

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Daniela Arbelaez Acevedo and Myrella Thomas (“Plaintiffs”) and defendant ACES 2020, LLC, doing business in California as ACES 2020 I, LLC, (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

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

- 1.1. “Action” collectively means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned: (1) *Myrella Thomas v. ACES 2020 I, LLC*, Case No. 37-2023-45753-CU-OE-CTL, PAGA Notice served on October 17, 2023 and filed on October 20, 2023, and pending in Superior Court of the State of California, County of San Diego; (2) *Daniela Arbelaez Acevedo v. ACES 2020 I, LLC*, Case No. 24CV061880, PAGA Notice served on October 9, 2023 and filed on January 30, 2023, and pending in Superior Court of the State of California, County of Alameda; and (3) *Daniela Arbelaez Acevedo v. ACES 2020 I, LLC*, Case No. 37-2024-4079-CU-OE-CTL, filed on January 30, 2023, and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendant and classified as a non-exempt employee in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendant and classified as a non-exempt employee in the State of California at any time during the Class Period, except any named plaintiff in the matter *Allen v. ACES 2020 I, LLC et. al.*, Superior Court for the County of Contra Costa, Case No. C23-00916.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP [“BNBD”]; Shani O. Zakay of Zakay Law Group, APC [“ZLG”]; Jean-Claude Lapuyade of JCL Law Firm, APC [“JCL”], and Nicholas J. Ferraro of Ferraro Vega Employment Lawyers, Inc. [“FVEL”].

- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendant), and number of hours worked by each Class Member during the Class Period and number of hours worked by each Aggrieved Employee during the PAGA Period.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from January 1, 2022 through the earlier of preliminary approval or November 5, 2024.
- 1.14. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiffs as Class Representatives in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiff.

- 1.16. “Court” means the Superior Court of California, County of Alameda.
- 1.17. “Defendant” means ACES 2020, LLC, a Delaware limited liability company, doing business in California as ACES 2020 I, LLC.
- 1.18. “Defense Counsel means Aaron A. Buckley and Nora J. Steinhagen of Quarles & Brady LLP.
- 1.19. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Six Hundred Fifty Thousand Dollars (\$1,650,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means full-time equivalent pay period(s), which are calculated by taking the total hours worked by all Aggrieved Employees during the PAGA Period and dividing that number by 86.67.
- 1.31. “PAGA Period” means the period of time from February 15, 2022 through the earlier of preliminary approval or November 5, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff Thomas’s October 17, 2023 letter to Defendant and the LWDA and Plaintiff Acevedo’s October 9, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$8,250) and the 75% to LWDA (\$24,750) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiffs” means Daniela Arbelaez Acevedo and Myrella Thomas, the named plaintiffs in the Action.

- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means all claims that were alleged, or reasonably could have been alleged, based on facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or Class claims based on facts occurring outside the Class Period.
- 1.39. “Released PAGA Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice, which occurred during the PAGA Period during employment in a non-exempt position in California. The Released PAGA Claims do not include all other claims including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment, discrimination, unemployment insurance, disability, social security, worker’s compensation, and PAGA claims outside of the PAGA Period.
- 1.40. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and subsidiaries.
- 1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. “Workweek(s)” means full-time equivalent workweek(s), which are calculated by taking the total hours worked by all Class Members during the Class Period and dividing that number by 40.

2. RECITALS

The Thomas Action

2.1. On October 20, 2023, Plaintiff Thomas commenced this Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego (the “Thomas Action”). Plaintiff Thomas’s Class Action Complaint asserted the following claims against Defendant:

- (a) Minimum Wage Violations;
- (b) Failure to Pay All Overtime Wages;
- (c) Meal Period Violations;
- (d) Rest Period Violations;
- (e) Paid Sick Leave Violations;
- (f) Untimely Payment of Wages;
- (g) Wage Statement Violations;
- (h) Waiting Time Penalties;
- (i) Failure to Reimburse Business Expenses; and
- (j) Unfair Competition.

2.2. On January 8, 2024, Plaintiff Thomas filed a First Amended Class and Representative Action Complaint, adding a cause of action for Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*)

2.3. On February 9, 2024, Defendant filed an Answer to the Plaintiff’s Thomas’s First Amended Class and Representative Action Complaint.

The Acevedo Class Action

2.4. On January 30, 2024, Plaintiff Acevedo filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego (the “Acevedo Class Action”). Plaintiff Acevedo’s Class Action Complaint asserted claims that Defendant:

- (a) Violated California Business and Professions Code § 17200 *et seq.*;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1.
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;

- (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and
- (i) Failure to pay sick pay wages in violation of California Labor Code §§ 201-204, 233, 246.

2.5. On May 9, 2024, Defendant filed an Answer to Plaintiff's Acevedo's Class Action Complaint.

The Acevedo PAGA Action

2.3. On January 30, 2024, Plaintiff Acevedo filed a separate Representative Action Complaint against Defendant in the Superior Court of the State of California, County of Alameda (the "Acevedo PAGA Action"). Plaintiff Acevedo's Representative Action Complaint asserted one cause of action against Defendant for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040 Subdivision 5(A)-(B) (Reporting Time Pay Violations), California Code Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

2.4. On May 9, 2024, Defendant filed an Answer to Plaintiff Acevedo's Representative Action Complaint.

Pleading Amendment

2.6. As part of this Agreement, the Parties stipulate to the filing of a First Amended Class and Representative Action Complaint in the Acevedo PAGA Action that adds the claims and parties from Acevedo Class Action and the Thomas Action, and names Plaintiffs as class representatives. The First Amended Class and Representative Action Complaint shall be the operative complaint in the Action (the "Operative Complaint"), which was filed on October 9, 2024. Plaintiffs will subsequently dismiss without prejudice the Acevedo Class Action and the Thomas Action.

2.7. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

Mediation and Settlement

2.5. On July 18, 2024, the Parties participated in an all-day mediation presided over by Louis Marlin, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, was able to

agree to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

- 2.6. Prior to mediation, Plaintiff obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.7. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.
- 2.8. The Parties, Class Counsel and Defense Counsel are aware of the following pending matters asserting claims that will be affected by the Settlement: (1) *Allen v. ACES 2020 I, LLC*, Case No. C23-00916, pending in the Superior Court for the County of Contra Costa; and (2) *Williams v. ACES 2020 LLC*, pending in the Superior Court for the County of Los Angeles, Case No. 24LBCV01031. Besides *Allen* and *Williams*, the Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matters or actions asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$1,650,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

- (a) To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$550,000, and a Class Counsel Litigation Expenses Payment of not more than \$45,000. Class Counsel Fees Payment shall be allocated among Class Counsel as follows: 37.5% to BNBD; 12.5% collectively to JCL and ZLG; and 50% to FVEL. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$43,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less, or the Court approves payment less than \$43,000 the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$33,000 to be paid from the Gross Settlement Amount, with 75% (\$24,750) allocated to the LWDA PAGA Payment and 25% (\$8,250) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$8,250) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that the Class consists of 7,539 Class Members who collectively worked a total of 99,000 Workweeks through March 15, 2024, and 8,425 Aggrieved Employees who worked a total of 46,957 PAGA Pay Periods.

- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 calendar days after the date of mailing, when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 calendar days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the

void date, it will expire and become non-negotiable and offer to replace the check if it was lost or misplaced but not cashed.

- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
6. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:
 - 6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and/or Plaintiff's PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

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

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

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

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

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

- 7.1. Defendant's Responsibilities. Within 14 calendar days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than those listed in paragraphs 1.5 and 2.8 herein. In this Declaration, Defendant shall also aver as to the number of Class Members and the number of Workweeks for the Class during the Class Period.

- 7.2. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense

Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than those listed in paragraphs 1.5 and 2.8 herein.

7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 60 calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

8. SETTLEMENT ADMINISTRATION

8.1. Selection of Administrator. The Parties have jointly selected IYLM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the

payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports to the state and federal tax authorities.

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

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks worked and Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members’ written objections, Challenges to Workweeks worked and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 calendar days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever ever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the

claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

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

8.7. Objections to Settlement.

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

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

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and

maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its

declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- (f) Final Report by Administrator. Within 10 calendar days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 calendar days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, Defendant is providing a declaration as set forth in paragraph 7.1 above. If at the time of preliminary approval, the 99,000 Workweeks during the Class Period proves to be inaccurate by more than 7%, then the Gross Settlement Amount will be increased proportionately. For example, if the number is 8% higher, the Gross Settlement Amount will be increased by 1%. In the alternative, the Defendant shall have the option of shortening the Class Period release date in order to stay within the 7% limitation.

10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 calendar days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

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

confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class

Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

13. ADDITIONAL PROVISIONS

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

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

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

without regard to conflict of law principles.

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

To Plaintiffs and the Class:

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

Nicholas J. Ferraro
Lauren N. Vega
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
Tel.: (619) 693-7727
Fax: (619) 350-6855 fax
E-Mail: nick@ferrarovega.com
lauren@ferrarovega.com

Jean-Claude Lapuyade
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, Ca 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
E-Mail: jlapuyade@jcl-lawfirm.com

Shani O. Zakay
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, Ca 92121
Tel: (619) 255-9047
E-Mail: shani@zakaylaw.com

To Defendant:

Aaron A. Buckley
Nora J. Steinhagen
Quarles & Brady LLP
101 West Broadway, Ninth Floor
San Diego, California 92101-8285
Telephone: 619-237-5200
Facsimile: 619-615-0700
E-Mail: aaron.buckley@quarles.com
nora.steinhagen@quarles.com

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

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of no less than one (1) year starting from the date of the signing of this agreement by all parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect..

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

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 10/31/2024 

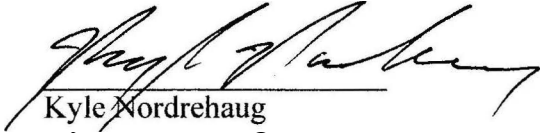
Daniela Arbelaez (Oct 31, 2024 12:42 PDT)
Plaintiff Daniela Arbelaez Acevedo

Dated: _____

Plaintiff Myrella Thomas

Dated: _____

[name]
For Defendant ACES 2020, LLC

Dated: 11/1/24 

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: _____

Nicholas J. Ferraro
Ferraro Vega Employment Lawyers, Inc.
Attorney for Plaintiffs

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of no less than one (1) year starting from the date of the signing of this agreement by all parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect..

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

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Daniela Arbelaez Acevedo

Dated: Oct 30, 2024

Myrella Thomas

Plaintiff Myrella Thomas

Dated: _____

[name]
For Defendant ACES 2020, LLC

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: Oct 28, 2024

Nicholas J. Ferraro

Nicholas J. Ferraro
Ferraro Vega Employment Lawyers, Inc.
Attorney for Plaintiffs

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of no less than one (1) year starting from the date of the signing of this agreement by all parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect..

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

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

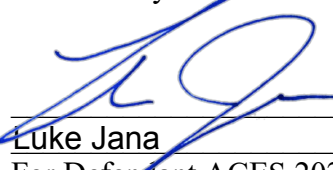
Dated: _____

Plaintiff Daniela Arbelaez Acevedo

Dated: _____

Plaintiff Myrella Thomas

Dated: 10/29/2024



Luke Jana [name]
For Defendant ACES 2020, LLC

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: _____

Nicholas J. Ferraro
Ferraro Vega Employment Lawyers, Inc.
Attorney for Plaintiffs

Dated: 10/31/2024



Jean Claude Lapuyade (Oct 31, 2024 13:42 PDT)
Jean-Claude Lapuyade
JCL Law Firm, APC.
Attorney for Plaintiffs

Dated: 10/31/2024



Shani Zakay (Oct 31, 2024 16:46 PDT)
Shani O. Zakay
Zakay Law Group, APLC
Attorney for Plaintiffs

Dated: _____

Aaron A. Buckley
Quarles & Bradley LLP
Attorney for Defendant

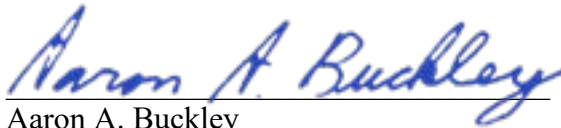
Dated: _____

Jean-Claude Lapuyade
JCL Law Firm, APC.
Attorney for Plaintiffs

Dated: _____

Shani O. Zakay
Zakay Law Group, APLC
Attorney for Plaintiffs

Dated: 10/29/2024



Aaron A. Buckley
Quarles & Bradley LLP
Attorney for Defendant

EXHIBIT A

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

EXHIBIT “A”

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

***Acevedo v. ACES 2020 I, LLC, Superior Court of the State of California,
County of Alameda, Case No. 24CV061880***

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant ACES 2020, LLC, doing business in California as ACES 2020 I, LLC (“Defendant”) for alleged wage and hour violations. The Action is brought by Plaintiffs Daniela Arbelaez Acevedo and Myrella Thomas (“Plaintiffs”) and seeks payment of (1) wages and other relief on behalf of all individuals who were employed by Defendant and classified as a non-exempt employee in the State of California at any time during the Class Period, except any named plaintiff in the matter *Allen v. ACES 2020 I, LLC et. al.*, Superior Court for the County of Contra Costa, Case No. C23-00916 (January 1, 2022 through November 5, 2024) (“Class Members”), and (2) penalties and other relief on behalf of all individuals who were employed by Defendant and classified as a non-exempt employee in the State of California at any time during the PAGA Period (February 15, 2022 through November 5, 2024) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> (less withholding), and your share of the PAGA Penalties is estimated to <<be \$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If \$0.00 is stated, then according to Defendant’s records you are not eligible for that payment.)

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

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to

finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

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

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

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

Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by the Response Deadline _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You can object to the Settlement and/or the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Alameda County Superior Court, in Department 518 before Judge Victoria Kolakowski. This hearing may change as explained below in Section 9. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment depends on how many full time equivalent workweeks you worked during the Class Period (i.e., your total hours worked divided by 40). The amount of your share of the PAGA Penalties (if any) depends on how many full time equivalent pay periods you worked during the PAGA Period (i.e. your total hours worked divided by 86.67). The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice

1. What is action about?

Plaintiffs were employees of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, failing to pay overtime wages, failing to provide required meal periods and unpaid premiums, failing to provide required rest periods and unpaid premiums, failing to provide accurate itemized wage statements, failing to provide required expense reimbursement, failing to provide wages when due, failure to pay sick wages, and engaging in unfair competition. Plaintiffs also seek civil penalties under the Private Attorneys General Act (“PAGA”).

Defendant denies that it has done anything wrong and disputes all the claims in the Action.

2. What does it mean that the action has settled?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant do not admit any violations or concede the merit of any claims. Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount **One Million Six Hundred Fifty Thousand Dollars (\$1,650,000) (the “Gross Settlement Amount”)** to fund the **settlement of the Action**. The Gross Settlement Amount includes all payments of Individual Class Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay payroll taxes thereon no later than 14 days after the Effective Date. The “Effective Date” means the date the Judgment is entered, unless there are objections or an appeal, in which case the Effective Date is the date the Judgment is no longer subject to appeal. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments to Participating Class Members.

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

- **Administration Expenses Payment.** Payment to the Administrator, estimated not to exceed \$43,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- **Attorneys’ Fees and Costs.** Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$550,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$40,000. Class Counsel has been prosecuting the Action on

behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing. Class Counsel Fees Payment shall be allocated among Class Counsel as follows: 37.5% to Blumenthal Nordrehaug Bhowmik De Blouw LLP; 12.5% collectively to Zakay Law Group, APLC and JCL Law Firm, APC; and 50% to Ferraro Vega Employment Lawyers, Inc.

- Class Representative Service Payments. Class Representative Service Payments in an amount not more than \$10,000 each to the two Plaintiffs as service awards, or such lesser amount as may be approved by the Court, to compensate for services on behalf of the Class in initiating and prosecuting the Action, and for the risks Plaintiffs undertook. The amount stated is what Plaintiffs will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$33,000 relating to Plaintiffs' claim under PAGA, \$24,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$8,250 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$8,250) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means a full-time equivalent pay period(s), which are calculated by taking the total hours worked by all Aggrieved Employees during the PAGA Period and dividing that number by 86.67.

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

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payments, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ _____. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means full-time equivalent workweek(s), which are calculated by taking the total hours worked by all Class Members during the Class Period and dividing that number by 40. The number of Workweeks will be based on Defendant's records; however, Class Members may challenge the number of Workweeks as explained below.

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

Tax Matters. Twenty Percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty Percent (80%) of each Participating Class Member's Individual Class Payment is in settlement of claims for non-wages, expense reimbursement, interest and penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

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

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

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

Administrator. The Court has appointed a neutral company, ILYM Group (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

4. What Do I Release Under the Settlement?

Released Class Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their

respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” are all claims that were alleged, or reasonably could have been alleged, based on facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California. Except as expressly set forth in the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or Class claims based on facts occurring outside the Class Period.

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

Released PAGA Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice, which occurred during the PAGA Period during employment in a non-exempt position in California. The Released PAGA Claims do not include all other claims including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment, discrimination, unemployment insurance, disability, social security, worker’s compensation, and PAGA claims outside of the PAGA Period.

Released Parties. The Released Parties are: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and subsidiaries.

5. How much will my payment be?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks.

Defendant’s records reflect that you worked <<_____>> Workweeks during the Class Period (January 1, 2022 through November 5, 2024).

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

Defendant's records reflect that you worked <<____>> PAGA Pay Periods during the during the PAGA Period (February 15, 2022 through November 5, 2024). Based on this information your estimated Individual PAGA Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice.

Your check will be sent to the same address as this Class Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Class Notice has the Administrator's contact information.

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Acevedo v. ACES 2020 I, LLC* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Acevedo v. ACES*

2020 I, LLC, Case No. 24CV061880. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

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

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Acevedo v. ACES 2020 I, LLC* or on the Court's website (<https://portal.alameda.courts.ca.gov/>) and entering the Case No. 24CV061880.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and for Fees, Litigation Expenses and Service Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Acevedo v. ACES 2020 I, LLC*, Case No. 24CV061880, and include your name, current address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely. Instructions on how to do so are available on the Court's website at <http://www.alameda.courts.ca.gov/>. Check the Court's

website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

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

Nicholas J. Ferraro
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
Tel.: (619) 693-7727
Fax: (619) 350-6855 fax
E-Mail: nick@ferrarovega.com

COUNSEL FOR DEFENDANT:

Aaron A. Buckley
Nora J. Steinhagen
Quarles & Brady LLP
101 West Broadway, Ninth Floor
San Diego, California 92101-8285

9. Can I Attend the Final Approval Hearing?

You can, but don't have to, attend the Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 518 of the Superior Court of California, County of Alameda, at 24405 Amador Street, Hayward, CA 94544, before Judge Victoria Kolakowski. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely or in person. Check the Court's website for the most current information concerning appearances and procedures at the Court - <http://www.alameda.courts.ca.gov/>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel.

It's possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Acevedo v. ACES 2020 I, LLC*. In addition, hearing dates are posted on the Internet via the eCourt Public Portal for the California Superior Court for the County of Alameda (<https://eportal.alameda.courts.ca.gov/>) and entering the Case No. 24CV061880.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Acevedo v. ACES 2020 I, LLC* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Acevedo v. ACES 2020 I, LLC* where these documents will be posted as they are available. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal," at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the "Search" tab at the top of the page, then select the Document Downloads link, enter the case number (24CV061880) and click "Submit." Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings, including the Clerk's Office at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California 94612.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

DANIELA ARBELAEZ ACEVEDO and
MYRELLA THOMAS, as individuals, and on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACES 2020 I, LLC, a Limited Liability
Company; and DOES 2 through 50, inclusive,

Defendants.

CASE NO.: 24CV061880

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Victoria Kolakowski
Dept: 518

Date Filed: January 30, 2024
Trial Date: Not set

This matter came before the Honorable Victoria Kolakowski of the Superior Court of the State of California, in and for the County Alameda, on _____[DATE], for hearing on the unopposed motion by Plaintiffs Daniela Arbelaez Acevedo and Myrella Thomas ("Plaintiffs") for preliminary approval of the Settlement with Defendant ACES 2020, LLC, doing business in California as ACES 2020 I, LLC ("Defendant"). The Court, having considered the briefs,

PRELIMINARY APPROVAL ORDER

1 argument of counsel and all matters presented to the Court and good cause appearing, hereby
2 GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3
4 **IT IS HEREBY ORDERED:**

5 1. The Court preliminarily approves the Class Action and PAGA Settlement
6 Agreement ("Agreement") attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in
7 Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based
8 on the Court's determination that the Settlement set forth in the Agreement is within the range of
9 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
10 Procedure and California Rules of Court, rule 3.769.

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

13 3. The Gross Settlement Amount that Defendant shall pay is One Million Six
14 Hundred Fifty Thousand Dollars (\$1,650,000). It appears to the Court on a preliminary basis that
15 the settlement amount and terms are fair, adequate and reasonable as to all potential Class
16 Members when balanced against the probable outcome of further litigation and the significant
17 risks relating to certification, liability and damages issues. It further appears that investigation and
18 research have been conducted such that counsel for the Parties are able to reasonably evaluate
19 their respective positions. It further appears to the Court that the Settlement will avoid substantial
20 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
21 further prosecution of the Action. It further appears that the Settlement has been reached as the
22 result of serious and non-collusive, arm's-length negotiations.

23 4. The Court preliminarily finds that the Settlement appears to be within the range of
24 reasonableness of a settlement that could ultimately be given final approval by this Court. The
25 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
26 preliminarily finds that the monetary settlement made available to the Class is fair, adequate, and
27
28

1 reasonable when balanced against the probable outcome of further litigation and the significant
2 risks relating to certification, liability, and damages issues.

3 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$40,000, and
5 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
6 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
7 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
8 evidence supporting these requests, including lodestar, prior to final approval.

9 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
10 representative treatment and certification of a class for settlement purposes only. This stipulation
11 will not be deemed admissible in this or any other proceeding should this Settlement not become
12 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
13 "all individuals who were employed by Defendant and classified as a non-exempt employee in the
14 State of California at any time during the Class Period, except any named plaintiff in the matter
15 *Allen v. ACES 2020 I, LLC et. al.*, Superior Court for the County of Contra Costa, Case No. C23-
16 00916." The "Class Period" is January 1, 2022 through November 5, 2024.

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

27 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
28

1 Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP, Zakay Law
2 Group, APLC, JCL Law Firm, APC, and Ferraro Vega Employment Lawyers, Inc. as Class
3 Counsel for the Class.

4 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
5 Amount of \$33,000, which shall be allocated \$24,750 to the Labor & Workforce Development
6 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
7 Agreement pursuant to the PAGA and \$8,250 to the Aggrieved Employees. “Aggrieved
8 Employees” are all individuals who were employed by Defendant and classified as a non-exempt
9 employee in the State of California at any time during the PAGA Period (February 15, 2022
10 through November 5, 2024). Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA
11 will be provided notice of the Agreement and these settlement terms. The Court finds the PAGA
12 Penalties to be reasonable.

13 10. The Court hereby approves, as to form and content, the Class Notice attached to the
14 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
15 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
16 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
17 and opportunity to object to the Settlement. The Court further finds that the distribution of the
18 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
19 the requirements of due process, is the best notice practicable under the circumstances, and shall
20 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
21 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
22 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
23 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
24 address for the Class Member no later than seven (7) days after the receipt of the undelivered
25 Class Notice.

26 11. The Court hereby appoints ILYM Group as the Administrator. No later than fifteen
27 (15) days after this Order, Defendant will provide the Class Data to the Administrator. The
28

1 Administrator will perform address updates and verifications as necessary prior to the first
2 mailing. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14)
3 days after receiving the Class Data, the Administrator will mail the Class Notice Packet to all
4 Class Members via first-class regular U.S. Mail to their last known address.

5 12. The Court hereby preliminarily approves the proposed procedure for exclusion
6 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
7 from the Class as provided in the Class Notice by following the instructions for requesting
8 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
9 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
10 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
11 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
12 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
13 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
14 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
15 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
16 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
17 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
18 group, class, or subclass of individuals is not permitted and will be deemed invalid.

19 13. Any Class Member who has not opted out may appear at the final approval hearing
20 and may object or express the Member’s views regarding the Settlement and may present evidence
21 and file briefs or other papers that may be proper and relevant to the issues to be heard and
22 determined by the Court as provided in the Class Notice. Class Members will have until the
23 Response Deadline to submit their written objections to the Administrator. Written objections
24 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
25 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
26 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
27 Hearing to make an oral objection.

1 14. A final approval hearing shall be held before this Court on _____
2 _____ at _____ in Department 518 of the Alameda County Superior Court to hear
3 the motion for final approval and for attorneys' fees and costs, and to determine all necessary
4 matters concerning the Settlement, including: whether the proposed settlement of the Action on
5 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
6 should be finally approved by the Court; whether the Final Approval Order and Judgment should
7 be entered herein; whether the plan of allocation contained in the Agreement should be approved
8 as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and
9 costs, service award, and the fees and expenses of the Administrator. All papers in support of the
10 motion for final approval shall be filed with the Court and served on all counsel no later than
11 sixteen (16) court days before the hearing and both motions shall be heard at this final approval
12 hearing.

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

25 16. In the event the Settlement does not become effective in accordance with the terms
26 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
27 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
28

1 and the Parties shall revert to their respective positions as of before entering into the Agreement,
2 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
3 including all available defenses and affirmative defenses, and arguments that any claim in the
4 Action could not be certified as a class action and/or managed as a representative action . In such
5 an event, the Court’s orders regarding the Settlement, including this Order, shall not be used or
6 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
7 the Agreement with respect to the effect of the Agreement if it is not approved.

8 17. The Court reserves the right to adjourn or continue the date of the final approval
9 hearing and all dates provided for in the Agreement without further notice to Class Members and
10 retains jurisdiction to consider all further applications arising out of or connected with the
11 proposed Settlement.

12 **IT IS SO ORDERED.**

13 Dated: _____

14 _____
15 HON. VICTORIA KOLAKOWSKI
16 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

DANIELA ARBELAEZ ACEVEDO and
MYRELLA THOMAS, as individuals, and on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACES 2020 I, LLC, a Limited Liability
Company; and DOES 2 through 50, inclusive,

Defendants.

CASE NO.: 24CV061880

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

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Victoria Kolakowski
Dept: 518

Date Filed: January 30, 2024
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiffs Daniela Arbelaez Acevedo and Myrella Thomas
2 (“Plaintiffs”) for an order finally approving the Class Action and PAGA Settlement Agreement
3 (“Agreement”) with Defendant ACES 2020, LLC, doing business in California as ACES 2020 I,
4 LLC (“Defendant”), attorneys’ fees and costs, service payments, and the expenses of the
5 Administrator duly came on for hearing on _____ before the Honorable Victoria
6 Kolakowski.

7 **I.**

8 **FINDINGS**

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

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the Superior Court for the State of California, in and for the County of Alameda, and over all
14 Parties to this litigation, including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of One Million Six Hundred
17 Fifty Thousand Dollars (\$1,650,000) and the terms set forth in the Agreement are fair, reasonable,
18 and adequate.
- 19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
22 Settlement, and the assistance of an experienced mediator in the settlement process, among other
23 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On _____, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

1 **Notice to the Class**

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

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

23 **Fairness of the Settlement**

24 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
25 48 Cal.App.4th 1794, 1801 (1996).

26 a. The settlement was reached through arm's-length bargaining between the
27 Parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
28

1 wage and hour class actions. There has been no collusion between the Parties in reaching the
2 Settlement.

3 b. Plaintiffs and Class Counsel's investigation and discovery have been
4 sufficient to allow the Court and counsel to act intelligently.

5 c. Counsel for all Parties are experienced in similar employment class action
6 litigation. Class Counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. ____
8 objections were received. _____ requests for exclusion were received.

9 e. The participation rate was high. _____ Class Members will be mailed a
10 settlement payment, representing ____% of the overall Class.

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

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

18 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

19 11. An award of \$ _____ for attorneys' fees, representing one-third of the
20 Gross Settlement Amount, and \$ _____ for litigation costs and expenses, is reasonable,
21 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
22 the results achieved by Class Counsel. The requested awards have been supported by Class
23 Counsel's lodestar and billing statement.

24 **Class Representative Service Payments**

25 12. The Agreement provides for Class Representative Service Payments of not more
26 than \$10,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
27 Representative Service Payments in the amount of \$ _____ each to the Plaintiffs are
28

1 reasonable in light of the risks and burdens undertaken by the Plaintiffs in this litigation and for
2 their time and effort in bringing and prosecuting this matter on behalf of the Class.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payment to be made to the
5 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
6 Class Representative Service Payments to the Plaintiffs, issue all required tax reporting forms,
7 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
8 Administrator has documented \$ _____ in fees and expenses, and this amount is reasonable in
9 light of the work performed by the Administrator.

10 **PAGA Penalties**

11 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
12 Amount of \$33,000, which shall be allocated \$24,750 to the Labor & Workforce Development
13 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
14 Agreement pursuant to the PAGA and \$8,2500 to be distributed to the Aggrieved Employees and
15 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
16 (\$8,250) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
17 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
18 Periods. "Aggrieved Employees" are all individuals who were employed by Defendant and
19 classified as a non-exempt employee in the State of California at any time during the PAGA
20 Period (February 15, 2022 through November 5, 2024). Pursuant to Labor Code section 2699,
21 subdivision (l)(2), the LWDA was provided notice of the Agreement and these settlement terms
22 and has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

23 **II.**

24 **ORDERS**

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

26 15. The Class is certified for the purposes of settlement only. The Class is defined as
27 follows:

1 All individuals who were employed by Defendant and classified as a non-exempt
2 employee in the State of California at any time during the Class Period, except any
3 named plaintiff in the matter *Allen v. ACES 2020 I, LLC et. al.*, Superior Court for
the County of Contra Costa, Case No. C23-00916 (January 1, 2022 through
November 5, 2024).

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

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

12 18. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
13 costs in the amount of \$_____. The Class Counsel Fees Payment shall be allocated among
14 Class Counsel as follows: 37.5% to Blumenthal Nordrehaug Bhowmik De Blouw LLP; 12.5%
15 collectively to Zakay Law Group, APLC and JCL Law Firm, APC; and 50% to Ferraro Vega
16 Employment Lawyers, Inc. Class Counsel shall not seek or obtain any other compensation or
17 reimbursement from Defendants, Plaintiffs or members of the Class.

18 19. The payment of Class Representative Service Payments in the amount of \$_____

19 each to the Plaintiffs is approved.

20 20. The payment of \$_____ to the Administrator for its fees and expenses is

21 approved.

22 21. The PAGA Penalties amount of \$33,000 is approved and is to be distributed in

23 accordance with the Agreement.

24 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall

25 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its

26 entry.

27 23. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this

28

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

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

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

26 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

27 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
28

1 Plaintiff, and all members of the Class, shall take nothing in the Action.

2 27. All Parties shall bear their own attorneys' fees and costs, except as otherwise
3 provided in the Agreement and in this Final Approval Order and Judgment.

4 28. Effective upon the entry of final judgment, Plaintiffs, Participating Class Members,
5 Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6 (a) All Participating Class Members, on behalf of themselves and their
7 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
8 and assigns, release Released Parties from the Released Class Claims. The "Released Class
9 Claims" are all claims that were alleged, or reasonably could have been alleged, based on facts
10 stated in the Operative Complaint which occurred during the Class Period during employment in a
11 non-exempt position in California. Except as expressly set forth in the Agreement, Participating
12 Class Members do not release any other claims, including claims for vested benefits, wrongful
13 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
14 disability, social security, workers' compensation, or Class claims based on facts occurring outside
15 the Class Period.

16 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf
17 of themselves and their respective former and present representatives, agents, attorneys, heirs,
18 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
19 The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably
20 could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA
21 Notice, which occurred during the PAGA Period during employment in a non-exempt position in
22 California. The Released PAGA Claims do not include all other claims including claims for
23 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
24 unemployment, discrimination, unemployment insurance, disability, social security, worker's
25 compensation, and PAGA claims outside of the PAGA Period.

26 (c) Plaintiffs and their respective former and present spouses, representatives,
27 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
28

1 Released Parties from all claims, transactions, or occurrences that occurred during the Class
2 Period, as fully set forth in the Agreement.

3 29. For any Class Member or Aggrieved Employee whose Individual Class Payment
4 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
5 Administrator shall transmit the funds represented by such checks to the California Controller's
6 Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue"
7 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

8 30. The Court hereby enters judgment in the entire Action as of the filing date of this
9 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
10 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
11 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
12 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

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

14
15 Dated: _____

16
17 _____
HON. VICTORIA KOLAKOWSKI
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA