it paid meal period premiums in shifts in which employees were not provided with
5 compliant meal periods. Thus, Defendant contends that to the extent an employee was not
6 provided the opportunity to take a legally compliant meal period, they were provided a
7 meal premium.

8 18. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
9 Members would be entitled to the following *maximum* potential damages: \$3,692,475
10 (246,165 shifts x \$15.00 per hour = \$3,692,475).

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

20 20. Defendant asserts that its rest period practice is lawful and that it provides employees with
21 rest periods in compliance with California law. Further, Defendant alleges that if litigation
22 continues it would be able to show that it advised employees of the right to take a rest
23 period in compliance with California law and provided lawful rest periods to employees.

24 21. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
25 Members would be entitled to the following *maximum* potential damages: \$3,692,475
26 (246,165 shifts x \$15.00 per hour = \$3,692,475).

27 22. Plaintiff alleges that Defendant does not pay all wages owed to employees because it
28 rounds employees' time punches. Employees must be paid for all "hours worked," as that

1 phrase is defined in the Wage Order and interpreted by California courts. Hours worked is
2 defined in the Wage Order as “the time during which an employee is subject to the control
3 of an employer, and includes all the time the employee is suffered or permitted to work,
4 whether or not required to do so.” Wage Order 4-2001, Section 2(K); *see also Mendiola v.*
5 *CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. In California, rounding policies are
6 permissible if the rounding policy is “fair and neutral on its face and ‘it is used in such a
7 manner that it will not result, over a period of time, in failure to compensate the employees
8 properly for all the time they have actually worked.’” *See’s Candy, Inc. v. Superior Court*
9 (2012) 210 Cal. App. 4th. 889, 907.

10 23. Plaintiff alleges that Defendant has an unlawful rounding practice that is not fair and
11 neutral in practice. Plaintiff asserts that Defendant’s rounding policy results in employees
12 systematically being undercompensated. Defendant counters that its rounding policy is fair
13 and neutral on its face and in practice and that its rounding policy does not systematically
14 result in employees being undercompensated.

15 24. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
16 Members would be entitled to the following **maximum** potential damages: \$923,118
17 (246,165 shifts x \$15.00 per hour x 0.25 hours = \$923,118.75).

18 25. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
19 waiting time penalty claims. These claims are derivative of Plaintiff’s unpaid wages, meal
20 period, and rest period claims. Should Plaintiff’s unpaid wages, meal period, and rest
21 period claims fail, these claims would also fail.

22 26. In addition, Defendant contends that even if Plaintiff were successful in his claims, he
23 would have to prove Defendant “willfully” failed to pay employees the appropriate
24 overtime wages and meal and rest period premiums due upon separation of employment.
25 “A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when
26 an employer intentionally fails to pay wages to an employee when those wages are due.
27 However, a good faith dispute that any wages are due will preclude imposition of waiting
28 time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’

1 that any wages are due occurs when an employer presents a defense, based in law or fact,
2 which would preclude any recovery on the part of the employee. The fact that a defense is
3 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.*
4 Defendant contends that any failure to pay wages due at the separate of employment was
5 not willful. Defendant argues that it would not be liable for waiting time penalties because
6 a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8
7 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Defendant also
8 argues that Plaintiff’s unpaid wages, meal period, and rest period claims cannot form the
9 basis of his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon*
10 *Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer
11 injury under California Labor Code § 226(a) so long as the wage statements correctly
12 reflected the hours worked and the pay received even if the pay is later determined to be
13 inaccurate.

14 27. If Plaintiff were to prevail on his unpaid wages, meal period, and/or rest period claims,
15 Plaintiff and the Class Members may be entitled to penalties for accurate itemized wage
16 statements to employees. Under California Labor Code § 226(e)(1), the damages for breach
17 of this section are fifty dollars (\$50) for the initial pay period in which a violation occurs
18 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
19 not to exceed an aggregate penalty of four thousand dollars (\$4,000). If Plaintiff were to
20 prevail on this claim, Plaintiff and the Class Members would be entitled to the following
21 **maximum** damages: \$2,109,100 (580 pay periods x \$50 initial violation = \$29,000 plus
22 20,801 pay periods x \$100 subsequent violation = \$2,080,100).

23 28. In addition, if Plaintiff were to prevail on his unpaid wages, meal period, and/or rest period
24 claims, he and the Class Members may also be entitled to waiting time penalties. Plaintiff
25 calculates the potential **maximum** exposure under his waiting time penalties cause of action
26 as \$705,600 (196 former employees x 30 days x 8 hours x \$15.00 = \$705,600).

27 29. Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
28 California Labor Code sections relating to wage and hour violations. The potential PAGA

penalties for Plaintiff's core claims are: \$1,003,100 (\$100 x 3 PAGA violations (meal periods, rest periods, and unpaid wages) x 21,381 pay periods = \$6,414,300).

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

31. Thus, not taking into account any of its defenses or arguments, Plaintiff estimates that if he were successful in his core claims, Defendant's total exposure would be approximately \$8,308,068 [\$3,692,475 (rest period exposure) + \$3,692,475 (meal period exposure) + \$923,118 (unpaid wage exposure) = \$8,308,068]. If Plaintiff are successful in his unpaid wage, meal period, and rest period claims, he may also be entitled to damages for wage statements (\$2,109,100) waiting time penalties (\$705,600). If Plaintiff's claims are successful, he may also be entitled to PAGA penalties.

32. In light of the risks Plaintiff's claims faced, I believe that the settlement amount of \$1,7500,000 – with an average settlement share amount estimated at \$1,580 – is a reasonable and fair settlement amount.

33. The preliminary approval motion and supporting documents were uploaded to the Labor

1 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received
2 as a result of this upload.

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

5
6 Dated: May 29, 2024

MARA LAW FIRM PC

7 

8 David Mara, Esq.

9 Attorneys for the Plaintiff MARK FRANKLIN
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiffs Plaintiff on behalf of themselves and the Class (“Plaintiffs”) and Defendant Desert Haven Enterprises. (“Defendant”) (collectively Plaintiffs and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the cases entitled *Mark Franklin v. Desert Haven Enterprises* (Kern County Superior Court, Case No. BCV-23-101153), *Mark Franklin v. Desert Haven Enterprises*. (Kern County Superior Court, Case No. BCV-23-101829).

I. DEFINITIONS

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

1. **Administration Costs**: The costs incurred by the Settlement Administrator, APEX Class Action Administration, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Aggrieved Employees**: All non-exempt, hourly employees of Defendant in the State of California from April 7, 2022 through June 1, 2024, and includes, but is not limited to, job positions Defendant refers to as Trainers and Consumers.
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 35% of the Gross Settlement Amount. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class**: All non-exempt, hourly employees of Defendant in the State of California from April 13, 2019 through June 1, 2024, and includes, but is not limited to, job positions Defendant refers to as Trainers and Consumers.
6. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC, Peter Horton of Lawyers for Employee and Consumer Rights.

7. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
8. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period**: April 13, 2019 through June 1, 2024.
11. **Class Representative**: Mark Franklin
12. **Class Representative Enhancement Payments**: The amounts the Court awards to the Class Representative, which will not exceed \$15,000. This payment shall be paid from the Gross Settlement Amount and is being offered in consideration for Plaintiff executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award**: The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$50,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant**: Brian E. Koegle and Ransom D. Boynton, of Greenspoon Marder LLP.
15. **Court**: Superior Court of California for the County of Kern.
16. **Defendant**: Desert Haven Enterprises.

17. **Disbursement of the Settlement:** Within ten (10) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The Effective Settlement Date of this Settlement shall be the later of the time when: (i) The date the Court enters Judgment granting final approval of the settlement, if there are no objectors at the time of the final approval hearing; (ii) if there are objectors at the time of the final approval hearing, the date by which an appeal of the judgment must occur, if no notice of appeal is filed; or (iii) if there is a timely notice of appeal filed, the date of final affirmance of the Judgment on an appeal, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant.
19. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later fifteen (15) calendar days after the Effective Date.
22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$1,750,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of its obligation to pay Employer Taxes, or if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid

outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

23. **Individual Class Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
24. **Individual PAGA Settlement Share(s)**: Settlement Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. The maximum amount that each Settlement Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Settlement Class Member's total pay periods worked during the Class Period in California by the total number of pay periods worked during the Class Period by all Settlement Class Members employed by Defendant as expressed in the following formula: Net Settlement Amount multiplied by Settlement Class Member pay periods divided by all pay periods worked by all Settlement Class Members
25. **LWDA**: California Labor and Workforce Development Agency ("LWDA"). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in this Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$75,000 that is to be paid to the LWDA as described in this Settlement.
27. **Net PAGA Settlement Amount or NPSA**: The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment.
28. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount

shall be reduced by the employee's tax liability for the portion of the settlement shares allocated as wages.

29. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
30. **PAGA ACTION**: The PAGA matter filed by Plaintiff Mark Franklin, entitled *Mark Franklin v. Desert Haven Enterprises*, Kern County Case No. BCV-23-101829.
31. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll, personnel, and other business records.
32. **PAGA Payment**: Refers to the \$75,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$56,250, shall be paid to the LWDA. The remaining 25% of the \$75,000, or \$18,750, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
33. **PAGA Period**: April 7, 2022 through June 1, 2024.
34. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
35. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
36. **Parties**: Plaintiff Mark Franklin, as an individual and as Class Representative, and Defendant Desert Haven Enterprises.
37. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
38. **Released Class Claims**: The Participating Class Members will, upon the Effective Date, release all claims during the Class Period that were pled or could have been pled based on a reasonable interpretation of the facts included in the operative complaint.
39. **Released PAGA Claims**: The PAGA Group Members will, upon the Effective Date, release all claims during the PAGA Period for civil penalties that were pled or could have been pled based on a reasonable interpretation of the facts

included in the operative complaint. Further, the State of California will release all claims raised in the PAGA demand letter submitted to the Labor and Workforce Development Agency on or about April 7, 2023.

40. **Released Parties:** Defendant Desert Haven Enterprises, its subsidiaries, DBA's, and affiliated and/or funding entities, and each of its past or present officers, directors, board members, employees and agents which could be jointly liable with Defendant for the claims alleged.
41. **Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notices.
42. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
43. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is APEX Class Action Administration.

II. **RECITALS**

44. A class action complaint was filed by Plaintiff Mark Franklin on April 13, 2023 in Kern County Superior Court (Case No. BCV-23-101153). The complaint alleges the following causes of action against Defendant: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 7) Failure to Pay all Wages Due at the Time of Termination; and 8) Violation of Unfair Competition Law.
45. Plaintiff Mark Franklin submitted his Notice of Labor Code Violations to the LWDA on April 7, 2023. Thereafter, a PAGA representative action complaint against was filed by Plaintiff (as an agent of the LWDA) in the Alameda County Superior Court on June 12, 2023 (Case No. BCV-23-101153). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Failure to Pay all Wages Due at the Time of Termination; 6) Knowing and Intentional

Failure to Comply with Itemized Employee Wage Statement Provisions; and 7) Failure to Adopt a Compliant Sick Pay Policy.

46. On June 2, 2023, Defendant filed a notice of removal of the Class Action to the U.S. District Court for the Central District of California. Thereafter, Plaintiff filed a motion to remand the matter back to state court, which led to Defendant withdrawing its motion to remand and the matter returned to the Superior Court of California, for the County of Kern.
47. The parties scheduled a mediation with respected wage and hour, class action mediator, Mark Rudy. That mediation took place on January 16, 2024.
48. Prior to mediation, Defendant produced to Plaintiff hundreds of pages of documents relating to the challenged class-wide policies in the Class and PAGA matters, along with a robust sampling of Class Member/PAGA Member time and wage records.
49. The matter did not settle at the mediation. Thereafter, the Parties continued to engage in negotiations at arms-length, with Defendant producing additional documents and data.
50. As a result of these continued settlement discussions, all of which were facilitated through the mediator, the parties were able to reach a settlement, which was reduced to a MOU that was executed on April 18, 2024.
51. Under this settlement, Defendant will pay a Gross Settlement Amount of \$1,750,000 to resolve the Class and PAGA actions. In addition, Defendant has agreed to make institutional policy changes relating to the challenged practices at issue in these matters.
52. For consolidation purposes, and to avoid duplication of expenses, efforts, and judicial resources, the Parties will stipulate to Plaintiff filing a First Amended Complaint to add in the PAGA claims pled in the PAGA Action. Upon receiving a stamped copy of the First Amended Complaint, Plaintiff will dismiss the separate PAGA action. Thus, at Preliminary and Final Approval, the Court will be ruling on the settlement of the Class and PAGA claims.
53. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the

Class Members, as it provides a definite, present sum of money and Defendant has agreed to make changes to its practices - as described in the following paragraph – that Plaintiff challenged as unlawful in this Matter.

54. **Policy/Practices Changes.** As part of the Settlement, Defendant has agreed to implement, beginning June 1, the following policies and practices: Updated policies and procedures, including but not limited to compliant meal and rest period policies for on-site service employees, time and attendance tracking policies for all employees and consumers, updated sick leave policies and procedures.
55. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
56. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
57. **Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiffs, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 58. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$1,750,000. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- A. Escalator Provision:** The Settlement Fund is based on Defendant's representation that the Class Members will have worked a total of approximately 82,055 workweeks from April 13, 2019 to the present. Should the number of workweeks worked from April 20, 2019 to May 27, 2024 exceed more than 10% of the amount represented (*i.e.* by more than 8,205 workweeks), Defendant, at its option, can either choose to: (1) cut off the end date for the class release as of the date on which the number of workweeks reaches 90,364; or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% amount (*i.e.* if there was a 11% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Settlement Fund by 1%).
- 59. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 60. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

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

A. Calculation.

- i. **Individual Class Settlement Share Calculation.** Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. The maximum amount that each Settlement Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Participating Class Member's total workweeks worked during the Class Period in California by the total number of workweeks worked during the Class Period by all Settlement Class Members employed by Defendant as expressed in the following formula: Net Settlement Amount multiplied by Participating Class Member workweeks divided by all workweeks worked by all Participating Class Members.

- B. Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: 10% wages and 90% to interest and penalties/other payments. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

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

A. Calculation.

- i. **Individual PAGA Settlement Share Calculation.** PAGA Group Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. The maximum amount that each PAGA Group Member is entitled to receive is determined by multiplying the PAGA Net Settlement Amount by a ratio that is determined by dividing a PAGA Group Member's total pay periods worked during the PAGA Period in California by the total number of pay periods worked during the PAGA Period by all PAGA Group Members employed by Defendant as expressed in the following formula: PAGA Net Settlement Amount multiplied by PAGA Group Member pay periods divided by all pay periods worked by all PAGA Group Members.

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

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

- A. To the Named Plaintiff:** In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Mark Franklin, will receive up to \$15,000 each in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments.

- B. To Class Counsel.** At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 35 % of the GSA and a Cost Award not to exceed \$50,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- C. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.
- D. To the Settlement Administrator.** The Settlement Administrator – APEX Class Action Administration – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- E. To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay \$56,250 of the PAGA Payment to the LWDA. This is 75% of the \$75,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$18,750) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees
- F. To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members

and Aggrieved Employees shall be made from the Gross Settlement Amount.

66. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that APEX Class Action Administration shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to Legal Aid at Work in the amounts directed per this Settlement; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in APEX Class Action Administration or otherwise have a relationship with APEX Class Action Administration that could create a conflict of interest.

67. Procedure for Approving Settlement.

A. Cooperation.

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

B. First Amended Complaint.

- i. Plaintiff Mark Franklin shall prepare and file a stipulated request for leave to amend in the lead case, Case No. BCV-23-101153, to add Claims pled in the PAGA Action. Upon the Court's receipt and acceptance of the amended complaint in Case No.

23CV031860, Plaintiff Franklin will file for dismissal of the PAGA Action.

C. Motion for Preliminary Approval and Conditional Certification.

- i. Plaintiffs will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- ii. At the same time that Plaintiffs files their Motion for Preliminary Approval, Plaintiffs shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- iii. At the Preliminary Approval hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

D. Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved

Employee will be provided with the Class Notice in accordance with the following procedure:

- i. Delivery of Class and PAGA Data.** Within ten (10) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.
- ii. Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the formulae set forth in Paragraph 62(A)(i) and 63(A)(i), above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.
- iii. Mailing of Class Notices.** Within ten (10) business days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.

- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
- v. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.
- vi. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

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

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d)

list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

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

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

- i. Effect of "Opt-Out."** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.
- ii. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

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

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

H. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

I. Settlement Website. The Settlement Administrator shall establish a website to host documents relevant to this lawsuit and the proposed settlement. Such documents shall include: the operative complaint; this Joint Stipulation and Settlement Agreement, together with its exhibits; and the Class Notice.

J. Motion for Final Approval.

- i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payments; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.
 - ii. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payments, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - iii. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.
- K. Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

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

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

- i. Funding the Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement no later than fifteen (15) calendar days after the Effective Date.
- ii. Disbursement:** Within ten (10) calendar days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.
- iii. Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a

Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

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

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

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

ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work. Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families for more than 100 years. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.

P. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

68. Release of Class Claims. As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Class Claims. Participating Class

Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

- 69. Release of PAGA Claims.** As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. Defendant will be entitled to assert this Settlement of the PAGA Claims in this Action as a defense to future claims against it for penalties by the LWDA or under the PAGA on behalf of the LWDA. The Released Parties will also be entitled to assert this release of PAGA Claims to assert claim or issue preclusion or other effects of this Settlement if any Aggrieved Employees bring a subsequent claim on behalf of the LWDA concerning the same primary rights that were at issue in this Action. Aggrieved employees may not opt out of the PAGA Settlement.
- 70. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount of \$15,000 each, Plaintiff Mark Franklin shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

Also, in consideration for providing Defendant with this complete, general release, Defendant agrees to provide a neutral reference (dates of employment and last position held) in response to any inquiries by prospective employers of Plaintiffs.

71. Miscellaneous Terms

- A. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- B. No Effect on Employee Benefits.** The Class Representative Enhancement Payments and/or Individual Settlement Shares paid to Plaintiffs and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiffs or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs' or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel 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 under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. No Prior Assignment.** Plaintiffs hereby represent, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- J. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the

State of California, without giving effect to any conflict of law principles or choice of law principles.

- K. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- L. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.
- M. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- N. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- O. 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.
- P. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the

Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 5/6/2024 _____

MARK FRANKLIN

DocuSigned by:

69BE776019AA4A8...

Dated: _____

DESERT HAVEN ENTERPRISES

Name:

Title:

5/3/2024
Dated: _____

MARA LAW FIRM, PC

DocuSigned by:

4579A5166C10447...

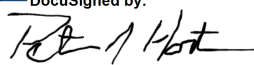
David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

5/3/2024
Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

DocuSigned by:

313820B81517465...

Peter Horton, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

GREENSPOON MARDER LLP

Brian E. Koogle, Esq.

Attorneys for Defendant

Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

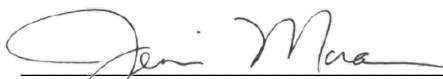
The Parties and their counsel execute this Agreement.

Dated: _____

MARK FRANKLIN

Dated: May 16, 2024

DESERT HAVEN ENTERPRISES



Name: _____

Title: _____

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

Peter Horton, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: May 17, 2024

GREENSPOON MARDER LLP

Brian E. Koegle, Esq.

Attorneys for Defendant

Exhibit *A*

KERN COUNTY SUPERIOR COURT

If you worked for Desert Haven Enterprises (“Desert Haven” or “Defendant”) in California as a non-exempt, hourly employee at any time between April 13, 2019, through June 1, 2024, a class action settlement will affect your rights. These employees include, but are not limited to, those that worked in the job positions Desert Haven refers to as Trainers and Consumers. You may be entitled to a payment under this settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A former employee, Mark Franklin, filed a proposed class action lawsuit against Desert Haven. The lawsuit alleges that Desert Haven failed to provide hourly, non-exempt employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to provide lawful wage statements, failed to adopt a compliant sick pay policy, failed to reimburse for all business expenses, and failed to pay all wages due at termination of employment. The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). Desert Haven denies all alleged violations and denies liability. The Court has not made a ruling on the merits of the case. The Parties have agreed to settle the claims set forth in the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	Get a settlement payment and give up any rights to sue for the Released Claims (defined below). <u>If you are still employed by Desert Haven and choose to receive a settlement payment, this will not affect your employment.</u>
EXCLUDE YOURSELF	Get no payment as a Class Member. This is the only option that allows you to ever be part of any other lawsuit against Desert Haven involving the legal claims and statutory period alleged in this case. Please note that you are unable to exclude yourself from the PAGA portion of the settlement if you are a PAGA Member.
OBJECT	If you do not agree with the settlement, write to the Court about why you don’t agree with the settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve of the settlement. Payments will be made if the Court approves the settlement. Please be patient.

WHAT INFORMATION IS IN THIS NOTICE?	
1. Why did I get this notice?	Page 2
2. What is this lawsuit about?	Page 2
3. How does a class action settlement work?	Page 3
4. Who are the attorneys representing the parties?	Page 3
5. How do I participate in the settlement?	Page 4
6. How do I request to be excluded from the settlement?	Page 4
7. How do I object to the settlement?	Page 5
8. How does this settlement affect employees' rights?	Page 6
9. How much is the settlement?	Page 7
10. How much can I expect to receive from the settlement?	Page 7
11. Will taxes be taken out of my settlement share?	Page 8
12. When can I expect to receive money from the settlement?	Page 8
13. How will the attorneys be paid?	Page 9
14. How will the class representative be paid?	Page 9
15. What do I do if I need more information or have questions?	Page 9

1. *Why Have I Received this Notice?*

Desert Haven's records indicate that you were employed as a non-exempt, hourly employee in California by Desert Haven at sometime between April 13, 2019, through June 1, 2024. This period of time is referred to as the "Class Period." If you worked for Desert Haven in California during the "Class Period," you may be entitled to money under this Settlement. This Notice provides you with basic information about the case and advises you of your options with regard to the Settlement.

2. *What is this Case About?*

This action was filed by Plaintiff on April 13, 2023, in the Superior Court of Kern County. The complaint alleges the following causes of action against Desert Haven: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to adopt a compliant sick pay policy; (6) knowing and intentional failure to comply with itemized employee wage statement provisions; (7) failure to pay all wages due at the time of termination of employment; (8) failure to reimburse/illegal deductions; and (9) violation of Unfair Competition Law. In addition, on June 12, 2023, Plaintiff filed a complaint in the Superior Court of Kern County asserting causes of action under the Private Attorneys General Act of 2004 ("PAGA") against Desert Haven. On October 3, 2023, the Court consolidated these actions.

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

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

3. *How Does this Class Action Settlement Work?*

Plaintiff and his attorneys believe the settlement is fair, adequate, and reasonable. The Kern County Superior Court has preliminarily reviewed the terms of the settlement and determined the settlement is fair, adequate, and reasonable. On [date of ruling on preliminary approval], the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [date of final approval hearing], 2024 at [time a.m./p.m.], in Division J before Judge Gregory A. Pulskamp, located at 1215 Truxtun Avenue, Bakersfield, California 93301. The date of the Final Fairness Hearing may change without further notice to the Class. You are advised to check the Court's website (instructions on accessing this site are provided in Section 15 of this Notice) to confirm that the date has not been changed.

4. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff and the Class ("Class Counsel")	Attorneys for Desert Haven
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Telephone: (619) 234-2833 LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS Peter Horton, Esq. phorton@lfecr.com 4100 West Alameda Avenue, Third Floor Burbank, California 91505 Telephone: (323) 486-5101	GREENSPOON MARDER, LLP Brian E. Koegle, Esq. Ransom D. Boynton, Esq. 1875 Century Park East, Suite 1900 Los Angeles, California 90067 Telephone: (323) 880-4520

The Court has appointed Mara Law Firm, PC, and Lawyers for Employee and Consumer Rights to represent you and all other Class Members simultaneously in this Settlement. You are not

required to hire your own attorney because Mara Law Firm, PC, and Lawyers for Employee and Consumer Rights are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

5. *How do I Participate in the Settlement?*

If you do nothing, you will automatically be included as a participant in this Settlement and will not have to take any further action to receive your settlement payment. By participating in the Settlement, you will be bound by the Release described in Section 8 below. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

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

If you do nothing, you **will** receive money and **will** be bound by the release of claims stated in this notice.

6. *How Do I Request to be Excluded from the Settlement?*

If you request to be excluded from the settlement, you **will not** receive any part of the class portion of the settlement. This is the only option that allows you to ever be a part of any other lawsuit against Desert Haven about the legal claims and statutory period alleged in this case. By timely opting out, you will not receive any part of the class portion of the Settlement, nor will you be bound by the release except as it relates to the PAGAs portion of the Settlement and release related thereto.

HOW TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT:

How can I request to be excluded from the settlement?

You can request to be excluded from the class portion of the settlement by mailing the Settlement Administrator a written request for exclusion. The Settlement Administrator's address is: **INSERT ADDRESS**

Is there a deadline to request to be excluded?

If you send a written request to the Settlement Administrator, you must postmark your request by **RESPONSE DEADLINE**.

What information do I need to provide?	Your request for exclusion must include: (1) your full name, current address, telephone number, and the last four digits of your Social Security number; (2) the case name and number (<i>Mark Franklin v. Desert Haven Enterprises</i> , Case No. BCV-23-101153); (3) a clear statement that you wish to be excluded from the Settlement; and (4) your signature or the signature of your lawful representative.
---	--

The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims if you were employed at any time between April 7, 2022, through June 1, 2024, and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining substantive, individual and/or class claims.

7. *How Do I Object to the Settlement?*

You can ask the Court to deny approval by filing an objection or appearing at the Final Approval Hearing to assert the objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. Importantly, you cannot object to the settlement if you have requested to be excluded from the settlement.

HOW TO OBJECT TO THE SETTLEMENT:	
How can I object to the settlement?	As long as you have not requested to be excluded from the Settlement, you can object to the settlement by mailing the Settlement Administrator a written objection, or appearing at the Final Approval Hearing to assert your objection. The Settlement Administrator's address is: INSERT ADDRESS
Is there a deadline to request to be excluded?	If you send a written objection to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .

What information do I need to provide?	Your written objection must include: (1) your full name, address, and telephone number; (2) the words “Notice of Objection” or “Formal Objection;”; (3) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (4) list identifying witness(es) you may call to testify at the Final Approval hearing; and (5) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing. Your objection must be signed and dated by you or your legal representative.
--	--

Class Members who fail to file timely written objections in the manner specified above or fail to appear at the Final Approval Hearing to assert an objection shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether an appeal or otherwise) to the settlement, unless otherwise ordered by the Court.

If the Court rejects the objection, the objector will receive a settlement payment and will be bound by the terms of the settlement and will release claims as defined in Section 8 of this notice and in the settlement agreement.

8. *How Does This Settlement Affect Employees’ Rights?*

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Class Members who do not opt out of the settlement will be bound by the Court’s final judgment and will release Desert Haven, and the other Released Parties¹ from the released claims. The claims released under the settlement are: All claims during the period of April 13, 2019, through June 1, 2024, that were pled or could have been pled based on a reasonable interpretation of the facts included in the operative complaint.

In addition, PAGA Aggrieved Employees will release all claims during the period of April 7, 2022, through June 1, 2024, for civil penalties that were pled or could have been pled based on a reasonable interpretation of the facts included in the operative complaint. Further, the State of California will release all claims raised in the PAGA demand letter submitted to the Labor and Workforce Development Agency on or about April 7, 2023.

If you would like to see the settlement documents or complaints, you can check www.INSERTSETTLEMENTWEBSITE.com, the Court’s website, or contact Class Counsel. Directions for accessing the Court’s website are outlined in Section 15 of this notice. Class Counsel’s information is outlined in Section 4 of this notice.

¹ “Released Parties” means Desert Haven, its subsidiaries, DBA’s, and affiliated and/or funding entities, and each of its past or present officers, directors, board members, employees and agents which could be jointly liable with Defendant for the claims alleged.

9. *How Much is the Settlement?*

The amount that Desert Haven is required to pay under this settlement is \$1,750,000. This amount is referred to as the “Gross Settlement Amount.” The Gross Settlement Amount includes the following amounts: (1) approximately \$987,500 for disbursement to Class Members who do not request to be excluded from the settlement; (2) \$15,000 to Plaintiff Mark Franklin for his efforts in bringing this action; (3) costs to administer the settlement – meaning costs associated with mailing this notice to employees and costs associated with sending out settlement checks – to the Settlement Administrator, APEX Class Action LLC, in the amount of approximately \$10,000; (3) payment of \$75,000 to the Plaintiff’s claims under the Private Attorneys’ General Act of 2004; and (4) payment to Class Counsel in the amount of \$612,500 (35% of the Gross Settlement Amount) in attorneys’ fees for investigating the facts of the case, litigating the case, and negotiating the settlement, and an amount not to exceed \$50,000 for actual costs spent litigating this case. All of these payments are subject to Court approval.

The Court will not approve any of these requests until the Final Fairness Hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the amount available for distribution to employees who do not request to be excluded from the settlement.

10. *How Much Can I Expect to Receive from the Settlement?*

Participating Class Members – meaning Class Members who do not request to be excluded from the settlement – will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Desert Haven during the period from April 13, 2019, through June 1, 2024. The maximum amount that each Participating Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Participating Class Member’s total workweeks worked during the Class Period in California by the total number of workweeks worked during the Class Period by all Participating Class Members employed by Defendant as expressed in the following formula: Net Settlement Amount multiplied by Participating Class Member workweeks divided by all workweeks worked by all Participating Class Members.

Although your exact settlement share cannot be precisely calculated until employees have had the opportunity to request to be excluded from the settlement, based upon the calculation formula above, your approximate share of the settlement is: \$ [REDACTED] (based on Desert Haven’s data which shows you worked # of workweeks between April 13, 2019, through June 1, 2024). Please note that under the law, the case can only go back four years from the date it was filed. This means the case can go back to April 13, 2019. If you began your employment prior to April 13, 2019, this lawsuit can only compensate you for the weeks you worked for Desert Haven on or after April 13, 2019.

You may also be entitled to a payment for your release of PAGA claims if you worked for Desert Haven on or after April 7, 2022, through June 1, 2024. If you worked for Desert Haven during this time period, you are a PAGA Aggrieved Employee. Your payment as a PAGA Aggrieved

Employee is \$ [REDACTED] (based on Desert Haven's data which shows you worked # of pay periods between April 7, 2022, through June 1, 2024).

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

11. Will Taxes be Taken Out of My Settlement Share?

Yes, 10% of each settlement payment is intended to settle employees' claims for unpaid wages. This portion of your settlement share will be reduced by applicable payroll tax withholdings and deductions. Desert Haven will pay the employer's share of legally required payroll taxes separately and outside of the settlement. The Settlement Administrator will issue you an IRS Form W-2 with respect to this portion of your settlement share.

Ninety percent (90%) of each settlement payment is intended to settle each employees' claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. In addition, one hundred percent of each PAGA Aggrieved Employees Employee's PAGA Settlement Share will be apportioned as 100% penalties. The Settlement Administrator will issue you an IRS Form 1099 with respect to these payments.

12. When Can I Expect to Receive Money from the Settlement?

If you do not request to be excluded from the settlement, you should receive your settlement check approximately a month and a half after the Court gives final approval of the settlement and it becomes effective. The settlement becomes effective on the date on the date the Court grants final approval if there are no objectors or plaintiffs in intervention. As such, if there are objectors and no appeals from the settlement, you should receive your settlement check approximately a month and a half after the date of the Final Fairness Hearing, listed in Section 3 of this notice.

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator at [PHONE NUMBER]. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, they will be deemed void and of no further force and effect. This means that you will not be able to cash or redeem your settlement check 180 days after its issuance. The funds from settlement checks that are voided will be distributed to Legal Aid at Work. After your check is voided, you may be able to receive your settlement funds by calling Legal Aid at Work at (415) 864-8848.

13. How Will the Attorneys for the Class Be Paid?

The Court-appointed attorneys for Plaintiff and the employees will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 35% of the Gross Settlement Amount (estimated to be \$612,500) in attorneys' fees and an amount not to exceed \$50,000 in actual litigation costs. Desert Haven has paid and will continue to pay all of its own attorneys' fees and costs.

14. How Will the Class Representative Be Paid?

Plaintiff Mark Franklin will also be paid, subject to Court approval, an amount not to exceed \$15,000 in consideration for bringing this case, for the time and effort he put into litigating this case and for conferring a benefit upon other employees and the State of California.

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

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, you can receive a copy of the settlement agreement by contacting Class Counsel at the information listed in Section 4, above, or by accessing the Court docket in this case through the Court's website at <https://odyprodportal.kern.courts.ca.gov/portalprod>. Click the "Register" button, and create an account. Once you have created an account, log in, and click the "Smart Search" button and enter the case number, BCV-23-101153. You can also visit the office of the Court at County of Kern, 1415 Truxtun Avenue, Bakersfield, CA 93301 between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the Desert Haven Class Action Settlement when calling the Settlement Administrator or Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 2