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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SITARA NAYABKHIL, individually, and on behalf of other members of the general public similarly situated, Plaintiffs, vs. SAN FRANCISCO SPCA, dba, SFSPCA, a California 501(c)(3) non-profit organization; DOES 1 through 25, inclusive, Defendants.	Case No.: CGC-23-609950 *Assigned for All Purposes to the Honorable Andrew Y.S. Cheng, Dept. 613* **DECLARATION OF KAREN I. GOLD IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: October 2, 2024 Time: 9:30 a.m. Dept.: 613 Complaint Filed: October 24, 2023 FAC Filed: December 22, 2023 Trial Date: Not Set

DECLARATION OF KAREN I. GOLD

I, Karen I. Gold, declare and state as follows:

1. I am an attorney duly licensed to practice law in all Courts of the State of California. I am a Senior Trial Attorney and Team Lead at Blackstone Law, APC ("Class Counsel") and one of the attorneys of record for Plaintiff Sitara Nayabkhil ("Plaintiff"). I have personal knowledge of the facts contained herein, and, if called to testify, I could and would competently do so.

Background and Experience

2. I am fully familiar with the legal and factual issues in this case and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

3. I graduated *cum laude* from UCLA in 2005 with a Bachelor of Science degree in Cognitive Science and a Specialization in Computing. I received my law degree from Boston University School of Law and was admitted to the California State Bar in 2008.

4. Upon graduation, I joined Cox Castle & Nicholson, LLP, and worked there for approximately a decade as a general litigation attorney focused primarily on high-stakes sophisticated cases including class action defense matters. Thereafter, I spent approximately five years working for Marlin & Saltzman, LLP, which is a well-known plaintiff-side wage and hour law firm in Los Angeles, before transitioning over to Blackstone Law as a Senior Trial Attorney and Team Lead.

5. Throughout my career, I have managed over one hundred complex litigation cases, ranging from employment matters to corporate and general business litigation matters. On many of those cases, I was the only or primary attorney managing the case and thus obtained extensive experience overseeing these types of actions. In that capacity, I was the primary contact for clients; took and defended many depositions; propounded and responded to discovery; prepared and opposed motions and pleadings, including dispositive and certification motions; strategized on all cases; attended hearings; attended mediations; coordinated with class action administrators; prepared and worked with experts; participated in trial prep and trials; and engaged in all other intricate facets of litigation. Super Lawyers honored me as a Southern California Rising Star from 2015 through 2018.

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6. As the Senior Trial Attorney and Team Lead, I oversee and handle over 100 wage-and-hour putative class actions and/or representative actions under the California Labor Code Private Attorney General Act of 2004 ("PAGA") seeking relief on behalf of California employees.

7. I have considerable experience in handling class and representative action lawsuits throughout my career and have been approved as counsel in a number of cases, including, most recently:

- *Richard v. Sa-Tech, Inc., et al.*, Ventura County Superior Court, Case No. 56-2015-00471720, approved as class counsel in settlement of wage and hour class and PAGA action.
- *Ouellette v. MKTG, Inc., et al.*, Los Angeles County Superior Court, Case No. 19STCV27487, approved as class counsel in settlement of wage and hour class and PAGA action.
- *Adame v. Comtrak Logistics, Inc.*, et al., San Bernardino County Superior Court, Case No. CIV-DS-1511291, approved as class counsel in settlement of wage and hour PAGA action.
- *Utne v. Home Depot U.S.A., Inc.*, United States District Court for the Northern District of California, Case No. 3:16-cv-01854-RS, successfully opposed decertification motion.

8. Blackstone Law, APC, represents plaintiffs in individual and representative employment litigation. The firm has grown exponentially over the past six-plus years, now maintaining twenty well-qualified attorneys working on almost exclusively labor and employment class actions, PAGA cases, and individual matters, with roughly 15% of the firm focused on other complex general litigation matters.

9. Blackstone Law, APC has been counsel of record on several class action and PAGA actions that have since been resolved, the most recent of which are as follows:

- *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No. CIV2203067, approved as class counsel in final settlement of wage and hour class and PAGA action.

- *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No. 21CV003541, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No. 21STCV34040, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case No. 37-2021-00034922-CU-OE-CTL, preliminarily approved as class counsel, in association with other counsel, in settlement of wage and hour class and PAGA action.
- *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140, preliminarily approved as class counsel in settlement of wage and hour class and PAGA action.
- *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No. BCV-21-101933, approved as class counsel in final settlement of wage and hour class action.
- *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No. CVRI2105756, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case No. 22CV403427, preliminarily approved as class counsel in settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, approved as class counsel in final settlement of wage and hour class action.
- *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement of wage and hour class and PAGA action.

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- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v.* Meathead Movers, Inc., Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.,* San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.,* Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.,* Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.

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- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.,* Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers,* Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sasha Aiono v. Benefit Cosmetics,* Los Angeles County Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

<u>Procedural History of the Action</u>

10. On August 7, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and to Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA ("Defendant"), pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("Original PAGA Letter"). A true and correct copy of the Original PAGA Letter is attached hereto as **Exhibit 1**.

11. On September 7, 2023, Defendant sent a letter to the LWDA and to Plaintiff's counsel contending that Defendant cured one of the several violations listed in the Original PAGA Letter. Specifically, Defendant contended that it revised all employees' wage statements from August 7, 2019 to present to include Defendant's registered fictitious business name on the wage statements and provided employees access to their revised wage statements.

12. On September 8, 2023, Plaintiff sent a letter to the LWDA contending that Defendant's action in revising its employees' wage statements failed to fully cure the alleged violation of California Labor Code section 226(a), as Defendant still failed to accurately record and pay all hours worked by the aggrieved employees, rendering the wage statements non-compliant.

13. On September 20, 2023, the LWDA sent Plaintiff's counsel and Defendant's counsel a letter entitled "Decision on Cure Dispute." The letter advised of the LWDA's decision that Defendant cured the "alleged violations of Labor Code section 226, subdivision (a)(8)" which mandates that a wage statement include the name and address of the legal entity that is the employer. The letter further stated: "The LWDA takes no position on the merits of any other alleged violation."

14. On October 18, 2023, Plaintiff provided a supplemental written notice ("Supplemental PAGA Letter") to the LWDA and to Defendant regarding Defendant's alleged failure to pay out vested and unused vacation pay to employees at their final rate of pay upon employees' resignation or termination. A true and correct copy of the Supplemental PAGA Letter is attached hereto as **Exhibit 2**. Together, the Original PAGA Letter and Supplemental PAGA Letter are referred to as the "PAGA Letter".

15. On October 24, 2023, Plaintiff filed a Class & Collective Action Complaint in the action entitled *Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, San Francisco County Superior Court, Case No. CGC-23-609950 ("Action"), thereby commencing a putative class and PAGA action against Defendant.

16. On December 22, 2023, Plaintiff filed a First Amended Class & Collective Action Complaint ("Operative Complaint") in the Action against Defendant to add a cause of action for unpaid vacation time. The Operative Complaint alleges thirteen (13) causes of action for: (1) Violation of 29 U.S.C. §§ 2101, *et seq*. (Federal WARN Act); (2) Violation of Cal. Labor Code §§ 1400, *et seq*. (California WARN Act); (3) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (4) Violation of Cal. Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations); (6) Violation of Cal. Labor Code § 226.7 (Rest Break Violations); (7) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid); (8) Violation of Cal. Labor Code § 226(a) (Wage Statement Violations); (9) Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (10) Violation of Cal. Labor Code § 227.3 (Unpaid Vacation Time); (11) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Expenses); (12) Violation of Cal. Business and Professions Code §§ 17200 *et seq*. (Unfair and Unlawful Business Practices); and (13) Violation of Cal. Labor Code §§ 2698 *et seq*.

("Private Attorneys General Act").

17. On April 9, 2024, Plaintiff and Defendant (together, the "Parties") participated in mediation conducted by Jeffrey A. Ross, Esq. ("Mediator"), a neutral and well-respected mediator with extensive experience in complex wage and hour matters. After a full day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and PAGA basis.

18. As of June 27, 2024, the Parties executed the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 3**.

Summary of the Terms of the Settlement Agreement

19. For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period" ("Class Members" or "Class"). The Class Period is defined as the period from October 24, 2019 through June 16, 2024. Based on information provided by Defendant, it is estimated that there are a total of five hundred and thirty (530) Class Members.

20. The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint, with the exception of the first and second causes of action (WARN Act claims), for a non-reversionary Gross Settlement Amount of One Million Nine Hundred Fifty Thousand Dollars and Zero Cents ($1,950,000.00), exclusive of employer-side payroll taxes. The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00); (3) Settlement Administration Costs, not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00); (4) Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00); and (5) PAGA Amount in the amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00). After the

above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be One Million One Hundred Sixty-Four Thousand Dollars and Zero Cents ($1,164,000.00). Additionally, 25% of the PAGA Amount ("PAGA Employee Amount"), which is $24,375.00 out of $97,500.00, will be fully distributed to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period ("PAGA Employees"). The "PAGA Period" is defined as the period from August 7, 2022 through June 16, 2024.

21. Based on information from Defendant, it is estimated that the Class Members worked a total of 45,028 Workweeks during the Class Period. If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period actually exceeds 45,028 by more than 20% (i.e., by more than 54,034 Workweeks), then Defendant shall, at its option, either (a) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 20%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached. For example, if the number of Workweeks increases by 21% to 54,484 Workweeks, then Defendant may choose to either (a) increase the Gross Settlement Amount by 1%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached.

22. The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement ("Individual Settlement Share") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement.

23. The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period ("Pay Periods"). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive

under the PAGA Settlement ("Individual PAGA Payment") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement.

24. Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

25. The Settlement Agreement is a non-reversionary and non-claims made settlement. The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. No money will revert to Defendant.

26. Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee.

<u>The Settlement is Reasonable</u>

Informed Arms-Length Negotiations

27. The Parties' settlement negotiations were at all times made at arm's-length and were adversarial. The Settlement was reached following a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases, and Plaintiff engaged in additional negotiations in order to finalize the long-form agreement presently before the Court.

28. The Parties engaged in extensive informal discovery prior to reaching a settlement at the mediation. Prior to mediation, Defendant produced putative class members' time and pay data, as well as Defendant's employee handbook, relevant wage and hour policies, and information on the total number of putative class members, the total number of former employees, the total number of hours worked by the putative class members, the total number of shifts worked by the putative class members, and the average rate of pay for the putative class members.

29. This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages.

30. Based on the information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions.

Estimate of Potential Value of Claims

31. My office hired an expert consultant, who assisted us in analyzing all available data and estimated Defendant's maximum potential exposure to be approximately $10,068,268, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked, and then reduced this exposure analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all putative class members across the entire putative class period, which included: $1,608,850 for meal period violations less meal period premiums paid; $3,303,887 for rest period violations; $1,296,486 for unpaid off-the-clock work; $24,154 for unpaid overtime wages at the required regular rate of pay; $1,419,588 for unpaid overtime wages for invalid alternative workweek schedules; $13,121 for unpaid meal break premiums and sick pay at the required regular rate of pay; $277,320 for unreimbursed business expenses; $1,563,412 for waiting time penalties; and $561,450 in wage statement penalties. Plaintiff further estimated that Defendant faced an additional exposure of $661,400 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. Together with the PAGA penalties, Defendant's

maximum potential exposure totaled $10,729,668.

Specific Risks Considered

32. Although the investigation and information discovered supports Plaintiff's contentions, Defendant raised potential defenses and other circumstances that impacted the risk of proceeding on a class-wide basis. Consideration of these risks factored into the decision to enter the Settlement.

33. My colleagues and I were aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and employment matters.

34. Defendant denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in the Action, and further denies that class certification is appropriate for any purpose other than the Settlement. Defendant believes that it would ultimately prevail in the Action. Defendant proffered defenses to both certification and to the merits of Plaintiff's claims. Defendant contended that Plaintiff's claims are not suitable for class certification because individual issues would predominate should this case go to trial. As with all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification.

i. Meal Periods

35. Plaintiff's meal period claims assert that Defendant failed to provide lawful meal periods. Plaintiff's theory of liability for meal period violations was based on allegations that Defendant's practices failed to allow Class Members to take meal breaks in the manner required under California law. Plaintiff's analysis of the time data revealed that in 32.7% of all shifts there was at least one unique meal period violation.

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36. Defendant contended that its policies and practices at all times during the Class Period were lawful. Additionally, Defendant claimed that Plaintiff's estimated meal break violations may be inflated because some Class Members signed a meal period waiver during their on-boarding. Defendant further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. Additionally, the records showed that Defendant had paid meal premiums for 34% of the recorded meal break violations.

ii. Rest Periods

37. Plaintiff argued that Defendant failed to schedule, permit, or authorize compliant rest periods. Plaintiff alleged that Plaintiff and other Class Members were unable to take their rest breaks because of their heavy workloads and the lack of adequate relief staff. Plaintiff alleged that she was unable to take compliant rest breaks on a near-daily basis. Further, for the instances in which Class Members were able to take rest breaks, they were frequently interrupted or cut short. Plaintiff's damages analysis on this claim was based on an alleged 100% violation rate.

38. As with the meal period allegations, Defendant contended that it had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. Defendant also contended that given the lack of records demonstrating rest period violations, there were legitimate concerns in certifying these claims.

iii. Off-The-Clock Work

39. Plaintiff's minimum and overtime wages claims were largely based on unrecorded, off-the-clock work performed by the Class Members both between shifts and during purported meal periods. For example, Plaintiff alleged that she was required to respond to work-related calls and messages while clocked out. Defendant contended that the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. The estimated damages for this claim assumed that all Class Members worked off the clock for at least one hour per week.

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iv. Unpaid Overtime

40. Plaintiff's overtime wage claim was also based on unpaid overtime in connection with schedules of four days per week, ten hours per day (a "4/10" schedule) worked by Class Members without a valid alternative workweek schedule in place. It appeared from Defendant's company policy that some portion of the Class was covered by an alternative workweek schedule, but details surrounding the adoption and scope of the alternative workweek schedule were unclear to Plaintiff. Defendant contended that all Class Members who worked a 4/10 schedule did so under a proper alternative workweek schedule.

v. Regular Rate

41. Plaintiff's unpaid wage claims were also based on Defendant having failed to factor all forms of non-discretionary compensation into the regular rate of pay for the purpose of paying overtime compensation, meal and rest break penalties, sick pay, and vacation time pay. For instance, swing shift differentials, overnight differentials, dental differentials, bilingual differentials, and referral bonuses were not properly included in the regular rate of pay. Defendant contended that the individualized nature of these damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification.

vi. Unreimbursed Business Expenses

42. Plaintiff alleged that Defendant failed to reimburse necessary business expenses, including for use of personal cell phones and electronic devices, the upkeep and maintenance of uniforms, and the purchase of home computer setups so that they could perform their job functions. Defendant contended that these expenses were not common to all Class Members and that the cost of uniform upkeep was not a reimbursable expense. Defendant further contended that it had policies and practices of reimbursing employees for necessary business expenses.

vii. Unpaid Vacation Time

43. Plaintiff's unpaid vacation time claims were based on Defendant having failed to provide Plaintiff and class members with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code Section 227.3. Defendant provided Plaintiff with a copy of its PTO policy, which provides that Defendant pays out all accrued and unused PTO upon the end of

employment, and a sample of records that contained evidence of payment of accrued and unused PTO. Defendant contended that any alleged damages were not common to all class members, and the individualized nature of these alleged damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification.

viii. WARN Act Claims

44. Defendant declined to provide data regarding Plaintiff's WARN Act claims, contending that no layoff event triggered the federal or California WARN Acts. As such, these claims were excluded from the Settlement Agreement. Additionally, Plaintiff has agreed to dismiss the federal and California Warn Act claims alleged in the Operative Complaint without prejudice upon final approval of the Settlement.

ix. Derivative Claims

45. As with all derivative claims, success depends on the success of the underlying claims. Here, Plaintiff's claims for inaccurate wage statements and failure to pay all wages due upon termination would only succeed if the underlying claims for failure to pay wages for off-the-clock work, failure to pay overtime, failure to pay vacation time pay, and failure to pay premiums for all meal and rest periods not lawfully provided were successful. Therefore, these claims were subject to the same risks of failure as discussed above. Also, even if Plaintiff prevailed on her underlying claims, she would still be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful* violations. Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain.

46. Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current

employer. On the other hand, Defendant would likely be able to obtain the cooperation of its employees. Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class.

47. Therefore, taking into account how each of the above risks potentially affected Plaintiff's ability to obtain class certification, then prove the underlying violations, and the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability by 60% to $4,291,867. The merits-based risk factors further reduced Defendant's estimated liability by an additional 45%. This resulted in an adjusted estimated liability of $2,360,527. In light thereof, the settlement amount of $1,950,000 is a significant settlement.

48. Class Counsel also separately contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims. It was anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. Class Counsel also anticipated Defendant would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. Finally, we were also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance.

49. Therefore, after considering this multitude of factors, we concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) of the Gross Settlement Amount towards the PAGA claims, which represents approximately 5% of the Gross Settlement Amount. This percentage of the settlement is well-within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve

PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer.

50. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement is in the best interest of the Settlement Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation.

Enhancement Payment

51. As part of the Settlement Agreement, Plaintiff is requesting a reasonable Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff Sitara Nayabkhil. This Enhancement Payment is eminently reasonable given the time and effort Plaintiff spent on this case, and the benefit to the Class Members as a result of Plaintiff's actions. Notice of the requested Enhancement Payment is disclosed to the Class Members in the Class Notice.

Attorneys' Fees and Costs

52. The attorneys' fees incurred by Class Counsel are in line with the common fund requested. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an amount of up to thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00) and actual litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00), which will be paid out of the Gross Settlement Amount, subject to approval by the Court. Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.

53. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated into tangible monetary benefits as follows: (1) Class Members, the State of California, and PAGA Employees will obtain monetary recovery over a relatively short period of time, as opposed to waiting additional years for the same, or a potentially worse, result; (2) a guaranteed result that compares

favorably with other similar class action settlements of this type, given the strengths and weaknesses of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only increased had the case progress through certification, trial, and/or upon appeal.

54. The attorneys who worked on this Action are all experienced in litigating wage and hour matters as follows:

a. Jonathan M. Genish is the shareholder and founder of Blackstone Law, APC. Mr. Genish received his law degree from Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During law school, he clerked at the litigation firm Oved & Oved, LLP and was published several times in various small publications. Upon graduation, he was hired by Freedman & Taitelman, LLP as an associate and remained employed there from September 2008 through August 2015. During his tenure, he managed hundreds (perhaps thousands) of complex litigation cases, ranging from employment, corporate, entertainment, and general business litigation matters, though his primary area of expertise was employment, both single plaintiff and representative actions. On the vast majority of those cases, he was the only or primary attorney managing the case and thus obtained extensive experience. He has represented a wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex, and appellate courts. Many of the cases he managed were highly publicized, with articles written about them in the Los Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super Lawyers has regularly honored him as a Southern California Rising Star since 2012.

b. Ashley H. Cruz is a tenth-year lawyer who is part of the team at Blackstone Law, APC that litigated this matter. She graduated cum laude from Loyola University Chicago School of Law in 2014, and she is a 2011 graduate of University of California, Los Angeles where she majored in International Development Studies with minors in Political Science and French. Ms. Cruz was admitted to practice law in Illinois in 2014 and in California in 2015. Since passing the California bar, Ms. Cruz has exclusively represented plaintiffs in employment litigation, including wage-and-hour disputes, as well as whistleblower, harassment, discrimination, and retaliation litigation.

c. Marissa A. Mayhood graduated from Pepperdine University School of Law with a juris doctorate and a certificate in dispute resolution from Pepperdine's Straus Institute. Ms. Mayhood spent approximately five years working for Marlin & Saltzman, LLP, which is a well-known plaintiff-side wage and hour law firm in Los Angeles. While working for Marlin & Saltzman, LLP, she litigated and helped settle a $72.5 million case, *Utne v. Home Depot U.S.A., Inc.*, United States District Court for the Northern District of California, Case No. 3:16-cv-01854-RS, and was approved as class counsel. Ms. Mayhood is now a senior attorney at Blackstone Law, APC.

55. Class Counsel has litigated this matter since it commenced and was actively preparing this matter for class certification and trial. The Motion for Final Approval will elaborate on the nature of the legal services provided, the time incurred in performing those services, and Class Counsel's hourly rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought by Class Counsel. Notice of the requested Attorneys' Fees and Costs is disclosed to the Class Members in the Class Notice.

Notice to the Class

56. The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to handle the notice and settlement administration process. The Parties respectfully request that the Court appoint ILYM to handle these procedures and to serve as the Settlement Administrator. Defendant will provide ILYM with the Class List and ILYM will calculate each Class Member's estimated Individual Settlement Share and each PAGA Employee's estimated Individual PAGA Payment. ILYM will also receive and process Requests for Exclusion, Notices of Objection, and Disputes; will provide necessary reports and declarations; will calculate, subtract, and transmit necessary taxes and withholdings with respect to the wages portion of the Individual Settlement Shares; will prepare and submit informational and other tax filings and documents; will issue and transmit all payments provided for by the Settlement, including, but not limited to, mailing Individual Settlement Payment checks to the Settlement Class Members and Individual PAGA Payment checks to the PAGA Employees; and perform any other usual and customary duties for administering a class action settlement.

57. I am not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendant. As a fail-safe to this highly reliable

method, skip tracing will be performed, if necessary.

Notice of Settlement to the LWDA

58. In accordance with California Labor Code section 2699(l)(2), on August 28, 2024, a copy of the proposed Settlement was submitted to the LWDA via online submission through the LWDA's website. A true and correct copy of the email from the LWDA confirming receipt is attached hereto as **Exhibit 4**.

Pending Actions

59. Neither I nor Plaintiff are aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement Agreement.

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

Executed on September 9, 2024, at Westlake Village, California

Karen Gold
____
Karen I. Gold

EXHIBIT 1

BLACKSTONE LAW

8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Karen I. Gold
kgold@blackstonepc.com

August 7, 2023

<u>PAGA Claim Notice Via Online Electronic Submission</u>
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

RE: ***San Francisco Society for the Prevention of Cruelty to Animals***

To Whom It May Concern:

This office represents Sitara Nayabkhil ("Claimant") with respect to her claims under the California Labor Code against San Francisco Society for the Prevention of Cruelty to Animals (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as "Employers"). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately March 2019 to October 2022 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Customer Service Representative at Employer's location at 201 Alabama Street, California, 91403.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*. ("PAGA"). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period ("Aggrieved Employees"). This letter is being sent in compliance with California Labor Code section 2699.3, and shall serve as Claimant's notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California's wage and hour laws during Claimant's employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1401 *et seq*., 2800, 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including, *inter alia*, IWC Wage Order No. 4-2001. The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Order No. 4-2001 require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Order No. 4-2001 further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to address customer concerns and work in triage while off-the-clock. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to

California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes must for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.,* 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia,* overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 4-2001 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of uniforms, including but not limited to scrubs and reimbursement for use of personal phones.

Accordingly, Employers violated IWC Order No. 4-2001 and California Labor Code sections

2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

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

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. FAILURE TO PROVIDE NOTICE OF MASS LAYOFF TO AFFECTED EMPLOYEES AND THE EMPLOYMENT DEVELOPMENT DEPARTMENT

California Labor Code sections 1401 *et seq*. or California's The Worker Adjustment and Retraining Notification Act ("WARN Act") requires an employer to provide 60 days notice to all affected employees and the Employment Development Department before ordering a mass layoff, relocation, or termination of 50 or more employees within a 30 day period. On or around September 2022, Employers eliminated multiple positions, including a call center. On information and belief, the notice provided to those employees was less than 60 days and there was no WARN notice filed with the Employment Development Department.

Claimant and Aggrieved Employees will therefore seek all permitted remedies, such as back pay (California Labor Code section 1402); PAGA civil penalties (California Labor Code sections 1403 and 2699); and attorneys' fees and costs (California Labor Code section 1404).

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Karen I. Gold, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

San Francisco Society for the Prevention of Cruelty to Animals
ATTN: Jennifer Scarlett
201 Alabama Street
San Francisco, California, 94103

EXHIBIT 2

8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Karen I. Gold
kgold@blackstonepc.com

October 18, 2023

PAGA Claim Notice Via Online Electronic Submission
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

RE: ***San Francisco Society for the Prevention of Cruelty to Animals, LWDA Case No. LWDA-CM-973459-23, Supplemental PAGA Notice***

To Whom It May Concern:

On August 7, 2023, pursuant to the Private Attorneys General Act of 2004 ("PAGA") (California Labor Code § 2699.3), our office provided notice to the Labor and Workforce Development Agency (LWDA) and San Francisco Society for the Prevention of Cruelty to Animals on behalf of Sitara Nayabkhil ("Claimant") with respect to her claims under the California Labor Code against San Francisco Society for the Prevention of Cruelty to Animals (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as "Employers"). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately March 2019 to October 2022 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Customer Service Representative at Employer's location at 201 Alabama Street, California, 91403.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are listed in Claimant's August 7, 2023, LWDA Notice Letter and this Supplemental Notice Letter. The penalties listed therein are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA"). Claimant is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period ("Aggrieved Employees"). In addition to the claims asserted in Claimant's August 7, 2023, LWDA Notice Letter, Claimant also believes Employers violated Cal. Lab. Code section 227.3. This supplemental letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant's notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof. The additional claim made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY OUT VESTED AND UNUSED VACATION PAY AT THEIR FINAL RATE OF PAY UPON THEIR RESIGNATION OR TERMINATION

According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off their vested vacation time, all vested vacation shall be paid to them as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

Throughout the relevant time period, Employers implemented and maintained a uniform policy, practice, or procedure of providing for paid vacations, and that Claimant's and Aggrieved Employees' employment contracts with Defendants included paid vacations.

As discussed in detail in the original notice letters, Employers laid off fifty (50) or more employees, including Plaintiff, and failed to comply with the California and Federal WARN Act by not providing them with at least sixty (60) days advance notice of the mass layoff. As a result, Claimant and Aggrieved Employees are entitled to backpay. (*Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1155 [holding back pay included vacation pay]). Employers failed to pay Claimant and Aggrieved Employees for their vacation or paid time off that would have accrued during the sixty (60) day advance notice period. Claimant and other Aggrieved Employees are entitled to compensation at their final rate of pay for any unused vested paid vacation days.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Karen Gold

Karen I. Gold, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested & Email
San Francisco Society for the Prevention of Cruelty to Animals' Counsel
Hirschfeld Kraemer LLP
Jenna Rogenski, Esq. (jrogenski@hkemploymentlaw.com)
Hieu Williams, Esq. (hwilliams@hkemploymentlaw.com)
456 Montgomery Street, Suite 2200
San Francisco, California, 94104

EXHIBIT 3

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") is made and entered into by and between Plaintiff Sitara Nayabkhil ("Plaintiff" or "Class Representative"), individually, and on behalf of all others similarly situated and on behalf of the State of California with respect to aggrieved employees, and Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA ("Defendant") (together, Plaintiff and Defendant are referred to as "Parties" and individually as "Party").

This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as defined herein), the State of California as to the employment of PAGA Employees (as defined herein), and Defendant, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

1. On August 7, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant, and on October 18, 2023, Plaintiff provided a supplemental notice as well (together, "PAGA Letter"). On October 24, 2023, Plaintiff filed a Class & Collective Action Complaint in the action entitled *Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, San Francisco County Superior Court Case No. CGC-23-609950 ("Action"), thereby commencing a putative class and representative action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Sections 2698, *et seq*. ("PAGA") against Defendant. On December 22, 2023, Plaintiff filed a First Amended Class & Collective Action Complaint ("Operative Complaint") in the Action. The Operative Complaint alleges thirteen (13) causes of action for: (1) Violation of 29 U.S.C. §§ 2101, *et seq*. (Federal WARN Act); (2) Violation of Cal. Labor Code §§ 1400, *et seq*. (California WARN Act); (3) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (4) Violation of Cal. Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations); (6) Violation of Cal. Labor Code § 226.7 (Rest Break Violations); (7) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid); (8) Violation of Cal. Labor Code § 226(a) (Wage Statement Violations);

(9) Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (10) Violation of Cal. Labor Code § 227.3 (Unpaid Vacation Time); (11) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Expenses); (12) Violation of Cal. Business and Professions Code §§ 17200 *et seq*. (Unfair and Unlawful Business Practices); and (13) Violation of Cal. Labor Code §§ 2698 *et seq*. ("Private Attorneys General Act").

2. Defendant denies all materials allegations set forth in the Action and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action, Released Class Claims (as defined herein), and Released PAGA Claims (as defined herein).

3. Class Counsel diligently investigated the class and PAGA claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of corporate policies and practices. The Parties have engaged in sufficient informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties.

4. On April 9, 2024, the Parties participated in mediation with Jeffrey A. Ross, Esq. (the "Mediator"), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator's evaluations, the Parties reached the settlement that is memorialized herein. The Parties' settlement discussions were conducted at arms' length, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on Class Counsel's investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members, State of California, and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

5. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason this Settlement Agreement is

not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

a. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Class Counsel's litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 9.

b. "Class" or "Class Member(s)" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period.

c. "Class Counsel" means Jonathan M. Genish, Karen I. Gold, Marissa A. Mayhood, and Ashley H. Cruz of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. "Class List" means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period; and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (if applicable).

e. "Class Notice" means the Notice of Class Action Settlement, substantially in the form attached hereto as "**Exhibit A**."

f. "Class Period" means the period from October 24, 2019 through June 16, 2024.

g. "Class Settlement" means the settlement and resolution of all Released Class Claims.

h. "Court" means the Superior Court of the State of California for the County of San Francisco.

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i. “Defendant’s Counsel” means Hieu T. Williams and Jenna M. Rogenski of Hirschfeld Kraemer LLP.

j. “Dispute” means a letter submitted by a Class Member disputing the number of Workweeks and/or Pay Periods to which they have been credited, which must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, and telephone number; (c) clearly state that the Class Member disputes the number of Workweeks and/or Pay Periods credited to the Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

k. “Effective Date” means the following: (i) if no Settlement Class Member objects to the Class Settlement, then the Effective Date will be the date of Final Approval; or (ii) if any Settlement Class Member objects to the Class Settlement, the Effective Date will be the sixty-first (61st) calendar day after the date of Final Approval, provided no appeal is initiated by an objector; or (iii) if a timely appeal is initiated by an objector, then the Effective Date will be the day after final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

l. “Employer Taxes” means the employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant in addition to the Gross Settlement Amount.

m. “Enhancement Payment” means the amount to be paid to Plaintiff, in recognition of her effort and work in prosecuting the Action on behalf of Class Members and PAGA Employees, as set forth in Paragraph 10.

n. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

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p. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

q. “Gross Settlement Amount” means the amount of One Million Nine Hundred Fifty Thousand Dollars and Zero Cents ($1,950,000.00) to be paid by Defendant in full satisfaction of the Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement Amount to be paid to the Settlement Class Members. Defendant shall pay the Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Payment will return to Defendant. The Gross Settlement Amount is subject to increase, as provided in Paragraph 13.

r. “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be calculated in accordance with Paragraph 15.

s. “Individual Settlement Payment” means the net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 16.

t. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 14.

u. “LWDA Payment” means the amount of Seventy-Three Thousand One Hundred Twenty-Five Dollars and Zero Cents ($73,125.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA under the PAGA Settlement, as set forth in Paragraph 11.

v. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs.

w. “Notice of Objection” means a Settlement Class Member’s written objection to the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

x. “PAGA Amount” means the allocation of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five percent (75%) of the PAGA Amount, or $73,125.00, will be paid to the LWDA (i.e., the LWDA Payment) and the remaining twenty-five percent (25%), or $24,375.00, will be distributed to the PAGA Employees (i.e., the PAGA Employee Amount).

y. “PAGA Employee(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period.

z. “PAGA Employee Amount” means the amount of Twenty-Four Thousand Three Hundred Seventy-Five Dollars and Zero Cents ($24,375.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees on a *pro rata* basis based on their Pay Periods.

aa. “PAGA Period” means the period from August 7, 2022 through June 16, 2024.

bb. “PAGA Settlement” means the settlement and resolution of all Released PAGA Claims.

cc. “Pay Periods” means the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period. Pay Periods will be calculated by the Settlement Administrator based on each PAGA Employee’s start date or the beginning of the PAGA Period, whichever is later, and separation date or the last day of the PAGA Period, whichever is earlier, based on the Class List provided by Defendant. In order to be counted as a Pay Period, the PAGA Employee must have worked at least one day in that bi-weekly pay period.

dd. "Preliminary Approval" means the date on which the Court enters the Preliminary Approval Order.

ee. "Preliminary Approval Order" means the order granting preliminary approval of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

ff. "Released Class Claims" means any and all claims and damages which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including claims for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and for violations of the California Business and Professions Code sections 17200, *et seq*. based on the aforementioned California Labor Code violations. The Released Class Claims specifically excludes any and all claims and damages for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice.

gg. "Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letter and/or Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq*., including for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s). The Released

PAGA Claims specifically excludes any and all claims for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice.

hh. "Released Parties" means Defendant and its current and former officers, directors, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns.

ii. "Request for Exclusion" means a letter submitted by a Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, and telephone number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

jj. "Response Deadline" means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the United States Postal service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline.

kk. "Settlement Administrator" means ILYM Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for purposes of administrating the Settlement. The Parties and their counsel each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

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ll. "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administrating the Settlement, as set forth in Paragraph 12.

mm. "Settlement Class" or "Settlement Class Member(s)" means all Class Members who do not submit a timely and valid Request for Exclusion.

nn. "Workweeks" means the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period. Workweeks will be calculated by the Settlement Administrator based on each Class Member's start date or the beginning of the Class Period, whichever is later, and separation date or the last day of the Class Period, whichever is earlier, based on the Class List provided by Defendant. In order to be counted as a Workweek, the Class Member must have worked at least one day in that week.

CLASS CERTIFICATION

7. For the purposes of this Settlement only, the Parties stipulate to the certification of the Class.

8. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

TERMS OF THE AGREEMENT

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

9. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees in the amount up to thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed Twenty Thousand Dollars and Zero

Cents ($20,000.00), both of which will be paid from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the litigation of the Action, including without limitation all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

10. Enhancement Payment. Defendant agrees not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment in the amount up to Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00). The Enhancement Payment, which will be paid from the Gross Settlement Amount, subject to Court approval, will be in addition to her Individual Settlement Payment as a Settlement Class Member and Individual PAGA Payment as a PAGA Employee. Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for the Enhancement Payment. Any portion of the requested Enhancement Payment that is not awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

11. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) shall be allocated from the Gross Settlement Amount toward penalties under the Private Attorneys General Act, California Labor Code Sections 2698, *et seq*. (i.e., the PAGA Amount), of which seventy-five percent (75%), or $73,125.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%), or $24,375.00, will be distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the total number of Pay Periods worked by each PAGA Employee during the PAGA

Period (i.e., the Individual PAGA Payments).

12. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00). These costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process the Settlement, and as requested by the Parties. To the extent the actual Settlement Administrator's costs are greater than the estimated amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement administration duties shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

13. Escalator Clause. Defendant has estimated that there are approximately 530 Class Members who worked a total of approximately 45,028 Workweeks during the Class Period. If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period actually exceeds 45,028 by more than 20% (i.e., by more than 54,034 Workweeks), then Defendant shall, at its option, either (a) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 20%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached. For example, if the number of Workweeks increases by 21% to 54,484 Workweeks, then Defendant may choose to either (a) increase the Gross Settlement Amount by 1%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached.

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14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' number of Workweeks, as follows:

a. After Preliminary Approval, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield each Class Member's estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement.

b. After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to each Settlement Class Member's final Individual Settlement Share.

15. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees' number of Pay Periods, as follows: The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the Pay Periods of all PAGA Employees to yield the "Pay Period Value," and multiply each PAGA Employee's individual Pay Periods by the Pay Period Value to yield each PAGA Employee's Individual PAGA Payment.

16. Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%)

penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

17. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll taxes and other legally required withholdings to the appropriate government authorities.

18. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement Class Members, and PAGA Employees are not relying on any statement, representation, or calculation by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class Members, and PAGA Employees should consult with their tax advisors concerning the tax consequences of any payment they receive under the Settlement.

19. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE

(INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEEMNT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

20. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually are issued to the payee. It is expressly understood and agreed that payments made under this Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee to additional compensation or benefits under any new or additional compensation or benefits, or any bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

21. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement. Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will be responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion seven (7) calendar days before filing it with the Court. Defendant agrees not to oppose the motion for

preliminary approval of the Settlement consistent with this Settlement Agreement. By way of said motion, Plaintiff will apply for the entry of the Preliminary Approval Order seeking the following:

a. Conditionally certifying the Class for settlement purposes only;

b. Granting Preliminary Approval of the Settlement;

c. Preliminarily appointing Plaintiff as the representative of the Class;

d. Preliminarily appointing Class Counsel as counsel for the Class;

e. Approving as to form and content, the mutually-agreed upon and proposed Class Notice and directing its mailing by First Class U.S. Mail;

f. Approving the manner and method for Class Members to request exclusion from or object to the Class Settlement as contained herein and within the Class Notice;

g. Scheduling a Final Approval Hearing at which the Court will determine whether Final Approval of the Settlement should be granted.

22. <u>Notice of Settlement to the LWDA</u>. Pursuant to California Labor Code § 2699(1)(2), Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary approval of the Settlement.

23. <u>Delivery of Class List</u>. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

24. <u>Notice by First-Class U.S. Mail</u>.

a. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.

c. Compliance with the procedures described herein above shall constitute due and sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process. Nothing else shall be required of or done by the Parties, Class Counsel, or Defendant's Counsel to provide notice of the Settlement.

25. Disputes Regarding Workweeks and/or Pay Periods. Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid Dispute to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or Pay Periods to be credited to a disputing Class Member, Defendant's records will be presumed to be correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or Pay Periods that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

26. Requesting Exclusion from the Class Settlement. Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are submitted, and also identify the individuals who have submitted a timely and valid Request for

Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to request exclusion from the Class Settlement. Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

27. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Notice of Objection has been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's Counsel the number of Notices of Objection that are submitted (specifying which ones were timely and complete and which were not), and also attach them to a declaration that is to be filed with the Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection and without any prior notice. If the Settlement Administrator receives both a Request for Exclusion and a Notice of Objection, the Settlement Administrator will honor the submission that is received first and disregard the other.

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28. Reports by the Settlement Administrator. The Settlement Administrator shall provide weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed Class Notices; (ii) the number of Class Members who have submitted Disputes; (iii) the number of Class Members who have submitted Requests for Exclusion; and (iv) the number of Settlement Class Members who have submitted Notices of Objection. Additionally, the Settlement Administrator will provide to counsel for the Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested, and immediately notify the Parties when it receives a request from an individual or any other entity regarding inclusion in the Class and/or Settlement or regarding a Dispute.

29. Defendant's Right to Rescind. If more than ten percent (10%) of the Class Members submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement Agreement. Defendant must exercise this right of rescission in writing that is provided to Class Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of the number of Class Members who have submitted timely and valid Requests for Exclusion following the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement administration owed to the Settlement Administrator incurred up to that date.

30. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

31. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for: (a) Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys' Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendant's Counsel a draft of the final approval motion seven (7) calendar days before filing it with the Court. By way of said motion, Plaintiff will apply for

the entry of the Final Approval Order and Judgment, which will provide for, in substantial part, the following:

a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Certification of the Settlement Class;

c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

d. Approval of the application for Enhancement Payment to Plaintiff;

e. Directing Defendant to fund all amounts due under the Settlement Agreement and ordered by the Court; and

f. Entering judgment in the Action, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement Agreement.

32. Funding of the Gross Settlement Amount. No later than five (5) business days after this Settlement Agreement is fully executed, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement Administrator. No later than five (5) business days after Final Approval, Defendant will deposit the Employer Taxes into the QSF. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than five (5) business days after Final Approval.

33. Distribution of the Gross Settlement Amount. Within five (5) business days after the Effective Date, the Settlement Administrator will issue the Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees, LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys' Fees and Costs to Class Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and timely forward these to the appropriate government authorities.

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34. Settlement Checks. The Settlement Administrator will be responsible for undertaking appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one check if the intended recipient for both payments is one individual. Settlement Class Members and PAGA Employees are not required to submit a claim to be issued an Individual Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds associated with such canceled checks shall be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake amended and/or supplemental tax filings and reporting required under applicable local, state, and federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the PAGA Settlement.

35. Class Settlement Release. Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

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36. PAGA Settlement Release. Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

37. Plaintiff's General Release. Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff, individually and on her own behalf, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or claimed to have or may have, including but not limited to any and all claims arising out of, relating to, or resulting from her employment and/or separation of employment with the Released Parties, including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981; the Americans with Disabilities Act; the Family and Medical Leave Act; the Employee Retirement Income Security Act; the California Family Rights Act; the California Fair Employment and Housing Act; all claims for wages or penalties under the Fair Labor Standards Act; all claims for wages or penalties under the California Labor Code; Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Plaintiff understands and expressly agrees that this Settlement Agreement extends to claims that she has against Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of this Settlement Agreement. Any and all

rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows:

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

38. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the Class will be required.

39. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

40. Effects of Termination or Rescission of Settlement. Termination or rescission of the Settlement Agreement shall have the following effects:

a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

b. In the event the Settlement Agreement is terminated, Defendant shall have no obligation to make any payments to any Party, Class Member, or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Settlement has been terminated;

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c. The Preliminary Approval Order, Final Approval Order and Judgment, including any order certifying the Class, shall be vacated;

d. The Settlement Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

e. Neither this Settlement Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of the Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever; and

f. Any documents generated to bring the Settlement into effect, will be null and void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

41. Dismissal of Federal and California WARN Act. Plaintiff agrees to dismiss the claims for violations of 29 U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act) alleged in the Operative Complaint *without* prejudice upon Final Approval.

42. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

43. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

44. Limitation on Publicity. Plaintiff and Class Counsel agree that, prior to filing the motion for preliminary approval, they will keep the terms of this Settlement confidential. Plaintiff and Class Counsel will not publicize this Settlement by name (i.e., identifying: (i) Defendant by name; (2) its industry (non-profit humane society); and (3) its location in California or San Francisco), whether through a press release, posting on Class Counsel's website, social media, or any other public means. Nothing herein is intended to prevent Plaintiff and Class Counsel from including the foregoing

information in the motion for preliminary approval, motion for final approval, and/or Class Notice. Nothing herein is intended to prevent Plaintiff from discussing this Settlement with her spouse, attorneys, or tax advisers. Nothing herein is intended to prevent Class Counsel from citing this Settlement in the Action or including publicly available information regarding this Settlement as evidence supporting their qualifications, experience, and competence as counsel in wage and hour and/or class and PAGA matters in public court filings nor affects in any way the ability of Class Counsel to communicate with putative class members in the Action or the Court. Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

45. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

46. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure § 583.310), except such proceedings necessary to implement and complete this Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

47. Amendment or Modification. Prior to the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for all Parties. After the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for all the Parties and subject to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

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48. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

49. Signatories. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each Settlement Class Member or PAGA Employee execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member and PAGA Employee.

50. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

51. California Law Governs. All terms of this Settlement Agreement and attached exhibits hereto will be governed by and interpreted according to the laws of the State of California.

52. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, this Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned copies of the signature page, will be deemed to be one and the same instrument.

53. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel

regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

54. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

55. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate to implement the Settlement.

56. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

57. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Settlement Agreement.

58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

59. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

60. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

61. Notices. All notices, demands, and other communications to be provided concerning the Settlement Agreement shall be in writing and deemed to have been duly given as of the third business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff and Class Counsel:
Jonathan M. Genish
jgenish@blackstonepc.com
Karen I. Gold
kgold@blackstonepc.com
Marissa A. Mayhood
mmayhood@blackstonepc.com
Ashley H. Cruz
acruz@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

To Defendant:
Hieu T. Williams
hwilliams@hkemploymentlaw.com
Jenna M. Rogenski
jrogenski@hkemploymentlaw.com
HIRSCHFELD KRAEMER LLP
456 Montgomery Street, Suite 200

San Francisco, California 94104
Tel: (415) 835-9000 / Fax: (415) 834-0443

62. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

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

IT IS SO AGREED.

PLAINTIFF SITARA NAYABKHIL

Dated: 06/27/2024

Plaintiff Sitara Nayabkhil

DEFENDANT THE SAN FRANCISCO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS DBA SAN FRANCISCO SPCA

Dated: ___________________

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Full Name: ____________________

Title: _________________________
On behalf of Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA

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San Francisco, California 94104
Tel: (415) 835-9000 / Fax: (415) 834-0443

62. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

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

IT IS SO AGREED.

PLAINTIFF SITARA NAYABKHIL

Dated: ____________________

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Plaintiff Sitara Nayabkhil

DEFENDANT THE SAN FRANCISCO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS DBA SAN FRANCISCO SPCA

Dated: 6/25/2024

DocuSigned by:
CBCBC6108217416...
____
Full Name: Carrie Weaver
Title: Chief People & Inclusion Officer
On behalf of Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA

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APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: June 26, 2024

Karen Gold

Jonathan M. Genish
Karen I. Gold
Attorneys for Plaintiff Sitara Nayabkhil and Proposed Class Counsel

HIRSCHFELD KRAEMER LLP

Dated: 6/25/2024

DocuSigned by:

27C54D178B33400...

Hieu T. Williams
Jenna M. Rogenski
Attorneys for Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA

EXHIBIT A

<u>NOTICE OF CLASS ACTION SETTLEMENT</u>

Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA
Superior Court of California for the County of San Francisco, Case No. CGC-23-609950

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or Pay Periods that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Sitara Nayabkhil ("Plaintiff") and Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, San Francisco County Superior Court Case No. CGC-23-609950 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. <u>IMPORTANT DEFINITIONS</u>

"**Class**" or "**Class Member(s)**" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period.

"**Class Period**" means the period from October 24, 2019 through June 16, 2024.

"**Class Settlement**" means the settlement and resolution of all Released Class Claims.

"**PAGA Employee(s)**" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period.

"**PAGA Period**" means the period from August 7, 2022 through June 16, 2024.

"**PAGA Settlement**" means the settlement and resolution of all Released PAGA Claims.

II. <u>BACKGROUND OF THE ACTION</u>

On August 7, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated, and on October 18, 2023, Plaintiff provided a supplemental notice as well (together, "PAGA Letter"). On October 24, 2023, Plaintiff commenced a putative class and representative action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Sections 2698, *et seq*. ("PAGA") by filing a Class & Collective Action Complaint in the Action. On December 22, 2023, Plaintiff filed a First Amended Class & Collective Action Complaint ("Operative Complaint") in the Action.

Plaintiff contends that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, pay paid sick leave, timely pay wages during employment and upon termination, provide accurate wage statements, pay vacation pay, and reimburse business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq*., and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action or that it violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement").

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed ILYM Group, Inc. as the administrator of the Settlement ("Settlement Administrator"), Plaintiff Sitara Nayabkhil as representative of the Class ("Class Representative"), and the following Plaintiff's attorneys as counsel for the Class ("Class Counsel"):

Jonathan M. Genish
Karen I. Gold
Marissa A. Mayhood
Ashley H. Cruz
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or Pay Periods credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is One Million Nine Hundred Fifty Thousand Dollars and Zero Cents ($1,950,000.00) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees, in an amount not to exceed 33 1/3% (thirty-three and one-third percent) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff for her services in the Action; (3) the amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) allocated toward civil penalties under PAGA ("PAGA Amount"), of which the LWDA will be paid 75% ($73,125.00) ("LWDA Payment") and the remaining 25% ($24,375.00) will be distributed to PAGA Employees ("PAGA Employee Amount"); and (4) Settlement Administration Costs in an amount not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiplied each Class Member's individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion

("Settlement Class Members") will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member ("Individual Settlement Payment"). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") will be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment") based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period ("Pay Periods"). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the Pay Periods of all PAGA Employees to yield the "Pay Period Value," and multiplied each PAGA Employee's individual Pay Periods by the Pay Period Value to yield each PAGA Employee's Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and Pay Periods (if applicable) Based on Defendant's Records

According to Defendant's records:

- **From October 24, 2019 through June 16, 2024 (i.e., the Class Period), you are credited as having worked [_____] Workweeks.**
- **From August 7, 2022 through June 16, 2024 (i.e., the PAGA Period), you are credited as having worked [_____]Pay Periods.**

If you wish to dispute the Workweeks and/or Pay Periods credited to you, you must submit your dispute in writing to the Settlement Administrator ("Dispute"). The Dispute must: (a) contain the case name and number of the Action (*Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, Case No. CGC-23-609950); (b) contain your full name, signature, address, and telephone number; (c) clearly state that you dispute the number of Workweeks and/or Pay Periods credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before** [Response Deadline].

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and Pay Periods (if applicable) credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be $__________. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be $__________ and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

"Released Class Claims" means any and all claims and damages which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including claims for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and for violations of the California Business and Professions Code sections 17200, *et seq*. based on the aforementioned California Labor Code violations. The Released Class Claims specifically excludes any and all claims and damages for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice.

"Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letter and/or Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq*., including for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s). The Released PAGA Claims specifically excludes any and all claims for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice.

"Released Parties" means Defendant and its current and former officers, directors, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount not to exceed thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. The Attorneys' Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) ("Enhancement Payment), in recognition of her services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to her Individual Settlement Payment and Individual PAGA Payment that she is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00) ("Settlement Administration Costs") for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter ("Request for Exclusion") to the Settlement Administrator, at the following address:

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, Case No. CGC-23-609950); (b) contain your full name, signature, address, and telephone number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Employees will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection ("Notice of Objection") to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action (*Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, Case No. CGC-23-609950); (b) contain your full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a Notice of Objection and without any prior notice.

If you submit both a Request for Exclusion and Notice of Objection, the Settlement Administrator will honor the submission that is received first and disregard the other.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 613 of the San Francisco County Superior Court, located at Civil Center Courthouse, 400 McAllister St., San Francisco, California 94102, on [**date**], at [**time**], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can find more information regarding appearing remotely through CourtCall online at: https://courtcall.com/schedule/.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for free by visiting the civil clerk's office located at Civil Center Courthouse, 400 McAllister St., San Francisco, California 94012, during business hours, or online by visiting the following website: https://sf.courts.ca.gov/online-services/case-information, clicking "Access Now" under Civil Case Query and typing in the Court Case Number "CGC-23-609950."

You may also visit the Settlement Administrator's website at ____________ for key documents in the Action.

PLEASE DO NOT TELEPHONE THE COURT, THE JUDGE, OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

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

EXHIBIT 4

Ashley Cruz

From: DIR PAGA Unit <no-reply@formassembly.com>
Sent: Wednesday, August 28, 2024 10:51 AM
To: Yesenia Rosas
Subject: Thank you for your Proposed Settlement Submission

[External Email].

08/28/2024 10:51:19 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm