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11 and the Putative Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 JULIE DEAN, on behalf of herself and all others  
15 similarly situated

16 Plaintiff,

17 vs.

18 FREEMODEL, INC.; JOHN GERALD  
19 GARNER; and DOES 1 through 10, inclusive,

20 Defendants.

Case No.: 23CV038315

**DECLARATION OF HUNTER PYLE IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR FINAL APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT**

DATE: May 29, 2025  
TIME: 10:00 A.M.  
DEPT: 23  
JUDGE: Hon. Michael Markman

Reservation Number: A-38315-001

Action Filed: July 14, 2023  
FAC Filed: October 25, 2023  
Trial Date: N/A

1 I, Hunter Pyle, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and the  
3 principal at Hunter Pyle Law, PC in Oakland, California. I submit this declaration in support of  
4 Plaintiff Julie Dean's ("Plaintiff") Motion for Final Approval of a Class and Representative Action  
5 Settlement Agreement agreed to by Plaintiff and Defendants Freemodel, Inc. ("Freemodel") and  
6 John Gerald Garner (collectively, "Defendants"). Plaintiff and Defendants are collectively referred  
7 to herein as the "Parties."

8 2. My firm, Hunter Pyle Law, PC is counsel for Plaintiff and the putative class in this  
9 matter. I have personal knowledge of the facts set forth in this declaration and could and would  
10 testify competently to them.

11 3. Attached as **Exhibit 1** is the proposed Stipulation of Settlement (the "Settlement" or  
12 "Settlement Agreement")<sup>1</sup> agreed to by the Parties.

13 4. Plaintiff's Motion is submitted following the Court's December 12, 2024, Order  
14 Granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement  
15 ("Preliminary Approval Order"), which granted preliminary approval of the Settlement, approved  
16 the proposed Class Notice, and approved the notice procedure. A true and correct copy of the  
17 Preliminary Approval Order is attached hereto as **Exhibit 2**.

18 5. Following the Court's November 1, 2024, Order, Plaintiff's Motion for Preliminary  
19 Approval was continued to allow Plaintiff to submit a revised proposed order and declaration. A true  
20 and correct copy of the Order Continuing the Motion for Preliminary Approval is attached hereto as  
21 **Exhibit 3**.

### 22 **BACKGROUND AND EXPERIENCE**

23 6. In 1997, I received a J.D. from Boalt Hall School of Law at the University of  
24 California at Berkeley.

25 7. As a law student, I clerked for Professor David Feller, one of the preeminent scholars  
26 in the field of labor and employment law. I also worked as a law clerk at Eggleston, Siegel &  
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28 <sup>1</sup> All capitalized terms here have the same meanings as those in the Settlement Agreement.

1 Lewitter; Beeson, Tayer & Bodine; and Davis, Cowell & Bowe. Each of these firms represents  
2 employees in the labor and employment context.

3 8. I have been practicing law since December 1997. From December 1997 through  
4 October 2003, I was an associate at Siegel & Yee in Oakland, where I focused my practice mainly  
5 on employment law. In that capacity, I was the primary attorney for numerous employment law  
6 cases that resolved prior to trial, handling all aspects of these cases. Additionally, I served as second  
7 chair in approximately ten trials.

8 9. In October 2003, I left Siegel & Yee and became a partner at Sundeen Salinas & Pyle.  
9 In 2017, I left Sundeen Salinas & Pyle and created Hunter Pyle Law. Since that time, most of my  
10 cases have involved employment law, and many of them have involved wage and hour matters. Over  
11 the past ten years, I have tried approximately fifteen cases to verdict.

12 10. I have been approved as Class Counsel in the following cases (among others), which  
13 resolved favorably for the class members: *Jackson v. ACE* (Alameda County Superior Court, Case  
14 No. RG05241698; settled for \$1.1 million); *Beasley, et al., v. Allied Cash Advance* (Alameda County  
15 Superior Court, Case No. 07359698; settled for \$400,000); *Schakow v. Lerner New York, Inc., et al.*  
16 (Contra Costa County, Case No. MSC08-01145; settled for \$850,000); *Brown, et al. v. George S.*  
17 *May International Company* (Alameda County Superior Court, Case No. 08413991; settled for  
18 \$750,000); *Miriam Aquino Ruelas, et al. v. Neilmed Products, Inc.* (Sonoma County Case No.  
19 SCV245231; settled for approximately \$600,000); *Randolph et al. v. AT&T Wireless Services, Inc.,*  
20 *et al.* (Alameda County Superior Court, Case No. RG05193855; settled for approximately \$70  
21 million); *Booker II, et al. v. Auto Guardian, et al.* (Alameda Superior Court case No. RG11562117;  
22 settled for \$775,000); *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court, Case No.  
23 BC433932; settled for \$2 million); *Lopez, et al. v. City of Montebello* (Los Angeles Superior Court,  
24 Case No. BC553076; settled for \$1 million); *Sadiq v. Greatwide Dedicated Transport II, LLC*  
25 (Alameda County Superior Court, Case No. RG15789114; settled for \$762,500); *Kostyuk v. Golden*  
26 *State Overnight Delivery Service, Inc.* (Alameda County Superior Court, Case No. RG14727191;  
27 settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda County Superior  
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1 Court, Case No. RG16815734; settled for \$750,000); *Hooper v. URS Midwest, Inc.*, (San Bernardino  
2 Superior Court Case No. CIV DS1607489; settled for approximately \$3 million); *Brooks, et al. v.*  
3 *Chariot Transit, Inc.* (San Francisco Superior Court, Case No. CGC-16-554398; settled for  
4 \$750,000); *Austin, et al. v. Foodliner, Inc.* (United States District Court, Northern District of  
5 California, Case No. 4:16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries,*  
6 *Inc., et al.* (United States District Court, Northern District of California, Case No. 4:17-cv-03026-  
7 YGR; settled for \$5,400,000); *Botros v. Walgreen Co.* (United States District Court, Northern District  
8 of California, Case No. 3:18-cv-05328; settled for \$2,142,000); *Winston v. Comcast Spectator*  
9 *Holding, et al.* (Alameda County Superior Court, Case No. R-2145147; settled for \$105,000.00);  
10 *Olivera v. C & B Delivery Service, et al.* (Alameda County Superior Court, Case No. RG20062287;  
11 settled for \$1,068,500); *Lopez v. First Student* (United States District Court, Central District of  
12 California, Case No. 5:19-cv-01669-JGB-SHK; settled for \$1.475 million); *Sales, et al. v. United*  
13 *Road Services, Inc. et al.* (United States District Court, Northern District of California, Case No.  
14 4:19-cv-08404-JST; settled for \$7,500,000); *Langlands et al. v. The Board of Trustees of the Leland*  
15 *Stanford Junior Univ., et al.* (Santa Clara Super. Ct., No. 19CV343871; settled for \$6,000,000); and  
16 *Roper v. Golden State Urgent Care Providers, et al.* (Santa Clara Super. Ct., No. 21CV386281;  
17 settled for \$250,000). Each of these cases, except for the *Randolph* case, was a wage and hour class  
18 action. (*Randolph* was a consumer class action.)

19 11. Hunter Pyle Law has recently had requests for attorneys' fees equaling one-third  
20 (33.33%) of the common fund approved in numerous cases, including *Kostyuk v. Golden State*  
21 *Overnight Delivery Serv., Inc.* (Alameda Super. Ct., No. RG14727191, April 7, 2017); *Newcomb, et*  
22 *al. v. J.B. Hunt Transp., Inc.* (Alameda Super. Ct., No. RG16815734, November 3, 2017); *James v.*  
23 *Packers Sanitation Servs., LTD. Inc.* (Alameda Super. Ct., No. RG16822242, June 25, 2019);  
24 *Winston, et al. v. Comcast Spectacor Holding Co., LLC et al.* (Alameda Super. Ct., No. RG18887584,  
25 July 14, 2020); *Olivera, et al. v. C & B Delivery Serv., et al.* (Alameda Super. Ct., No. RG20062287,  
26 Sept. 14, 2021); *Langlands et al. v. The Board of Trustees of the Leland Stanford Junior Univ., et al.*  
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(Santa Clara Super. Ct., No. 19CV343871, October 4, 2024); and *Roper v. Golden State Urgent Care Providers, et al.* (Santa Clara Super. Ct., No. 21CV386281, January 24, 2025).

12. In 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017, I organized and/or presented at annual CLEs put on by the Alameda County Bar Association Labor and Employment Law Section regarding wage and hour law and class actions. The faculty for these CLEs has included the Honorable George C. Hernandez, Jr., the Honorable Ronald Sabraw, the Honorable Bonnie Sabraw, the Honorable Robert Freedman, the Honorable Steven Brick, the Honorable David Flinn, the Honorable Richard A. Kramer, Jenna Whitman, Walter Stemmler and Phillip Obbard.

13. I am a Lecturer at U.C. Berkeley Law School (formerly known as Boalt Hall). From 2014 to 2016, I, along with one other Lecturer, taught the employment law course to second and third year law students. The course materials included a survey of California wage and hour law. From 2017 to present I have taught an advanced seminar on California Wage and Hour Law.

14. I am the primary contributor to [www.workersrightsblog.com](http://www.workersrightsblog.com). That blog covers recent developments in employment law, including wage and hour law. Additionally, I am a co-author of “Civil Penalties Under the California Private Attorneys General Act (PAGA),” Employment Damages and Remedies (CEB 2014). I have also served as the updating editor for the Employee and Union Member Guide to Labor Law (West), Chapter 2 (“Opposing Discriminatory Discharges”).

15. Almost every year from 2011 to present I have served on the faculty of the Stanford Law School Trial Advocacy Workshop.

16. Almost every year from 2011 to present, I have been a panelist at annual seminars put on by Bridgeport regarding California wage and hour law, including the Wage and Hour Litigation Seminar.

17. I have made numerous other presentations regarding wage and hour law and class actions. For example, in 2025, I have spoken on several panels regarding California’s Private Attorneys General Act. I have also spoken on separate panels discussing trends in class action litigation.

1           18.     I am a member of the California State Bar Labor and Employment Law Section. In  
2 addition, I regularly serve as a volunteer attorney at the Workers’ Rights Clinic put on by the Legal  
3 Aid Society of San Francisco Employment Law Center. I am also a member or past member of the  
4 Alameda County Bar Association Labor and Employment Section and Trial Practice Section.

5           19.     My experience in litigating employment wage and hour matters was integral in  
6 evaluating the strengths and weaknesses of the case against Defendants and negotiating a fair and  
7 reasonable settlement.

8           20.     Andrea A. Núñez is an associate at Hunter Pyle Law, PC. She was admitted to the  
9 California Bar in November of 2021. Ms. Núñez received her J.D. from U.C. Berkeley School of  
10 Law in 2020. During law school, Ms. Núñez volunteered at the Workers’ Rights Clinic and the  
11 Wage Justice Clinic at Legal Aid at Work, providing legal services to low-wage workers. Ms.  
12 Núñez also worked as a law clerk at a plaintiff-side employment law firm and at the Department of  
13 Labor Office of Administrative Law Judges. Prior to joining Hunter Pyle Law in December 2021,  
14 Ms. Núñez was a Law Fellow at the Impact Fund, a public interest non-profit organization in  
15 Berkeley, where she worked on impact litigation, research, training, and amicus briefs in support  
16 of social justice. In addition to other types of cases, Ms. Núñez now litigates wage-and-hour  
17 actions on behalf of workers at Hunter Pyle Law.

18                           **FACTUAL AND PROCEDURAL BACKGROUND**

19           21.     Plaintiff and Class Members are all individuals who entered into Project Director  
20 Agreements with Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in  
21 California between July 14, 2019, and the date of preliminary approval of the parties’ settlement  
22 agreement by the Court (the “Class Period”).

23           22.     Defendants hired Project Directors to plan and execute design projects for the  
24 homeowners and agents paying for Freemodel’s services. John Gerald Garner is the Chief Executive  
25 Officer, Chief Financial Officer, and Secretary for Freemodel.

1           23.     Plaintiff Julie Dean was a Project Director for Freemodel, a pre-sale home renovation  
2 company. Plaintiff worked as a Project Director for Freemodel from April 30, 2022, through July 25,  
3 2023.

4           24.     On July 14, 2023, Plaintiff commenced this Action by filing a complaint asserting  
5 causes of action for: 1) failure to reimburse business expenses (Lab. Code § 2802); 2) failure to pay  
6 minimum wages (Lab. Code §§ 226.2, 1182.11–1182.13, 1194, 1194.2, 1197 & 1198, IWC Wage  
7 Order No. 4-2001); 3) failure to pay overtime wages (Lab. Code §§ 510 & 1194, IWC Wage Order  
8 No. 4-2001); 4) failure to provide off-duty meal periods (Lab. Code §§ 226.7 & 512, IWC Wage  
9 Order No. 4-2001); 5) failure to authorize and permit rest periods (Lab. Code §§ 226.2 & 226.7,  
10 IWC Wage Order No. 4-2001); 6) failure to provide accurate wage statements (Lab. Code § 226,  
11 IWC Wage Order No. 4-2001); and 7) unlawful business practices under Business and Professions  
12 Code section 17200 *et seq.*

13           25.     On July 20, 2023, Plaintiff notified Defendants and the with the Labor and Workforce  
14 Development Agency (“LWDA”) of Defendants’ alleged violations of the Private Attorneys General  
15 Act (Lab. Code § 2698 *et seq.*) (“PAGA”).

16           26.     On October 25, 2023, Plaintiff filed a First Amended Complaint, adding claims for  
17 wrongful termination of public policy, breach of contract, and penalties under PAGA.

#### 18                               **INVESTIGATION AND SETTLEMENT**

19           27.     Class Counsel conducted a thorough investigation into the facts relevant to this  
20 Action and diligently pursued an investigation of Class Members’ claims against Defendants. Class  
21 Counsel spoke to Plaintiff and interviewed other Class Members about their job duties and the  
22 claims asserted in the Action, along with Defendants’ available defenses. Class Counsel also  
23 reviewed relevant documents, such as Project Director Agreements between Class Members and  
24 Freemodel, contracts between Freemodel and clients, Plaintiff’s accounting spreadsheets used in  
25 projects with Freemodel, and correspondence between Plaintiff and Freemodel employees.

26           28.     Class Counsel reviewed data provided by Defendants and calculated Class Member  
27 damages.

1           29.     Prior to mediation, the Parties met and conferred and agreed to an informal discovery  
2 plan that would allow them to productively move forward with settlement discussions.

3           30.     Through informal discovery, Defendants produced and Plaintiff's counsel reviewed a  
4 spreadsheet that included each class member's dates of employment, how many projects that had  
5 with Freemodel, the total compensation they had received, and whether they had signed an  
6 arbitration agreement.

7           31.     Defendants also produced Plaintiff's Project Director Agreement, which included  
8 information regarding Project Director job duties, expectations, tools, and relationship with  
9 Freemodel and Freemodel's clients.

10          32.     Additionally, Defendants produced an email thread that evidenced Plaintiff's work on  
11 various projects and provided information about Plaintiff's job duties.

12          33.     Class Counsel carefully reviewed these documents. Based on these documents and  
13 interviews of class members, Class Counsel determined the ways in which class member job duties  
14 were inconsistent with the independent contractor test outlined in Labor Code sections 2775. Class  
15 Counsel also used this information to determine whether Project Directors were not subject to the  
16 business-to-business exception codified in Labor Code section 2776.

17          34.     On February 14, 2024, the Parties attended a private mediation with mediator Hon.  
18 Ronald Sabraw (Ret.). The mediation lasted approximately nine hours, during which the parties  
19 explained their respective positions to Judge Sabraw at length. Plaintiff provided Judge Sabraw with  
20 her detailed analysis of Defendants' liability and damages. At the end of the mediation, the Parties  
21 had not come to an agreement and agreed to consider a mediator's proposal. The Parties engaged in  
22 arm's-length negotiations throughout the mediation and in the following weeks and ultimately  
23 resolved the matter with the assistance of Judge Sabraw.

24          35.     The principal terms of the Parties' agreement were outlined in a Memorandum of  
25 Understanding. The Parties then negotiated the terms of the Settlement Agreement.

26          36.     In reaching the Settlement, Class Counsel relied on their substantial litigation  
27 experience in similar employment class actions. Information gathered from investigation and  
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1 informal discovery informed Class Counsel's assessment of the strengths and weaknesses of the case  
2 and the benefits of the Settlement. The arm's-length settlement of this matter avoids significant  
3 litigation and financial risk and provides for a monetary distribution to all Settlement Class  
4 Members.

5 37. Plaintiff recognizes the expense and length of protracted proceedings necessary to  
6 continue the Action against Defendants through trial and through any possible appeals.

7 38. Plaintiff has also taken into account the uncertainty and risks of further litigation,  
8 including the risk of significant delay, the risk that the Court may not certify the Class or may later  
9 decertify it, and potential appellate issues.

10 39. Plaintiff is also aware of the burdens of proof necessary to establish liability for the  
11 claims asserted in the Action, Defendants' defenses to those claims, and the difficulties in  
12 establishing damages. Thus, the Settlement is the product of sufficient investigation and discovery to  
13 allow Class Counsel and the Court to act intelligently.

14 **PRELIMINARY APPROVAL AND NOTICE PROCESS**

15 40. On September 20, 2024, Plaintiff filed a Notice of Motion and Motion for  
16 Preliminary Approval of Class and Representative Action Settlement. On November 1, 2024, the  
17 Court issued an order instructing Plaintiff to narrow the scope of released claims in the settlement  
18 agreement and to update information on the class notice. The Court continued the hearing on the  
19 Motion for Preliminary Approval and instructed that Plaintiff submit a revised proposed order and  
20 declaration addressing the issues noted.

21 41. On November 26, 2024, Plaintiff filed the Supplemental Declaration of Hunter Pyle  
22 in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action  
23 Settlement that included an updated settlement agreement and an updated class notice that addressed  
24 the issues raised in the Court's order.

25 42. On December 12, 2024, the Court preliminarily approved the settlement. The Court  
26 further appointed Plaintiff as settlement Class Representative and Plaintiff's counsel as Class  
27 Counsel. At that time, the Court also set a final settlement approval hearing.

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44. The Settlement Agreement provides that Defendants shall pay the Maximum Settlement Amount of \$350,000 for the class and representative claims in the Action, which Defendants agree to pay, on an all-in an non-reversionary basis, for the class and representative claims in the Action, which is inclusive of any Class Counsel Award, PAGA Payment, Service Award to Plaintiff, and Claims Administration Expenses.

46. The Settlement Administrator Expenses shall not exceed \$4,000 and will be deducted from the Maximum Settlement Amount upon approval by the Court.

48. For the reasons set forth more fully below, and in accordance with the terms of the Settlement, Class Counsel respectfully requests the Court approve an award of attorneys' fees in the amount of \$116,666.67, plus actual litigation costs in the amount of \$20,448.04.

49. The Net Settlement Amount or Net Settlement Fund is the Maximum Settlement Amount minus the Class Counsel Award, Service Award to Plaintiff, PAGA Payment, and Claims Administration Costs. The Net Settlement Amount is currently estimated to be \$168,885.29, and the PAGA Settlement allocated to PAGA Employees is projected to be an additional \$8,750, as follows:

|                                       |                     |
|---------------------------------------|---------------------|
| <b>Maximum Settlement Amount</b>      | \$350,000.00        |
| Less PAGA Payment                     | -\$35,000.00        |
| Less Claims Administrator Expenses    | -\$4,000.00         |
| Less Service Award                    | -\$5,000.00         |
| Less Attorneys' Fees                  | -\$116,666.67       |
| Less Litigation costs                 | -\$20,448.04        |
| <b>NET SETTLEMENT AMOUNT</b>          | <b>\$168,885.29</b> |
| <br><b>PAGA Payment</b>               | <br>\$35,000.00     |
| Less Payment to LWDA                  | -\$26,250.00        |
| <b>PAYMENT TO AGGRIEVED EMPLOYEES</b> | <b>\$8,750.00</b>   |

50. This is not a claims-made Settlement. Settlement Class Members will receive a portion of the Net Distribution Fund as long as they do not opt out of the Settlement. All Aggrieved Employees will receive their portion of the PAGA Payment.

51. The Settlement is also non-reversionary. Under no circumstances will the Maximum Settlement Amount or any portion of it revert back to Defendant.

52. The release is limited to claims actually alleged or that could have been alleged in the Action based on the facts and theories alleged in the Action. Should Settlement Class Members have claims that are not based on the facts and theories alleged in the Complaint, they will not be released by this Settlement.

#### **NOTICE PROCEDURE**

53. As agreed upon by the Parties, Apex Class Action has served as the Claims Administrator. Apex Class Action's team has been directly involved with class action administration for a combined 15 years and has successfully managed numerous class action cases during that time. Apex's comprehensive fees and costs for administering this Settlement, covering both incurred and anticipated expenses, amount to \$4,000.00. Apex will proceed with additional tasks related to this matter, such as calculating settlement award payments, issuing and mailing settlement award checks, handling necessary tax filings and reporting on these payments, and any other tasks mutually agreed upon by the Parties or ordered by the Court for Apex to undertake. Class Counsel considered four bids before choosing Apex.

1                   **CALCULATION OF PAYMENTS AND DISTRIBUTION TO CLASS MEMBERS**

2           54.     Each Settlement Class Member will receive a pro-rata share of the Net Settlement  
3 Fund based on the number of semi-monthly periods the Class Member was employed by Defendants  
4 during the Class Period (the “Individual Settlement Share”). Each Class Member’s number of semi-  
5 monthly periods will be based on the number of semi-monthly periods between July 14, 2019, or the  
6 date of execution of their respective Project Director Agreements (whichever is later) and the date of  
7 Preliminary Approval or the date their respective relationships ended with Defendants (whichever is  
8 earlier), contained in the records kept by Defendants in the ordinary course of business during the  
9 Class Period.

10          55.     Individual Settlement Shares will be characterized as 20 percent for reimbursement of  
11 expenses, 60 percent penalties, and 20 percent interest. Each Class Member’s gross settlement award  
12 will be reported on a 1099 Form. This allocation roughly tracks the proportion of these components  
13 in Plaintiff’s damages model.

14          56.     Aggrieved Employees will receive an Individual PAGA Payment that consists of a  
15 pro-rata share of twenty-five percent of the PAGA Payment (\$8,750) based on the number of semi-  
16 monthly periods between July 20, 2022, or the date of execution of their respective Project Director  
17 Agreements (whichever is later) and the date of Preliminary Approval or the date their respective  
18 relationships ended with Defendants (whichever is earlier). The Individual PAGA Payment to be  
19 made to each Aggrieved Employee shall be calculated by multiplying the value of a semi-monthly  
20 period by the number of semi-monthly periods worked by the Aggrieved Employee during the  
21 PAGA Period. Individual PAGA Payments will be allocated as one hundred percent penalties to be  
22 reported on IRS Form 1099. The remaining seventy-five percent of the PAGA Payment (\$26,250) of  
23 the PAGA Payment will be distributed to the LWDA.

24                   **A CY PRES BENEFICIARY IS APPROPRIATE**

25          57.     The Settlement proposes that the Court designate Legal Aid at Work as the *cy pres*  
26 beneficiary. Redistributing any uncashed checks to Class Members would result in additional Claims  
27 Administration Expenses. A *cy pres* beneficiary is needed because some checks will be for small  
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1 amounts and will go undeposited. Redistributing these small amounts would be impractical given the  
2 mailing and administrative costs required. Defendants do not oppose this request.

3 58. Under Code of Civil Procedure section 384, subdivision (b), *cy pres* awards may be  
4 made to “nonprofit organizations or foundations to support projects that will benefit the class or  
5 similarly situated persons, or that promote the law consistent with the objectives and purposes of the  
6 underlying cause of action . . . or to nonprofit organizations providing civil legal services to the  
7 indigent.”

8 59. Any funds that remain from uncashed or unclaimed Settlement checks will be  
9 distributed to Legal Aid at Work, the *cy pres* recipient agreed upon by the Parties. Legal Aid at  
10 Work is a qualified *cy pres* designee under section 384 because it is a “nonprofit organization[]  
11 providing civil legal services to the indigent.” Plaintiff and Class Counsel do not have an interest in  
12 Legal Aid at Work, including its governance.

13 **THE REASONABLE VALUATION OF THE CLAIMS AT ISSUE**

14 60. The Court previously found that the proposed Class meets all the requirements for  
15 class certification for settlement purposes when it granted preliminary approval of the Settlement on  
16 December 12, 2024

17 61. In its Preliminary Approval Order, the Court found that the “terms of the settlement  
18 and notice procedures appear generally fair, reasonable and adequate.” Nothing has occurred that  
19 would disturb the Court’s findings. Therefore, for the reasons set forth below, Plaintiff respectfully  
20 asks the Court to affirm that the Settlement is fair, reasonable, and adequate to all parties involved.

21 62. The Settlement was reached after arm’s-length negotiations between the Parties.

22 63. In reaching the Settlement, Class Counsel relied on their substantial litigation  
23 experience in similar employment class actions. Information gathered from investigation and  
24 informal discovery informed Class Counsel’s assessment of the strengths and weaknesses of the case  
25 and the benefits of the Settlement. Thus, the Settlement is the product of informed and non-collusive  
26 arm’s-length bargaining and is entitled to a presumption of fairness.

1           64.     Plaintiff and Class Counsel have vigorously prosecuted this case and will continue to  
2 do so. Information gathered from Class Counsel's investigation and discovery informed Class  
3 Counsel's assessment of the merits and risks of the case and the benefits of the Settlement. Class  
4 Counsel conducted a thorough investigation into the facts of the Action. Based on an independent  
5 investigation and evaluation, Class Counsel believe that the Settlement is fair, reasonable, and  
6 adequate, and is in the best interest of the Class Members in light of all known facts and  
7 circumstances, including the risk of significant delay, the risk that Defendants will prevail on its  
8 defenses, and potential appellate issues.

9           65.     The LWDA was notified of the PAGA aspects of the Settlement on February 6, 2025,  
10 in conformity with Labor Code section 2699(1)(2). To date, the LWDA has not objected to the  
11 Settlement.

12           66.     Each Settlement Class Member will receive an average Individual Settlement  
13 Payment of \$ 1,481.31. The Settlement therefore provides meaningful relief to Class Members for  
14 the disputed wage and hour violations alleged in the Action.

15           67.     The Settlement avoids the risks of litigation while ensuring that Settlement Class  
16 Members receive substantial consideration for releasing their claims. The Total Settlement Amount  
17 of \$350,000 is also well within the range of reasonableness. As described in detail in Plaintiff's  
18 Motion for Preliminary Approval, based on Class Counsel's review of the extensive data provided  
19 by Defendants for mediation, Class Counsel estimates the reasonable settlement value of the Action  
20 to be approximately \$ 211,610. The Total Settlement Amount of \$350,000 thus represents more  
21 than 100% of Class Counsel's reasonable settlement value of the Action and is therefore an excellent  
22 result.

23           68.     Apex has fulfilled its duties to prepare and send notices to all Class Members. It also  
24 provided weekly updates to Class Counsel. Apex's Group's total costs in connection with  
25 administration of this Settlement, including fees incurred and anticipated future costs for completion,  
26 are \$4,000. Apex's will proceed with additional tasks related to this matter, such as calculating  
27 settlement award payments, issuing and mailing settlement award checks, handling necessary tax  
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filings and reporting on these payments, and any other tasks mutually agreed upon by the Parties or ordered by the Court for Apex to undertake.

### **ATTORNEYS' FEES AND COSTS**

69. An award of 33.33% of the Maximum Settlement Amount is further supported by the excellent results in this case. As discussed in Plaintiffs' Motion for Preliminary Approval, Plaintiff calculated the reasonable settlement value of the case to be approximately \$211,610. The proposed Maximum Settlement Amount of \$350,000 thus represents more than Plaintiff's reasonably forecasted recovery, including penalties. Settlement Class Members will receive an average Individual Settlement Payment of \$1,481.31. They will not have to wait years of litigation to achieve relief.

70. Consequently, Plaintiff respectfully submits that the requested fee of \$116,666.67 is fair compensation for obtaining an excellent result for the Class and, in doing so, undertaking complex, risky, potentially expensive, and time-consuming litigation on a contingent basis.

71. The task-based billing records from Class Counsel Hunter Pyle Law are included in the declaration of Hunter Pyle. These records indicate that from the inception of this case to the date of this filing, Class Counsel at Hunter Pyle Law have worked the following hours in this case:

| <b>Name</b>                          | <b>Year<br/>Admitted</b> | <b>Hours</b> | <b>Rate</b> | <b>Amount</b>       |
|--------------------------------------|--------------------------|--------------|-------------|---------------------|
| Hunter Pyle, Principal               | 1997                     | 113.3        | \$950       | \$107,635.00        |
| Andrea Núñez, Associate              | 2021                     | 118.5        | \$500       | \$59,250.00         |
| Bradán Litzinger, Associate          | 2022                     | 9            | \$400       | \$3,600.00          |
| Matthew Junker, Contract<br>Attorney | 2020                     | 50           | \$450       | \$22,500.00         |
| Kim Misenhimer, Paralegal            | N/A                      | 1.6          | \$225       | \$360.00            |
| Darlene Sanchez, Paralegal           | N/A                      | 6.5          | \$250       | \$1,470.00          |
| <b>Totals:</b>                       |                          |              |             | <b>\$194,815.00</b> |

72. Class Counsel anticipates that they will spend an additional 15 hours in attorney time preparing for and appearing at the final approval hearing and conducting remaining Settlement administration tasks, including responding to questions from Settlement Class Members, and subsequent reporting on the administration of the Settlement. Accordingly, ten additional hours for

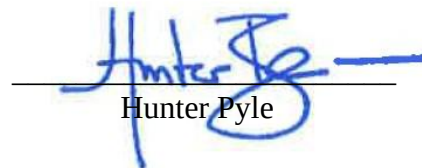
1 Ms. Núñez (\$5,000) and five additional hours for Mr. Pyle (\$4,750) increases Hunter Pyle Law's  
2 total estimated lodestar to \$204,565.

3 73. Hunter Pyle Law applied its skill and experience in undertaking the substantial work  
4 to obtain the class-wide Settlement. This included, among other things: conducting significant pre-  
5 suit investigation; analyzing Plaintiff's claims; drafting and amending pleadings; fact-intensive  
6 interviews with Plaintiff and Class Members; preparing an informal discovery plan; extensive review  
7 of documents to evaluate Plaintiff's claims and assess potential damages and defenses; conducting a  
8 damages analysis; active participation in settlement negotiations; substantial negotiation over a  
9 memorandum of understanding, a long form settlement agreement and Class Notice, drafting  
10 motions for preliminary and final approval, and overseeing the settlement administration process.

11 74. Class Counsel represented Plaintiff on a purely contingent fee basis. Unlike defense  
12 counsel, who are regularly paid a fair-market hourly rate, Class Counsel have not received any  
13 attorney's fees for the significant time they have spent prosecuting this case. Class Counsel have also  
14 paid for all of the costs of litigation out of pocket.

15 75. In addition, Class Counsel displayed a high level of skill in prosecuting this case. As  
16 detailed above, Class Counsel's respective firms are highly skilled and experienced in employment  
17 and class litigation. They deployed this skill and experience in investigating the claims, defenses,  
18 and risks of this case, including the enormous risk in obtaining class certification. Class Members  
19 will benefit from the excellent result without having to wait through years of protracted litigation.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing  
21 is true and correct, and that this declaration was executed on May 2, 2025, in Oakland, California.

22  
23   
24 Hunter Pyle  
25  
26  
27  
28

# **EXHIBIT 1**

HUNTER PYLE, SBN 191125  
ANDREA A. NÚÑEZ, SBN 340062  
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Attorneys for Defendants FREEMODEL, INC.  
and JOHN GERALD GARNER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

JULIE DEAN, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

FREEMODEL, INC.; JOHN GERALD  
GARNER; and DOES 1 through 10, inclusive,

Defendants.

) CASE NO. 23CV038315

)  
) Assigned for All Purposes to  
) The Hon. Michael Markman  
) Department 23

) **STIPULATION OF SETTLEMENT**

) Trial Date: Not Set  
) Complaint Filed: July 14, 2023  
) FAC Filed: October 25, 2023  
)  
)  
)

1 This Stipulation of Settlement, including Exhibit A (the “Settlement,” “Settlement  
2 Agreement,” or “Agreement”), is made and entered into by, between, and among Plaintiff  
3 JULIE DEAN (“Plaintiff”) on behalf of herself and the Settlement Class Members, on the one  
4 hand, and Defendants FREEMODEL, INC. (“Freemodel”) and JOHN GERALD GARNER  
5 (collectively, “Defendants”) on the other hand. Plaintiff and Defendants (the “Parties”) enter  
6 into this Agreement to effect a full and final settlement and preclusive judgment resolving all  
7 claims brought or that could have been brought against Defendants based on the factual  
8 allegations alleged in the case *Julie Dean v. Freemodel, Inc. et al.* (Superior Court of the State  
9 of California, County of Alameda, No. 23CV038315) (the “Action”). This Agreement is  
10 intended to fully and finally compromise, resolve, discharge, and settle the Released Claims,  
11 as defined and on the terms set forth below, and to the full extent reflected here, subject to the  
12 Court’s approval.

13 **1. RECITALS**

14 This Agreement is made in consideration of the following facts:

15 1.1 WHEREAS, on July 14, 2023, Plaintiff Julie Dean commenced the Action by  
16 filing a Class Action Complaint asserting causes of action for: (1) Failure to Reimburse  
17 Business Expenses; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages;  
18 (4) Failure to Provide Off-Duty Meal Periods; (5) Failure to Authorize and Permit Rest  
19 Periods; (6) Failure to Provide Accurate Wage Statements; and (7) Unlawful Business  
20 Practices;

21 1.2 WHEREAS, on July 20, 2023, Plaintiff notified Defendants and the Labor and  
22 Workforce Development Agency (“LWDA”) of Defendants’ alleged violations under the  
23 Private Attorneys General Act (“PAGA”), Labor Code section 2698 *et seq.*;

24 1.3 WHEREAS, on October 25, 2023, Plaintiff Julie Dean filed a First Amended  
25 Complaint asserting causes of action for: (1) Failure to Reimburse Business Expenses; (2)  
26 Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide  
27 Off-Duty Meal Periods; (5) Failure to Authorize and Permit Rest Periods; (6) Failure to  
28 Provide Accurate Wage Statements; (7) Unlawful Business Practices; (8) Wrongful

1 Termination in Violation of Public Policy; (9) Breach of Contract; and (10) Penalties Under  
2 the Private Attorneys General Act;

3 1.4 WHEREAS the Parties engaged in an exchange of information, documents, and  
4 reviewing and analyzing data made available by Defendants, which enabled the Parties to  
5 thoroughly evaluate Plaintiff's claims, the PAGA claim, the claims of the putative Class,  
6 Defendants' defenses, and the likely outcomes, risks, and expense of pursuing litigation;

7 1.5 WHEREAS, on February 14, 2024, the Parties attended a private mediation with  
8 mediator Hon. Ronald Sabraw (Ret.), and, although the case did not resolve at that mediation,  
9 subsequently reached the terms of this arm's-length Settlement;

10 1.6 WHEREAS, a bona fide dispute exists as to whether any wages or penalties are  
11 due from Defendants to any putative Class Member, to the LWDA, or to any allegedly  
12 aggrieved employees;

13 1.7 WHEREAS, the Parties desire to compromise and settle all issues and claims  
14 that have been or could have been brought against Defendants based on the factual allegations  
15 of the Action, including all claims brought on a putative class and representative basis in the  
16 Action;

17 1.8 WHEREAS, the Parties further agree that this Agreement, the fact of this  
18 Settlement, any terms of this Agreement, and any documents filed in connection with the  
19 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an  
20 admission, finding, or evidence of: (i) any wrongdoing by any Released Parties; (ii) any  
21 violation of any statute or law by Released Parties; (iii) any liability on the claims or  
22 allegations in the Action on the part of any Released Parties; (iv) any waiver of Defendants'  
23 right to arbitration or the enforceability of any arbitration agreement; or (v) the propriety of  
24 certifying a class or pursuing representative relief under PAGA in the Action or any other civil  
25 or administrative proceeding; and this Agreement shall not be used by any person for any  
26 purpose whatsoever in any administrative or legal proceeding, including but not limited to  
27 arbitrations, other than a proceeding to enforce the terms of this Agreement;

28

1           1.9   NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
2   AGREED by Plaintiff, for herself and on behalf of the Settlement Class Members, defined  
3   below, and Aggrieved Employees, defined below, and by Defendants that, subject to the  
4   approval of the Court, the Action shall be settled and compromised, and the Released Claims  
5   shall be finally and fully compromised and settled as to the Released Parties in the manner and  
6   upon the terms and conditions set forth in this Agreement.

7       **2.   DEFINITIONS**

8           Unless otherwise defined herein, capitalized terms used in this Agreement have these  
9   meanings:

10          2.1   “Action” means the case *Julie Dean v. Freemodel, Inc. et al.* (Superior Court of  
11   the State of California, County of Alameda, No. 23CV038315).

12          2.2   “Aggrieved Employees” is defined as all individuals who entered into Project  
13   Director Agreements with Freemodel, Inc. and/or worked as Project Directors for Freemodel,  
14   Inc. in California between July 20, 2022, through the date of Preliminary Approval of the  
15   parties’ settlement agreement by the Court.

16          2.3   “Claims Administrator” means Apex Class Action.

17          2.4   “Claims Administrator Expenses” means the maximum amount to be paid to the  
18   Claims Administrator, which shall not exceed four thousand dollars (\$4,000.00). All Claims  
19   Administrator Expenses are to be paid exclusively from the Maximum Settlement Amount.

20          2.5   “Class Members” means: all individuals who entered into Project Director  
21   Agreements with Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in  
22   California between July 14, 2019, and the date of preliminary approval of the parties’  
23   settlement agreement by the Court (the “Class Period”).

24          2.6   “Class Period” means July 14, 2019, through the date of preliminary approval of  
25   the Parties’ Settlement Agreement by the Court.

26          2.7   “Class Counsel” means Hunter Pyle and Andrea A. Núñez of Hunter Pyle Law.

1           2.8   “Class Counsel Award” means the attorneys’ fees and reimbursement of  
2 litigation costs and expenses awarded by the Court to Class Counsel to fully satisfy all claims  
3 for attorneys’ fees and costs incurred by Plaintiff to litigate and settle this Action.

4           2.9   “Class Information” means information regarding Class Members that  
5 Defendants will in good faith compile from their records and provide to the Claims  
6 Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall  
7 include each Class Member’s full name, last known mailing address, and applicable semi-  
8 monthly pay periods. Because Class Members’ private information is included in the Class  
9 Information, the Claims Administrator shall maintain the Class Information in confidence,  
10 shall limit access to the information only to those employees of the Claims Administrator with  
11 a need to use the Class Information as part of the administration of the Settlement, and shall  
12 use and disclose the Class Information only for purposes of this Settlement.

13           2.10 “Class Notice” means the Notice of Class Action Settlement to be provided to  
14 Class Members, substantially in the form attached as “Exhibit A.”

15           2.11 “Complete and General Release” means a release of the Released Parties from  
16 all claims, including but not limited to any claims actual or potential, known or unknown,  
17 which arise under or relate to, or are based on Dean’s working relationship with Freemodel  
18 and the termination thereof, any and all contracts, promises, representations and statements to,  
19 from or between the Parties, the common laws of any state, Title VII of the Civil Rights Act of  
20 1964, the Equal Pay Act of 1963, all federal Civil Rights Acts, the Age Discrimination in  
21 Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities  
22 Act, the Employee’s Retirement Income Security Act of 1974, and all other state and federal  
23 statutes, and all conduct of Freemodel’s past or present managers, officers and directors,  
24 whether in their individual or representative capacities.

25           The Complete and General Release also means that Plaintiff Julie Dean voluntarily  
26 waives the provisions, rights, and benefits of Section 1542 of the California Civil Code and of  
27 any law, regulation or provision of any code of civil procedure of any other jurisdiction which  
28

1 is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which  
2 provides as follows:

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

7 2.12 “Court” means the Alameda County Superior Court.

8 2.13 “Effective Date” means the first business day upon which the latest of the  
9 following dates: (i) if no Class Member files an objection or, if they have filed objections, such  
10 objections have been withdrawn, then the date the Court enters an order granting final  
11 approval of the Agreement; (ii) if a Class Member files an objection to the Agreement that has  
12 not been withdrawn, and if an appeal, review or writ is not sought from the order granting final  
13 approval of the Agreement, then sixty-one calendar days after service of notice of entry of the  
14 order; or (iii) if an appeal, review or writ is sought from the order, then the business day after  
15 the court of last resort to which any appeal is taken has affirmed the order or the appeal,  
16 review or writ is dismissed or denied, and the order is no longer subject to further appeal or  
17 judicial review.

18 2.14 “Final Approval Date” means the date of the Court’s order finally approving this  
19 Settlement.

20 2.15 “Final Approval Hearing” means the hearing at or after which the Court will  
21 make a final decision as to whether the Settlement is fair, reasonable, and adequate, and  
22 therefore is finally approved by the Court.

23 2.16 “Final Approval Order” means the Court’s order finally approving this  
24 Settlement.

25 2.17 “Individual PAGA Payment” means Aggrieved Employees’ pro rata share of  
26 25% of the PAGA Payment.

27 2.18 “Individual Settlement Payment” means the gross payment of each Settlement  
28 Class Member’s Individual Settlement Share and Individual PAGA Payment, if applicable.

2.19 “Individual Settlement Share” means the pro rata payment of the Net Settlement Amount to each Settlement Class Member.

2.20 “Judgment” means the judgment to be entered in the Action upon final approval of the Settlement.

2.21 “Mailed Notice Date” means the date of the initial mailing of the Class Notice to Class Members.

2.22 “Net Settlement Amount” available to the Class Members for Distribution means the Gross Settlement less payment of (1) Class Counsel Award; (2) Service Award to Plaintiff; (3) PAGA Payment; and (4) Claims Administration Costs.

2.23 “PAGA Payment” means a total payment of \$35,000 as consideration for the PAGA Release. The PAGA Payment will be allocated exclusively as penalties under Labor Code section 2699, et seq. of which 75% (\$26,250) will be paid to the LWDA and the remainder (\$8,750) of which will be distributed to the Aggrieved Employees. The PAGA Payment shall be payable from the Maximum Settlement Amount.

2.24 “PAGA Period” means July 20, 2022, through the date of Preliminary Approval of the parties’ settlement agreement by the Court.

2.25 “PAGA Release” means and refers to the release provided by Plaintiff acting in their capacity as private attorneys general on behalf of the State of California, and on behalf of the Labor and Workforce Development Agency. The PAGA Release shall operate to release and discharge the Released Parties from any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that arose during the PAGA Period, as asserted in the Action, and were identified in Plaintiff’s PAGA letter to the LWDA dated July 20, 2023. This shall specifically include claims for: Labor Code §§ 226, 226.2, 226.7, 510, 512, 1182.11–1182.13, 1194, 1194.2, 1197, 1198, and 2802 and the related IWC Wage Order No. 4-2001 and Business & Professions Code §§ 17200, et seq. claims based on alleged violations of these Labor Code and Wage Order provisions, and related interest, fees, and costs (“Released Claims”).

2.26 “Plaintiff” means Julie Dean.

1           2.27 “Preliminary Approval” means entry of the Preliminary Approval Order.

2           2.28 “Preliminary Approval Order” means the order granting preliminary approval of  
3 this Settlement Agreement.

4           2.29 “Released Claims” means all claims, charges, complaints, liens, demands, causes  
5 of action, obligations, damages and liabilities, from July 14, 2019, through the date of  
6 preliminary approval of the parties’ settlement agreement by the Court (“Relevant Time  
7 Period”), that each participating class member had, now has, or may hereafter claim to have  
8 during the Relevant Time Period against Defendants, its agents, officers, employees, directors,  
9 owners, subsidiaries, DBA’s, affiliates and predecessor, successor, and parent companies  
10 (“Released Parties”), and that were asserted in the Action, or that arise from or could have  
11 been asserted based on any of the facts alleged in Plaintiff’s First Amended Complaint  
12 (“Complaint”) and/or Notice to the California Labor Workforce Development Agency,  
13 regardless of whether such claims arise under federal, state and/or local law, statute,  
14 ordinance, regulation, common law, or other source of law. The Released Claims specifically  
15 include, but are not limited to Labor Code §§ 226, 226.2, 226.7, 510, 512, 1182.11–1182.13,  
16 1194, 1194.2, 1197, 1198, and 2802 and the related IWC Wage Order No. 4-2001 and  
17 Business & Professions Code §§ 17200, et seq. claims based on alleged violations of these  
18 Labor Code and Wage Order provisions) and all other claims, such as those under the  
19 California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could  
20 have been pleaded based on the facts asserted in the Action, including: (1) Failure to  
21 Reimburse Business Expenses; (2) Failure to Pay Minimum Wages; (3) Failure to Pay  
22 Overtime Wages; (4) Failure to Provide Off-Duty Meal Periods; (5) Failure to Authorize and  
23 Permit Rest Periods; (6) Failure to Provide Accurate Wage Statements; (7) Unlawful Business  
24 Practices; (8) Civil Penalties Pursuant to PAGA as described in Plaintiff’s letter to the LWDA,  
25 dated July 20, 2023, as well as interest, fees, and costs.

26           2.30 “Released Parties” means Defendants, its agents, officers, employees, directors,  
27 owners, subsidiaries, DBA’s, affiliates and predecessor, successor, and parent companies.

28

2.31 “Response Deadline” means the date by which a Class Member may: (i) request to be excluded from the Settlement; (ii) object to the Settlement; or (iii) dispute the number of Semi-Monthly Periods credited to him or her. The Response Deadline shall be sixty (60) calendar days after the Mailed Notice Date and shall be specifically identified and set forth in the Preliminary Approval Order and Class Notice. The Response Deadline may be extended in the event the Class Notice is re-mailed to any Class Members as set forth in section 6. In the event the Class Notice is re-mailed, the Claims Administrator shall advise the Class Member that they have an additional ten (10) calendar days from the original Response Deadline to submit a response (the “Extended Response Deadline”).

2.32 “Service Award” means the amounts approved by the Court to be paid to Plaintiff, in addition to Plaintiff’s respective Individual Settlement Payment. The Service Award payable to Plaintiff Julie Dean shall not exceed \$5,000 and shall be payable from the Maximum Settlement Amount.

2.33 “Settlement Class Members” means all Class Members who do not opt out of this Settlement.

2.34 “Maximum Settlement Amount” means a total of three-hundred and fifty thousand dollars \$350,000.00 for the class and representative claims in the Action, which Defendants agree to pay, on an all-in an non-reversionary basis, for the class and representative claims in the Action, which is inclusive of any Class Counsel Award, PAGA Payment, Service Award to Plaintiff, and Claims Administration Expenses.

2.35 “Void Date” means the date by which any checks issued to Settlement Class Members shall become void, i.e., on the 181st day after mailing.

### **3. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

3.1 Certification of Class: Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify the Class.

3.2 Appointment of Class Representative: Solely for the purposes of this Settlement, the Parties stipulate and agree that Plaintiff Julie Dean shall be appointed representative of the Class.

1           3.3   Appointment of Class Counsel: Solely for the purposes of this Settlement, the  
2 Parties stipulate and agree that Class Counsel shall be approved as counsel for Settlement  
3 Class Members.

4           3.4   Appointment of Claims Administrator: Solely for the purposes of this  
5 Settlement, the Parties stipulate and agree that Apex Class Action shall be appointed to serve  
6 as Claims Administrator. The Claims Administrator shall be responsible for establishing a toll-  
7 free telephone number by which Class Members can inquire about the Settlement and a Post  
8 Office Box for receipt of Class Members' communications; preparing, printing and mailing  
9 the Class Notice; receiving and reviewing requests for exclusion, objections, or disputes  
10 submitted by Class Members; calculating Individual Settlement Shares and Individual PAGA  
11 Payments; calculating and paying any and all payroll tax or other required withholdings from  
12 the wage portion of the Individual Settlement Shares as required under this Agreement and  
13 applicable law; providing weekly status reports to Defendants' counsel and Class Counsel;  
14 providing a due diligence declaration for the Court prior to the Final Approval Hearing;  
15 mailing Individual Settlement Payments, the Service Award, the Class Counsel Award, and  
16 75% of the PAGA Payment to the LWDA; printing and providing Plaintiff, Class Counsel,  
17 and Settlement Class Members with IRS Forms W-2 or 1099 as required under this Agreement  
18 and applicable law; providing a due diligence declaration for submission to the Court upon the  
19 completion of the Settlement; and for other tasks as the Parties mutually agree. The Parties  
20 agree to cooperate in the settlement administration process and to make all reasonable efforts  
21 to control and minimize Claims Administrator Expenses.

22           3.5   Conditional Nature of Stipulation for Certification: Solely for the purposes of  
23 this Settlement, the Parties stipulate and agree to the certification of the Class. Should for  
24 whatever reason the Settlement not become effective, the fact that the Parties were willing to  
25 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be  
26 admissible in connection with, the issue of whether the Class should be certified in a non-  
27 Settlement context in this Action or in any other lawsuit. Defendants expressly reserve its right  
28

1 to oppose any claim or class certification in this or any other action should this Settlement not  
2 become effective.

3 3.6 The Parties agree to stay all proceedings in the Action, except those proceedings  
4 necessary to implement and complete the Settlement, from the date that this Settlement  
5 Agreement is executed by Plaintiff until such time as the Parties shall agree in writing that the  
6 stay is lifted, which stay shall extend the time within which this action must be brought to trial  
7 pursuant to California Code of Civil Procedure section 583.310, et seq.

8 **4. NON-REVERSIONARY SETTLEMENT CONSIDERATION**

9 4.1 Defendants' total monetary obligation under this Settlement is the Maximum  
10 Settlement Amount (\$350,000) and is non-reversionary. This is an "all in" number that  
11 includes, without limitation, all monetary benefits and payments for Settlement Class  
12 Members, Service Award, the Class Counsel Award, Claims Administrator Expenses, the  
13 PAGA Payment, and all other claims for interest, fees, and costs. Under no circumstances shall  
14 Defendants be required to pay anything more than the Maximum Settlement Amount. In no  
15 event shall Defendants be liable for making any payments under this Settlement, or for  
16 providing any relief to the Settlement Class Members, before the Effective Date of this  
17 Agreement. Within thirty (30) calendar days of the Effective Date, Defendants will transfer the  
18 Maximum Settlement Amount to the Claims Administrator. Such funding is conditioned on  
19 the Claims Administrator providing valid transmission instructions.

20 4.2 Defendants agree not to oppose Plaintiff Julie Dean's application for a Service  
21 Award in an amount up to \$5,000. Any Service Award awarded by the Court shall be paid  
22 from the Maximum Settlement Amount. If the Court awards less than the full Service Award,  
23 the unawarded funds shall become part of the Net Settlement Fund.

24 4.3 Plaintiff shall seek a Class Counsel Award from the Court, consisting of  
25 attorneys' fees in an amount of up to \$122,500 and all litigation costs and expenses incurred  
26 subject to proof in an amount not to exceed \$25,000. Defendants agree not to oppose a request  
27 for these amounts. Any Class Counsel Award awarded by the Court shall be paid from the  
28

Maximum Settlement Amount. Any portion of the Class Counsel Award that is not approved by the Court and awarded to Class Counsel shall become part of the Net Settlement Fund.

4.4 The Parties agree to allocate thirty-five thousand dollars (\$35,000) for the PAGA Payment, of which 75% or \$26,250 shall be paid to the LWDA, and the remaining 25% or \$8,750 shall be paid to Aggrieved Employees on a pro rata basis based on the number of semi-monthly periods between July 20, 2022, or the date of execution of their respective Project Director Agreements (whichever is later) and the date of Preliminary Approval or the date their respective relationships ended with Defendants (whichever is earlier), and irrespective of whether or not they request exclusion from the Settlement. The PAGA Payment shall be paid from the Maximum Settlement Amount. Any portion of the PAGA Payment that is not approved by the Court shall become part of the Net Settlement Fund.

4.5 The Claims Administrator Expenses are estimated not to exceed four thousand dollars (\$4,000). The Claims Administrator Expenses shall be paid from the Maximum Settlement Amount. Any portion of the Claims Administrator Expenses not actually incurred by the Claims Administrator shall become part of the Net Settlement Fund.

4.6 The Claims Administrator shall calculate the Individual Settlement Shares based on the Class Information provided to the Claims Administrator by Defendants. Payment of Individual Settlement Shares to Settlement Class Members will be made from the Net Settlement Fund as follows:

(a) The allocation of the Net Settlement Fund shall be made pursuant to a formula by which each Class Member receives a pro rata portion of the Net Settlement Amount based on the number of semi-monthly periods between July 14, 2019, or the date of execution of their respective Project Director Agreements (whichever is later) and the date of Preliminary Approval or the date their respective relationships ended with Defendants (whichever is earlier), and irrespective of whether or not they request exclusion from the Settlement.

(b) Each Class Member's number of semi-monthly periods will be derived by Defendants based on the records kept by Defendants in the ordinary course of

1 business during the Class Period. Individual Settlement Shares shall be characterized  
2 as 20 percent for reimbursement of expenses, 60 percent penalties, and 20 percent  
3 interest. Each Class Member's gross settlement award will be reported on a 1099  
4 Form.

5 4.7 Aggrieved Employees will receive an Individual PAGA Payment that consists of  
6 a pro rata share of 25% of the PAGA Payment based on the number of semi-monthly periods  
7 between July 20, 2022, or the date of execution of their respective Project Director  
8 Agreements (whichever is later) and the date of Preliminary Approval or the date their  
9 respective relationships ended with Defendants (whichever is earlier). The Individual PAGA  
10 Payment to be made to each Aggrieved Employee shall be calculated by multiplying the value  
11 of a semi-monthly period by the number of semi-monthly periods worked by the Aggrieved  
12 Employee during the PAGA Period.

13 4.8 Settlement Class Members may dispute the number of semi-monthly periods  
14 with which they have been credited, as reflected in their respective Class Notices. In order to  
15 dispute semi-monthly periods, Settlement Class Members must submit a written letter returned  
16 to the Claims Administrator by mail at the specified address, postmarked on or before the  
17 Response Deadline. The written letter must: (a) contain the case name and number of the  
18 Action; (b) be signed by the Settlement Class Member; (c) contain the full name, address,  
19 telephone number, and the last four digits of the Social Security Number of the disputing  
20 Settlement Class Member; (d) clearly state that the Settlement Class Member disputes the  
21 number of semi-monthly periods credited to them and what they contend is the correct number  
22 to be credited to them; and (e) include information or attached documentation demonstrating  
23 that the amount of semi-monthly periods that they contend should be credited to them are  
24 correct. The date of the postmark on the submission will be the exclusive means to determine  
25 whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of  
26 Defendants' records and data as they pertain to the number of semi-monthly periods to be  
27 credited to a disputing Settlement Class Member, Defendants' records will be presumptively  
28 determinative in any dispute over entitlement to payment or over membership in the Class.

1 However, if a Class Member produces information or documents to the contrary, the Claims  
2 Administrator will evaluate the materials submitted by the Class Member and the Claims  
3 Administrator will resolve and determine the number of eligible semi-monthly periods that the  
4 disputing Settlement Class Member should be credited with under the Settlement. The Claims  
5 Administrator's decision on such disputes will be final and non-appealable.

6 4.9 Individual PAGA Payments will be allocated as one hundred percent (100%)  
7 penalties to be reported on IRS Form 1099.

8 4.10 Settlement Class Members (except Plaintiff with respect to her Service Award  
9 and Individual Settlement) are not eligible to receive any compensation other than the  
10 Individual Settlement Payments discussed above.

11 4.11 The Claims Administrator shall never be empowered to make payments to Class  
12 Members exceeding the total Net Settlement Fund or deviate from the payment formula agreed  
13 upon by the Parties.

14 4.12 Amounts paid to Plaintiff and Settlement Class Members pursuant to this  
15 Settlement Agreement shall be deemed to be paid to such Settlement Class Members and  
16 Aggrieved Employees solely in the year in which such payments actually are received by the  
17 Settlement Class Members and Aggrieved Employees. It is expressly understood and agreed  
18 that such Individual Settlement Payment and Individual PAGA Payments will not be utilized  
19 to calculate any additional compensation or any additional benefits under any compensation or  
20 benefit plans to which any Settlement Class Member or PAGA Employee may be eligible,  
21 including, but not limited to: bonus, contest or commissions plans; profit-sharing plans, bonus  
22 plans, 403(b) and 457 plans, deferred compensation plans; vacation plans, sick leave plans,  
23 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement  
24 Agreement will not affect any rights, contributions, or amounts to which any Settlement Class  
25 Members or Aggrieved Employees may be entitled under any compensation or benefit plans.

26 4.13 In consideration of her Service Award, Plaintiff Julie Dean, individually and on  
27 behalf of her heirs, estates, trustees, executors, administrators, representatives, agents,  
28 successors, and assigns, and anyone claiming through them or acting or purporting to act on

her behalf, agrees to provide a Complete and General Release.

4.14 In exchange for the consideration provided by Defendants, Plaintiff Julie Dean, acting in the capacity of a representative of the State of California and on behalf of the group of Aggrieved Employees, agrees to release any and all claims pursuant to the PAGA Release.

4.15 In exchange for the consideration provided by Defendants, Settlement Class Members, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, will agree to forever release, discharge, and hold harmless each and all of the Released Parties for the Released Claims during the Class Period.

4.16 All releases identified herein shall be null and void if Defendants fail to fully fund the Maximum Settlement Amount. The releases identified herein shall become effective on the date on which Defendant fully funds the Maximum Settlement Amount.

4.17 Any uncashed settlement compensation left after distributing the Net Settlement Amount and after the 180-day period for negotiating checks will constitute a *cy pres* fund to be distributed to Legal Aid at Work, subject to Court approval.

4.18 Defendants will not receive reversion of any part of the Maximum Settlement Amount, unless the Settlement is not finally approved by the Court with the terms materially identical to the terms articulated in this Agreement. In the event the Settlement is void per this term, or is not given final approval by the Court, Defendants will bear only one half of the already-accrued costs of the Claims Administrator.

## **5. PROCEDURE FOR REQUESTING PRELIMINARY APPROVAL OF THE SETTLEMENT**

5.1 After execution of this Settlement Agreement, Plaintiff shall promptly submit a motion for preliminary approval of the Settlement to the Court, along with the Settlement Agreement. Plaintiff will provide the proposed motion to Defendants' counsel of record no less than five (5) calendar days before the motion is filed for review and comment. Plaintiff's motion for preliminary approval shall request that the Court enter a preliminary approval order. Drafts of the motion for preliminary approval, including the proposed preliminary

1 approval order, shall be provided to Defendants' counsel at least five (5) court days before the  
2 documents are filed and approved of in writing before being filed.

3 5.2 The Preliminary Approval Order shall:

- 4 • Conditionally certify the Settlement Class for settlement purposes;
- 5 • Preliminarily appoint Plaintiff as representative of the proposed Settlement
- 6 Class;
- 7 • Preliminarily approve Class Counsel to represent the Settlement Class;
- 8 • Appoint Apex Class Action as the Claims Administrator and order the Claims
- 9 Administrator to provide notice of the Settlement as outlined in this Agreement;
- 10 • Stay all litigation of the Action pending the Final Approval Hearing, except as
- 11 necessary to implement and effectuate the Settlement; and
- 12 • Order that the preliminary approval of the Settlement, conditional certification
- 13 of the Settlement Class, and all actions associated with them, are undertaken on
- 14 the condition that they shall be vacated if the Settlement Agreement is
- 15 disapproved in whole or in part by the Court, or any appellate court or other
- 16 court of review, in which event the Settlement Agreement and the fact that it
- 17 was entered into shall not be offered, received, or construed as an admission or
- 18 as evidence for any purpose, including but not limited to an admission by any
- 19 Party of liability or non-liability or of the certifiability of a litigation class or the
- 20 appropriateness of maintaining a representative action.

21 5.3 The motion for preliminary approval shall request: the Final Approval Hearing;  
22 that any determination on the request for a Class Counsel Award and Service Award be set no  
23 earlier than forty-five (45) calendar days after the Response Deadline; and that Plaintiff be  
24 permitted to file Plaintiff's motion for final approval of the Settlement no later than sixteen  
25 (16) court days before the Final Approval Hearing.

26 5.4 At the same time that Plaintiff files the motion for preliminary approval, Class  
27 Counsel will submit the Settlement Agreement to the LWDA.

28 **6. PROCEDURE FOR PROVIDING NOTICE OF SETTLEMENT**

1           6.1 No more than thirty (30) calendar days after Preliminary Approval, Defendants  
2 shall provide the Claims Administrator with the Class Information for purposes of sending the  
3 Class Notice to Class Members.

4           6.2 No more than forty-five (45) calendar days after Preliminary Approval, the  
5 Claims Administrator shall mail the Class Notice to Class Members via first-class regular U.S.  
6 mail. Prior to mailing, the Claims Administrator will perform a search based on the National  
7 Change of Address Database to update and correct for any known or identifiable address  
8 changes. For each Class Notice returned as undeliverable without a forwarding address, the  
9 Claims Administrator will perform a single computer or “skiptrace” search to obtain an  
10 updated address. All Class Members’ names and postal mail addresses obtained through these  
11 sources shall be protected as confidential and not used for purposes other than the notice and  
12 administration of this Settlement. The address determined by the Claims Administrator as the  
13 current mailing address shall be presumed to be the best mailing address for each Class  
14 Members. The Claims Administrator shall promptly re-mail the Class Notice to any Class  
15 Member whose original notice was returned because of a wrong address within three (3)  
16 business days of obtaining an updated address and advise the Class Member of the Extended  
17 Response Deadline.

18           6.3 If any Class Notice to a Class Member is returned to the Claims Administrator  
19 with a forwarding address, the Claims Administrator shall forward the postal mailing to that  
20 address within three (3) business days. Class Members whose Class Notices are re-mailed  
21 shall have an additional ten (10) calendar days from the original Response Deadline to submit  
22 a response (the Extended Response Deadline). The Claims Administrator will advise Class  
23 Members of the Extended Response Deadline where applicable.

24           6.4 The Claims Administrator shall continue to obtain updated mailing addresses for  
25 any undeliverable Class Notices until the Response Deadlines. The Claims Administrator shall  
26 maintain a log detailing the instances Class Notices are returned as undeliverable, re-mailed,  
27 and when applicable, returned again.

1           6.5    The Class Notice shall include a statement as to the number of semi-monthly  
2 periods credited to the Class Member, where applicable, as well as an explanation of how the  
3 Workweeks will be used to calculate the Individual Settlement Shares and Individual PAGA  
4 Payments if applicable.

5           6.6    The Class Notice will inform Class Members that, unless they submit a request  
6 to be excluded from the Settlement, they will become Settlement Class Members and will  
7 receive Individual Settlement Payments under the Agreement.

8           6.7    The Class Notice will inform Class Members of their right to request exclusion  
9 from the Settlement or to object to the Settlement, dispute the amount of semi-monthly periods  
10 credited to them, and of the procedure for doing so. The Class Notice will also inform Class  
11 Members that if they request exclusion from the Class, they may not also object to the  
12 Settlement or dispute the number of Workweeks credited to them. The Class Notice will  
13 inform PAGA Employees that all claims to PAGA penalties are settled by operation of law  
14 and that they are not able to exclude themselves from the PAGA Release and will receive an  
15 Individual PAGA Payment whether or not they request exclusion from the Action and the  
16 Settlement.

17          6.8    Class Members will have sixty (60) days from the mailing of the Class Notice to  
18 submit a request for exclusion or objections (which periods shall run concurrently). However,  
19 the Court will consider any oral objections made at the hearing on final approval.

20          6.9    The Parties agree that the procedures set forth in this Section comply with all  
21 due process requirements, constitute reasonable and best practicable notice under the  
22 circumstances, and constitute an appropriate and sufficient effort to locate current addresses  
23 for Class Members such that no additional efforts to do so shall be required.

24          6.10   No more than ten (10) calendar days after the Response Deadline or Extended  
25 Response Deadline in the event the Class Notice is re-mailed, the Claims Administrator shall  
26 provide a declaration of due diligence confirming: its dissemination of the Class Notice in  
27 accordance with the notice procedures of this Agreement; all attempts by the Claims  
28 Administrator to locate Class Members; the number of delivered and undeliverable Class

1 Notices; the number of objections received and copies of same; the number of requests for  
2 exclusion received and copies of same; and the number of semi-monthly periods payment  
3 disputes received. Class Counsel shall be responsible for filing the due diligence declaration  
4 with the Court.

## 5 **7. PROCEDURE FOR REQUESTING EXCLUSION**

6 7.1 All requests for exclusion will be submitted to the Claims Administrator, who  
7 will timely certify jointly to Plaintiff's counsel and Defendants' counsel the forms that were  
8 timely and correctly submitted.

9 7.2 Class Members who wish to exclude themselves from (or "opt out" of) the  
10 Settlement must submit timely, signed written requests for exclusion from the Settlement to  
11 the Claims Administrator that includes the Class Member's name, a clear and unequivocal  
12 statement that the individual wishes to be excluded from the Settlement, and the Class  
13 Member's signature.

14 7.3 The request for exclusion must be mailed to the Claims Administrator at the  
15 address provided in the Class Notice and must be postmarked no later than the Response  
16 Deadline. The date of the postmark on the envelope containing the request for exclusion shall  
17 be the exclusive means used to determine whether a request for exclusion has been timely  
18 submitted.

19 7.4 The Claims Administrator shall immediately notify Class Counsel and counsel  
20 for Defendants by email and phone if the number of timely-submitted requests for exclusion  
21 reaches ten percent (10%) of all Class Members. If Class Members representing more than  
22 10% of the total semi-monthly in the Class Period submit exclusion forms of any kind,  
23 Defendants may exercise the option to rescind and revoke the entire Settlement Agreement by  
24 sending written notice to Class Counsel that it revokes the Settlement within ten (10) calendar  
25 days after notice from the Claims Administrator. However, if Defendants exercise this option,  
26 it will be responsible for paying all settlement administration costs incurred to date.

27 7.5 All Class Members who do not opt out of the Settlement shall be bound by the  
28 Final Approval Order and Judgment even if they never received the Class Notice or other

1 actual notice of this Settlement. However, if a Class Member's information was not part of the  
2 Class Information that Defendants provided to the Claims Administrator, Defendants shall  
3 provide additional funding sufficient to fully fund the share the Class Member would have  
4 otherwise been entitled to receive under the terms of this Agreement.

5 7.6 Plaintiff agrees not to request exclusion from the Settlement.

6 7.7 The Parties agree there is no statutory or other right for any Aggrieved  
7 Employee to opt out or otherwise exclude themselves from the settlement and release of the  
8 PAGA Claims.

9 **8. PROCEDURE FOR WRITTEN OBJECTION**

10 8.1 Class Members need not file a written objection or notice intent to appear at the  
11 hearing on final approval. However, [a]ny Class Member who has not opted out of the  
12 Settlement and who wishes to submit a written objection to the fairness, reasonableness, or  
13 adequacy of this Agreement may provide the written objection to the Claims Administrator,  
14 who shall immediately forward it to Class Counsel and counsel for Defendants by the  
15 Response Deadline or Extended Response Deadline.

16 8.2 All written objections and supporting papers must be postmarked no later than  
17 the Response Deadline or Extended Response Deadline if applicable. The date of the postmark  
18 on the envelope containing the objection shall be the exclusive means used to determine  
19 whether the written objection has been timely submitted. The Parties shall file any objections  
20 received with the Court prior to the Final Approval Hearing.

21 8.3 Written objections should contain at least the following: (i) the objector's full  
22 name, address, telephone number, last four digits of their Social Security number, and  
23 signature; (ii) the name and case number of the Action; (iii) a statement of the specific legal  
24 and factual basis for each objection argument; and (iv) a statement whether the objector  
25 intends to appear at the Final Approval Hearing, either remotely, in person, or through  
26 counsel, and, if through counsel, a statement identifying that counsel by name, bar number,  
27 address, and telephone number.

1           8.4   Class Members who object to the Settlement shall remain Settlement Class  
2 Members and shall be deemed to have voluntarily waived their right to pursue an independent  
3 remedy against Defendants and the Released Parties for the Released Claims if the Court  
4 grants final approval of the Settlement. To the extent any Settlement Class Member objects to  
5 the Settlement, and such objection is overruled in whole or in part, those Settlement Class  
6 Members will be forever bound by the Final Approval Order and Judgment if the Court grants  
7 final approval of the Settlement.

8           8.5   The Parties agree there is no statutory or other right for any Aggrieved  
9 Employee to object to the PAGA Release portion of the Settlement.

10       **9.    PROCEDURE FOR REQUESTING FINAL APPROVAL OF THE**  
11 **SETTLEMENT**

12           9.1   Promptly after receipt of the declaration of due diligence from the Claims  
13 Administrator, Plaintiff shall file a motion requesting final approval of the Settlement, along  
14 with a proposed Final Approval Order. Drafts of the motion for final approval of the  
15 Settlement and proposed Final Approval Order shall be provided to Defendants' counsel at  
16 least five (5) court days before the documents are filed and approved of in writing before it is  
17 filed.

18           9.2   The Final Approval Order shall adjudge, among other things, that:

- 19           • The Claims Administrator has fulfilled its initial notice and reporting duties  
20           under the Settlement and that the Class Notice: (i) constituted the best  
21           practicable notice; (ii) constituted notice that was reasonably calculated under  
22           the circumstances to apprise Class Members of the pendency of the Action and  
23           their right to exclude themselves from or object to the proposed Settlement and  
24           to appear at the Final Approval Hearing; (iii) was reasonable and constituted  
25           due, adequate, and sufficient notice to all persons entitled to receive notice; and  
26           (iv) met all applicable requirements of due process and any other applicable  
27           rules or law;
- 28           • The Settlement is fair, reasonable, and adequate;

- Plaintiff and Class Counsel may adequately represent the Settlement Class for the purpose of entering into and implementing the Agreement;
- The Claims Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
- Legal Aid at Work is approved as the *cy pres* beneficiary;
- The Final Approval Order and Judgment shall be final and entered forthwith;
- Without affecting the finality of the Final Approval Order and Judgment, the Court retains continuing jurisdiction over Plaintiff, Defendants, and Settlement Class Members, as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- As of the Effective Date of the Release, Plaintiff and Settlement Class Members compromised, settled, discharged, and provided the release of the Released Class Claims during the applicable time period against Defendants and the Released Parties and are bound by the provisions of this Settlement Agreement;
- The State's claims for civil penalties pursuant to PAGA are also extinguished.
- This Settlement Agreement and the Final Approval Order and Judgment are binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass Plaintiff's and Settlement Class Members' claims released herein, and that are maintained by or on behalf of Plaintiff and Settlement Class Members;
- The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued;

9.3 In a separate motion to be heard at the same time as the Final Approval Hearing, Class Counsel shall request entry of an Order approving the Class Counsel Award and the

1 Service Award to Plaintiff. Any Class Counsel Award or Service Award shall be paid  
2 exclusively from the Maximum Settlement Amount.

3 9.4 The Parties expressly agree that the Court's approval or denial of any request for  
4 a Service Award is not a material condition to this Agreement and is to be considered by the  
5 Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement.  
6 Any order or proceeding relating to the application by Class Counsel of a Service Award shall  
7 not operate to terminate or cancel this Agreement. To the extent the Court awards less than the  
8 amount of the requested Service Award, the consideration referenced herein shall not be  
9 affected, and the requirement for or validity of an executed Complete and General Release by  
10 Plaintiff Julie Dean shall remain in force and effect. To the extent the Court awards less than  
11 the amount of the requested Service Award, any remaining amount will be redistributed  
12 amongst participating Class Members on a pro rata basis.

13 **10. PROCEDURE FOR EXECUTING THE SETTLEMENT IF/WHEN IT**  
14 **BECOMES EFFECTIVE**

15 10.1 Defendants shall provide payment to the Claims Administrator as provided in  
16 section 4.1.

17 10.2 Within thirty (30) calendar days of receipt of the Maximum Settlement Amount,  
18 the Claims Administrator shall distribute the following payments: (a) full payment to Plaintiff  
19 of Plaintiff's Court-approved Service Award; (b) full payment to the LWDA for its 75%  
20 portion of the PAGA Payment; (c) full payment of the Court-approved Claims Administrator  
21 Expenses; (d) full payment of the Individual Settlement Payments to Settlement Class  
22 Members; (e) full payment to Aggrieved Employees of their 25% portion of the PAGA  
23 Payment; and (f) the Court-approved Class Counsel Award to Class Counsel.

24 10.3 The Claims Administrator shall prepare all tax forms related to any and all  
25 employer taxes incurred by Defendants as a result of this Settlement, shall inform Defendants  
26 and their Counsel of the amounts owed, shall collect the necessary funds from Defendants and  
27 remit them to the requisite taxing authorities.

1           10.4 If any Individual Settlement Payments are not cashed, deposited, or negotiated  
2 on or before the Void Date, then thirty (30) calendar days after the Void Date, the Claims  
3 Administrator shall void the uncashed checks and shall transmit the funds to Legal Aid at  
4 Work.

5           10.5 Upon completion of administration of the Settlement, the Claims Administrator  
6 will provide a written declaration under oath to certify completion to the Court and counsel for  
7 all Parties. Class Counsel shall file the declaration with the Court to confirm full satisfaction of  
8 the Settlement.

9           10.6 The Individual Settlement Payments cashed shall be reported by the Claims  
10 Administrator to the applicable governmental authorities on IRS Form 1099s if required. The  
11 portions allocated to the Service Award shall likewise be reported on IRS Form 1099s by the  
12 Claims Administrator. The Claims Administrator shall be responsible for issuing copies of all  
13 IRS Forms for Plaintiff and Settlement Class Members.

14           10.7 The Parties make no representation as to the tax treatment or legal effect of the  
15 payments called for here, and Plaintiff and the Settlement Class Members are not relying on  
16 any statement, representation, or calculation by any of the Parties, their counsel, or the Claims  
17 Administrator in this regard. Plaintiff and Settlement Class Members understand and agree  
18 that they will be solely responsible for payment of any taxes and penalties assessed on the  
19 payments described herein and will hold Plaintiff, Class Counsel, Defendants, Defendants'  
20 counsel, and the Released Parties free and harmless from and against any claims resulting  
21 from the tax treatment of payments under this Agreement. Plaintiff and the Settlement Class  
22 Members acknowledge and agree that no provision of this Settlement, and no written  
23 communication or disclosure between or among the Parties or their attorneys and other  
24 advisers, is or was intended to be, nor will any such communication or disclosure constitute or  
25 be construed or be relied upon as, tax advice within the meaning of United States Treasury  
26 Department Circular 230 (31 C.F.R. Part 10, as amended).

27           10.8 Payments and tax reporting by the Claims Administrator in the manner described  
28 above shall be deemed conclusive of compliance with this Settlement Agreement as to all

1 Settlement Class Members. No Settlement Class Members shall have any claim against the  
2 Plaintiff, Class Counsel, Defendants, Defendants' counsel, or the Claims Administrator for  
3 distributions made substantially in accordance with this Settlement Agreement or orders of the  
4 Court.

5 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**  
6 **SETTLEMENT AGREEMENT**

7 11.1 If the Court does not approve the Settlement as set forth in this Settlement  
8 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such  
9 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final  
10 Approval Order does not otherwise become Final, then this Settlement Agreement shall be  
11 cancelled and terminated, unless all Parties, in their sole discretion within thirty (30) days from  
12 the date such ruling becomes final, provide written notice to all other Parties of their intent to  
13 proceed with the Settlement under the terms of the Judgment as it may be modified by the  
14 Court or any appellate court.

15 11.2 In the event that: (i) the Settlement is not approved, is overturned, or is  
16 materially modified by the Court or on appeal; (ii) the Judgment does not become Final; or  
17 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective pursuant  
18 to this Agreement, then: (a) the Parties stipulate and agree that the Settlement, the Class  
19 Information, and all documents exchanged and filed in connection with the Settlement shall be  
20 treated as inadmissible mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b)  
21 the Settlement shall be without force and effect upon the rights of the Parties, and none of its  
22 terms shall be effective or enforceable, with the exception of this paragraph, which shall  
23 remain effective and enforceable; (c) the Parties shall be deemed to have reverted to their  
24 respective status prior to execution of this Agreement; (d) all Orders entered in connection  
25 with the Settlement, including the certification of the Class, shall be vacated without prejudice  
26 to any Party's position on the issue of class certification, the issue of amending the complaint,  
27 or any other issue, in this Action or any other action, and the Parties shall be restored to their  
28 litigation positions existing on the date of execution of this Agreement; and (e) the Parties

1 shall proceed in all respects as if the Settlement Agreement and related documentation and  
2 orders had not been executed, and without prejudice in any way from the negotiation or fact of  
3 the Settlement or the terms of the Settlement Agreement. The Settlement, all documents,  
4 orders, and evidence relating to the Settlement, the fact of their existence, any of their terms,  
5 any statement or report concerning the Settlement Agreement, its existence, or their terms, any  
6 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance  
7 of the Settlement Agreement shall not be admissible in any proceeding, and shall not be  
8 offered, received, or construed as evidence of a presumption, concession, or an admission of  
9 liability, of unenforceability of any arbitration agreement, of the certifiability of a litigation  
10 class, or otherwise used by any person for any purpose whatsoever, in any trial of this Action  
11 or any other action or proceedings.

## 12 **12. ADDITIONAL PROVISIONS**

13 12.1 Exhibit A to this Agreement, the Class Notice, is an integral part of the  
14 Settlement and is incorporated by reference as though fully set forth herein.

15 12.2 Unless otherwise noted, all references to “days” in this Agreement are to  
16 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend  
17 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

18 12.3 The Parties to the Settlement agree that the terms of the Settlement were  
19 negotiated at arm’s length and in good faith by the Parties, resulted from an arm’s-length  
20 mediation session, and reflect a settlement that was reached voluntarily based upon adequate  
21 information and sufficient discovery and after consultation with experienced legal counsel.

22 12.4 Plaintiff, Class Counsel, Defendants, and counsel for Defendants have concluded  
23 that the Settlement constitutes a fair, reasonable, and adequate resolution of the claims that  
24 Plaintiff asserted against Defendants, including the claims on behalf of the Class Members,  
25 and that it promotes the best interests of the Class Members.

26 12.5 To the extent permitted by law and unless otherwise necessary to seek Court  
27 approval of this Settlement Agreement, all agreements made and orders entered during the  
28

1 course of the Action relating to the confidentiality of information shall survive this Settlement  
2 Agreement.

3 12.6 The waiver by one Party of any breach of this Settlement Agreement by any  
4 other Party shall not be deemed a waiver of any other prior or subsequent breach of this  
5 Settlement Agreement.

6 12.7 The Parties may not amend or modify any provision of this Settlement  
7 Agreement except by written agreement signed by counsel for the Parties and subject to any  
8 necessary Court approval.

9 12.8 All notices, demands, and other communications to be provided concerning this  
10 Settlement Agreement shall be in writing and delivered by receipted delivery and by email at  
11 the addresses set forth below, or such other addresses as either Party may designate in writing  
12 from time to time:

13  
14 if to Defendants:

15 **GORDON REES SCULLY**  
16 **MANSUKHANI, LLP**

17 Linh T. Hua, Esq.  
18 Simran Virdi, Esq.  
19 633 West Fifth Street  
20 52nd Floor  
Los Angeles, CA 90071  
Telephone: (213) 576-5000  
Facsimile: (213) 680-4470  
lhua@grsm.com  
svirdi@grsm.com

if to Plaintiff:

**HUNTER PYLE LAW**

Hunter Pyle, Esq.  
Andrea A. Núñez, Esq.  
505 14th Street, Suite 600  
Oakland, California 94612  
Telephone: (510) 444-4400  
Facsimile: (510) 444-4410  
hunter@hunterpylelaw.com  
anunez@hunterpylelaw.com

21 12.9 This Settlement Agreement, including its Exhibits, constitutes the entire  
22 agreement among the Parties, and no representations, warranties, or inducements have been  
23 made to any Party concerning this Settlement Agreement or its Exhibits, other than the  
24 representations, warranties, and covenants contained and memorialized in this Settlement  
25 Agreement and its Exhibits.

26 12.10 This Settlement Agreement may be executed in one or more counterparts. All  
27 executed counterparts and each of them, including facsimile, electronic, and scanned copies of  
28 the signature page, shall be deemed to be one and the same instrument.

1 12.11 The Parties and their respective counsel agree that they will use their best efforts  
2 to obtain all necessary approvals of the Court required by this Agreement. The Parties agree  
3 that Plaintiff will submit to the Court a Motion for Preliminary Approval of this Settlement  
4 containing all of the terms and conditions contained herein notwithstanding any new legal  
5 developments regarding the Released Claims or PAGA Release.

6 12.12 This Settlement Agreement shall be binding upon and shall inure to the benefit  
7 of the successors and assigns of the Parties, including any and all Released Parties and any  
8 corporation, partnership, or other entity into or with which any Party hereto may merge,  
9 consolidate, or reorganize.

10 12.13 In the event of any dispute arising out of the performance or breach of any  
11 provision of this Settlement Agreement, the prevailing party in such disputes shall be entitled  
12 to recover his, her, or its reasonable attorneys' fees and costs incurred arising from the dispute,  
13 provide that the prevailing party gives 30 days written notice before commencing legal action  
14 regarding any failure to perform or breach of any provision of this Settlement Agreement.

15 12.14 This Settlement Agreement shall not be construed more strictly against one Party  
16 than another merely because of the fact that it may have been prepared by counsel for one of  
17 the Parties. It is recognized that because of the arm's-length negotiations resulting in the  
18 Settlement Agreement, all Parties have contributed substantially and materially to the  
19 preparation of the Settlement Agreement.

20 12.15 Except where this Settlement Agreement itself provides otherwise, all terms,  
21 conditions, and Exhibits are material and necessary to this Settlement Agreement and have  
22 been relied upon by the Parties in entering into this Settlement Agreement.

23 12.16 This Settlement Agreement shall be governed by California law. Any action  
24 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the  
25 Alameda County Superior Court, which shall retain jurisdiction over all such disputes. All  
26 Parties to this Settlement Agreement shall be subject to the jurisdiction of this Court for all  
27 purposes related to this Settlement Agreement.

28

1           12.17 The Court shall retain continuing and exclusive jurisdiction over the Parties to  
2 this Settlement Agreement for the purpose of the administration and enforcement of this  
3 Settlement Agreement.

4           12.18 The headings used in this Settlement Agreement are for the convenience of the  
5 reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

6           12.19 In construing this Settlement Agreement, the use of the singular includes the  
7 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).  
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**SO STIPULATED.**

Date: \_\_\_\_\_, 2024

JULIE DEAN

\_\_\_\_\_  
Plaintiff

Date: \_\_\_\_\_, 2024

JOHN GERALD GARNER

\_\_\_\_\_  
Defendant

Date: \_\_\_\_\_, 2024

FREEMODEL, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM**

Date: \_\_\_\_\_, 2024

HUNTER PYLE LAW PC

\_\_\_\_\_  
Hunter Pyle  
Andrea A. Núñez  
  
Attorneys for Plaintiff Julie Dean and the  
putative class and aggrieved employees

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DATE: \_\_\_\_\_, 2024

GORDON REES SCULLY  
MANSUKHANI, LLP

\_\_\_\_\_  
Linh T. Hua  
Simran Virdi

Attorneys for Defendants John Gerald  
Garner and Freemodel, Inc.

# **EXHIBIT 2**

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

JULIE DEAN

Plaintiff/Petitioner(s)

VS.

FREEMODEL, INC. et al

Defendant/Respondent

(s)

No. 23CV038315

Date: 12/12/2024

Time: 10:00 AM

Dept: 23

Judge: Michael Markman

ORDER re: Hearing on Motion -

Other Motion for

Preliminary Approval;

Case Management

Conference filed by JULIE

DEAN (Plaintiff) on

11/26/2024

The Motion for Preliminary Approval of Settlement filed by JULIE DEAN on 09/20/2024 is Granted.

## **BACKGROUND FACTS**

This is a wage-and-hour class action and PAGA representative action. Plaintiff Julie Dean and Defendants Freemodel, Inc. and John Gerald Garner have agreed to settle the claims for \$350,000.00 which includes attorney's fees of up to \$122,500.00; litigation costs of up to \$25,000.00; a service award of up to \$5,000.00 for the representative plaintiff; settlement administration costs of up to \$4,000.00, and \$35,000.00 in PAGA civil penalties (75% of penalties go to California Labor and Workforce Development Agency (LWDA) and 25% to aggrieved employees). The remaining amount is to be distributed among participating class members on a pro rata basis.

## **LEGAL STANDARD**

To prevent "fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The Court "must determine the settlement is fair, adequate, and reasonable." (*Id.* at p. 1801.) "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed

ORDER re: Hearing on Motion - Other Motion for Preliminary Approval;  
Case Management Conference filed by JULIE DEAN  
(Plaintiff) on 11/26/2024

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128 [quoting Dunk, supra, at p. 1801].)

Similarly, a “trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 77 [noting overlap of factors in class action analysis, “including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount”].)

## **PRELIMINARY APPROVAL**

Plaintiff’s counsel investigated and obtained information from Defendant. (Pyle Decl., ¶ 25.) Plaintiff’s counsel reviewed, among, other things, a spreadsheet that included each class member’s dates of employment, number of projects for Freemodell, total compensation, and whether they signed an arbitration agreement. (Id., ¶¶ 26–30.) The parties then participated in an arm’s length mediation with a professional mediator and eventually settled. (Id., ¶ 31.) Plaintiff includes an adequate Kullar analysis, providing a reasonable estimate of the number of class members, the total estimated possible recovery, and an explanation why the settlement was reasonable in light thereof. (See id., ¶¶ 58–110.) The court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (Kullar, supra, 168 Cal.App.4th at p. 129.) The terms of the settlement and notice procedures appear generally fair, reasonable and adequate. The parties revised the agreement and notices to address the court’s concerns about the scope of the releases and to clarify that the court does not require written objections but will hear from any objectors at the hearing on the motion for final approval (See Supp. Pyle Dec., filed Nov. 26, 2024.)

## **SERVICE AWARD, FEES, & COSTS**

The court will not rule on the service award for the representative plaintiff, attorney’s fees, or costs until final approval but provides the following preliminary guidance:

Any request for a service award must be supported with “quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs.” (Clark v. Am. Residential Servs. LLC (2009) 175 Cal.App.4th 785, 807.)

This court’s benchmark for attorney’s fees is 30%. (See Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.) A “court approving a settlement that includes a negotiated fee [] is required to decide if the fee negotiated by the parties closely approximates the value of

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

the attorneys' work." (*Robbins v. Alibrandi*, 127 Cal.App.4th 438, 452.) Counsel must address the value of the attorneys' work, as well as the justification for any deviation from this court's benchmark. Ten percent of the attorney's fee award must be held by the settlement administrator until completion of the distribution process and court approval of a final accounting.

The settlement agreement authorizes reimbursement of litigation costs. Counsel must provide evidentiary support for the actual costs incurred at the time of final approval.

The court's preference is for Plaintiffs to move for final approval, including approval of attorneys' fees, costs, and Plaintiff's enhancement award, in a single motion.

## **ORDER**

Plaintiff's motion for preliminary approval is GRANTED. A final approval hearing will be held on May 29, 2025 at 10:00 am in Department 23. The reservation number is A-38315-001.

The Case Management Conference scheduled for 12/12/2024 is continued to 05/29/2025 at 10:00 AM in Department 23 at Rene C. Davidson Courthouse .

Continued to coincide with hearing on motion for final approval.

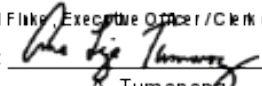
Dated : 12/12/2024



Michael Markman / Judge

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

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|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                      | <p align="center">Reserved for Clerk's File Stamp</p>                                                                                                                        |
| <p>COURTHOUSE ADDRESS:<br/>Rene C. Davidson Courthouse<br/>1225 Fallon Street, Oakland, CA 94612</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>12/12/2024</p>                                                                     |
| <p>PLAINTIFF/PETITIONER:<br/>JULIE DEAN</p>                                                          | <p>Chad Finke, Executive Officer / Clerk of the Court<br/>By:  Deputy<br/>A. Tumonong</p> |
| <p>DEFENDANT/RESPONDENT:<br/>FREEMODEL, INC. et al</p>                                               |                                                                                                                                                                              |
| <p align="center"><b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL<br/>PROCEDURE 1010.6</b></p>    | <p>CASE NUMBER:<br/>23CV038315</p>                                                                                                                                           |

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Hearing on Motion - Other Motion for Preliminary Approval; Case Management Conference filed by JULIE DEAN (Plaintiff) on 11/26/2024 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

ANI ASLANIAN  
GORDON REES SCULLY MANSUKHANI, LLP  
aaslanian@grsm.com

Andrea Alejandra Nunez  
Hunter Pyle Law  
anunez@hunterpylelaw.com

Hunter Pyle  
HUNTER PYLE LAW  
hunter@hunterpylelaw.com

Linh Tu Hua  
lhua@grsm.com

Dated: 12/12/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Tumonong, Deputy Clerk

# **EXHIBIT 3**

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

JULIE DEAN

Plaintiff/Petitioner(s)

VS.

FREEMODEL, INC. et al

Defendant/Respondent

(s)

No. 23CV038315

Date: 11/01/2024

Time: 9:21 AM

Dept: 23

Judge: Michael Markman

ORDER re: Ruling on Submitted

Matter

The Court removes Hearing on Motion - Other Motion for Preliminary Approval taken under submission on 10/31/2024 and places the matter on calendar for 12/12/2024 at 10:00 AM in Department 23 at Rene C. Davidson Courthouse.

The Court, having taken the matter under submission on 10/31/2024, now rules as follows:

## BACKGROUND FACTS

Plaintiff Julie Dean seeks to represent a class of current and former project directors employed by Defendant Freemodel, Inc., alleging that class members were misclassified as independent contractors. Plaintiff asserts cause of action for violations of the Labor Code and Unfair Competition Law against Defendants Freemodel and John Gerald Garner, Freemodel's CEO. The parties have agreed to settle the claims for \$350,000.00, which includes up to \$122,500.00 in attorney's fees; up to \$25,000.00 in litigation costs; a service award of up to \$5,000.00 for the representative plaintiff; settlement administration costs of up to \$4,000.00; and \$35,000.00 in PAGA civil penalties (75% of penalties go to California Labor and Workforce Development Agency (LWDA) and 25% to aggrieved employees). The remaining amount is to be distributed among participating class members and aggrieved employees on a pro rata basis.

## LEGAL STANDARDS

To prevent "fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1800.) The Court "must determine the settlement is fair, adequate, and reasonable." (Id. at p. 1801.) "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.'" (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128 [quoting Dunk, supra, at p. 1801].)

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Similarly, a “trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 77 [noting overlap of factors in class action analysis, “including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount”].)

## PRELIMINARY APPROVAL

Plaintiff’s counsel investigated by interviewing class members, obtaining informal discovery from Defendants, and analyzing potential claims and defenses. (Pyle Decl., ¶¶ 25–30.) The parties settled after participating in an arm’s length mediation with a professional mediator. (Id., ¶ 31.) Plaintiff’s counsel provides an adequate Kullar analysis, providing a reasonable estimate of the number of class members, the total estimated possible recovery, and an explanation why the settlement was reasonable in light thereof. (See id., ¶¶ 58–105.) The court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (Kullar, supra, 168 Cal.App.4th at p. 129.) While the terms of the settlement and notice procedures appear generally fair, reasonable, and adequate, the parties must make certain revisions before the settlement is approved.

First, the court will not approve a release of “unknown” or “unsuspected” claims belonging to absent class members. (See Pyle Decl., Ex. 1 [Settlement Agreement], ¶ 2.29; Ex. A [Notice], p. 6.) At the preliminary approval hearing, the court discussed the release with the parties. Defendant argued that the “unknown” and “unsuspected” language are “standard” releases, that the language is narrow because the release specifies that such claims still must “arise from or could have been asserted based on any of the facts alleged” in the complaint or PAGA notice letter, and that Defendant needs to make sure it can make a collateral estoppel argument to preclude further litigation if the need arises.

The court disagrees with Defendant. A release of “unknown” and “unsuspected” claims is not “standard” in this court, and it introduces unnecessary ambiguity into the class settlement. Further, the language would amount to surplusage in the absence of a waiver of rights under Civil Code section 1542. Finally, the release appears adequate, even in the absence of the “known or unknown, suspected or unsuspected” language, to protect Defendants from duplicative litigation. Collateral estoppel will not be an issue here, since collateral estoppel requires a final valid judgment on the merits by a court in order to preclude further litigation of the same claims that were actually and necessarily litigated in the original action. Rather, a settlement agreement will give Defendant a release defense, and the comprehensive release set out in the proposed settlement encompasses all the claims identified in the PAGA notice letter and the complaint.

Second, the scope of the PAGA release must be revised. A PAGA representative is acting “acting as a proxy or agent” of the LWDA, and many appellate decisions have clarified that a PAGA claim is brought on behalf of the state, rather than individuals. (Turrieta v. Lyft, Inc. (2024) 16 Cal.5th 664, 692 fn. 12 [a PAGA plaintiff “represents a single principal — the LWDA”]; see also, e.g., Adolph v. Uber Techs., Inc. (2023) 14 Cal. 5th 1104, 1113; Kim v.

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

Reins International California, Inc. (2020) 9 Cal.5th 73, 81.) As currently drafted, the Settlement Agreement includes a release by “Aggrieved Employees.” (See Pyle Decl., Ex. 1 [Settlement Agreement], ¶ 4.14.) This error is unlikely to have practical consequences in the context of settlement, but the court does not want to perpetuate any confusion by approving a settlement that inaccurately implies that PAGA claims are released by anyone other than the LWDA through its authorized agent, i.e., the named plaintiff.

The scope of the LWDA’s release must also be limited to the scope of PAGA notice letter. (LaCour v. Marshalls of California, LLC (2023) 94 Cal.App. 5th 1172, 1192–97 [notice letter is “objective source of proof for the scope” of PAGA plaintiff’s “authorized enforcement interest”]; Accurso v. In-N-Out Burgers (2023) 94 Cal.App.5th 1128, 1141–1142 [“The delegation of enforcement power from the LWDA to the aggrieved employee is not open-ended. It gives the proxy control of the penalty claims identified in his written notice to the LWDA, but is limited in scope to the specific facts and theories stated in the notice.”].) As currently drafted, the Settlement Agreement suggests that the PAGA release extends to cover claims “that arose during the PAGA Period, as asserted in the Action, or that could have been asserted based on the facts, claims, causes of action, and legal theories that were asserted in the Action.” (See Pyle Decl., Ex. 1 [Settlement Agreement], ¶ 2.25.) In addition to revising the scope of the release, the parties must provide a copy of the PAGA notice letter to the court.

Finally, the court does not require a written objection or notice of intent to appear and will consider any oral objections made at the hearing. The notice must be clarified on this point and revised to note that Department 23 is located in the Administration Building at 1221 Oak Street, Oakland, California 94612. (See Pyle Decl., Ex. A [Notice], p. 8.)

## **SERVICE AWARD, FEES, & COSTS**

The court will not rule on the incentive award for the representative plaintiff, attorney’s fees, or costs until final approval but provides the following preliminary guidance:

Any incentive, enhancement, or service award must be supported with “quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs.” (Clark v. Am. Residential Servs. LLC (2009) 175 Cal.App.4th 785, 807.)

This court’s benchmark for attorney’s fees is 30%. (See Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.) A “court approving a settlement that includes a negotiated fee [] is required to decide if the fee negotiated by the parties closely approximates the value of the attorneys’ work.” (Robbins v. Alibrandi, 127 Cal.App.4th 438, 452.) Counsel must address the value of the attorneys’ work, as well as the justification for any deviation from this court’s benchmark. Ten percent of the attorney’s fee award must be held by the settlement administrator until completion of the distribution process and court approval of a final accounting.

The settlement agreement authorizes reimbursement of litigation costs. Counsel must provide evidentiary support for the actual costs incurred at the time of final approval.

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

The court's preference is for Plaintiffs to move for final approval, including approval of attorneys' fees, costs, and Plaintiff's enhancement award, in a single motion.

## **ORDER**

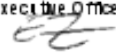
Plaintiff's motion for preliminary approval of class action settlement is CONTINUED to December 12, 2024 at 10:00 am in Department 23. At least five (5) court days before the continued hearing, Plaintiff must submit a revised proposed order and declaration addressing the issues noted above and suggesting a date, a Thursday at 10:00 am, for the final approval hearing. Any revised documents should be submitted, in a searchable format, as both fully executed versions and in redline.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 11/01/2024



**Michael Markman / Judge**

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|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                      | <p align="center">Reserved for Clerk's File Stamp</p>                                                                                                        |
| <p>COURTHOUSE ADDRESS:<br/>Rene C. Davidson Courthouse<br/>1225 Fallon Street, Oakland, CA 94612</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>11/04/2024</p>                                                     |
| <p>PLAINTIFF/PETITIONER:<br/>JULIE DEAN</p>                                                          | <p>Chad Finke, Executive Officer / Clerk of the Court<br/>By:  Deputy</p> |
| <p>DEFENDANT/RESPONDENT:<br/>FREEMODEL, INC. et al</p>                                               | <p>E. Zhong</p>                                                                                                                                              |
| <p align="center"><b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL<br/>PROCEDURE 1010.6</b></p>    | <p>CASE NUMBER:<br/>23CV038315</p>                                                                                                                           |

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

ANI ASLANIAN  
GORDON REES SCULLY MANSUKHANI, LLP  
aaslanian@grsm.com

Andrea Alejandra Nunez  
Hunter Pyle Law  
anunez@hunterpylelaw.com

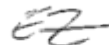
Hunter Pyle  
HUNTER PYLE LAW  
hunter@hunterpylelaw.com

Linh Tu Hua  
lhua@grsm.com

Dated: 11/04/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



E. Zhong, Deputy Clerk