

Jonathan M. Genish (State Bar No. 259031)
Karen Gold (State Bar No. 258360)
kgold@blackstonepc.com
Sara Pezeshkpour (State Bar No. 260240)
spezeshkpour@blackstonepc.com
Noam Reiffman (State Bar No. 299446)
nreiffman@blackstonepc.com
Marissa Mayhood (State Bar No. 334376)
mmayhood@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff TYLER EMERY, individually,
and on behalf of others similarly situated

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

TYLER EMERY, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

SANTA CRUZ BICYCLES, LLC; and DOES
1 through 25, inclusive,

Defendants.

Case No.: 24CV00244
Related Case No. 24CV00839

Honorable Syda K. Cogliati, Dept. 5

**DECLARATION OF KAREN I. GOLD IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, ATTORNEYS' FEES
AND COSTS, CLASS REPRESENTATIVE
INCENTIVE PAYMENT, AND SETTLEMENT
ADMINISTRATION COSTS**

Date: March 3, 2025
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: January 25, 2024
Trial Date: Not Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney duly licensed to practice law in all Courts of the State of California. I am a Senior Trial Attorney & Team Lead with Blackstone Law, APC (“Blackstone”), attorneys of record for Plaintiff Tyler Emery (“Plaintiff”).
2. I am familiar with the legal and factual issues in this matter. I have extensive experience litigating complex wage and hour class actions and California Private Attorneys General Action (“PAGA”) representative actions. I have personal knowledge of the facts contained herein, and if called to testify, I could and would competently do so.

Karen Gold

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

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

1 from 2015 through 2018.

2 6. As a Senior Trial Attorney and Team Lead at Blackstone Law, I currently oversee and
3 handle over 100 wage-and-hour putative class actions and/or representative actions under PAGA
4 seeking relief on behalf of California employees and the State of California.

5 7. My billable rate is \$985. I am informed and believe that this is within the range of
6 reasonable prevailing rates for attorneys with my education and experience in this area of law in
7 Southern California

8 8. The attorneys at Blackstone Law possess combined extensive experience litigating
9 wage and hour and other complex litigation matters.

10 Jonathan M. Genish

11 9. Jonathan M. Genish is the founder and owner of Blackstone Law. Mr. Genish is a 2008
12 graduate of the Benjamin N. Cardozo School of Law, and he was admitted to the California Bar that
13 same year.

14 10. During law school, Mr. Genish clerked at the litigation firm Oved & Oved, LLP and
15 was published several times in various small publications. Upon graduation, Mr. Genish was rehired
16 by Freedman & Taitelman, LLP as an associate and remained employed there from September 2008
17 through August 2015. During his tenure, Mr. Genish managed hundreds (perhaps thousands) of
18 complex litigation cases, though his primary area of expertise was employment, both single plaintiff
19 and representative actions.

20 11. On the vast majority of his cases, Mr. Genish was the only or primary attorney
21 managing the case and thus obtained extensive experience. In that capacity, he conducted wage and
22 hour and wrongful termination labor and employment intakes; was the primary contact for all clients;
23 took and defended hundreds (if not thousands) of depositions; propounded and responded to all
24 discovery; prepared and opposed all motions and pleadings, including dispositive and certification
25 motions; strategized on all cases; attended all hearings; attended all mediations; coordinated with class
26 action administrators; prepared and worked with experts; first and second chaired multiple trials and
27 arbitrations; and engaged in all other intricate facets of litigation. During that time, he represented a
28 wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex,

1 and appellate courts. Many of the cases Mr. Genish managed were highly publicized, with articles
2 written about them in the Los Angeles Times, Deadline, The Hollywood Reporter, Business Insider,
3 Law360, and others. Super Lawyers has regularly honored him as a Southern California Rising Star
4 since 2012.

5 12. In February 2018, Mr. Genish started the law firm of Blackstone Law, APC,
6 representing plaintiffs in individual and representative employment litigation. The firm maintains
7 many highly pedigreed attorneys working on almost exclusively labor and employment class actions,
8 California Labor Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters,
9 with roughly 15% of the firm focused on other complex general litigation matters. Mr. Genish has
10 considerable experience in handling class and representative action lawsuits throughout his career and
11 has been approved as counsel in a number of cases.

12 13. Mr. Genish is currently the managing partner at Blackstone Law, APC, overseeing
13 roughly 500 labor and employment cases, approximately 80% of which include a wage and hour
14 component. The majority of those cases are wage-and-hour putative class actions or representative
15 PAGA actions seeking relief on behalf of thousands of California employees. Mr. Genish’s billable
16 rate is \$1,150.

17 Blackstone Law

18 14. Blackstone Law, APC has been approved as class counsel in several class action and
19 PAGA actions that have since been resolved, the most recent of which are as follows:

- 20 • *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No.
21 CIV2203067, approved as class counsel in final settlement of wage and hour class and
22 PAGA action.
- 23 • *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No.
24 21CV003541, approved as class counsel in final settlement of wage and hour class and
25 PAGA action.
- 26 • *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No.
27 21STCV34040, approved as counsel in settlement of representative wage and hour action
28 pursuant to PAGA.

- 1 • *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case
2 No. 37-2021-00034922-CU-OE-CTL, preliminarily approved as class counsel, in
3 association with other counsel, in settlement of wage and hour class and PAGA action.
- 4 • *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court,
5 Case No. CIVSB2211140, preliminarily approved as class counsel in settlement of wage
6 and hour class and PAGA action.
- 7 • *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No.
8 BCV-21-101933, approved as class counsel in final settlement of wage and hour class
9 action.
- 10 • *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No.
11 CVRI2105756, approved as class counsel in final settlement of wage and hour class and
12 PAGA action.
- 13 • *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case
14 No. 22CV403427, preliminarily approved as class counsel in settlement of wage and
15 hour class and PAGA action.
- 16 • *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino
17 County Superior Court, Case No. CIVSB2121529, approved as class counsel in final
18 settlement of wage and hour class action.
- 19 • *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County
20 Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement
21 of wage and hour class and PAGA action.
- 22 • *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No.
23 22STCV01892, approved as counsel in settlement of representative wage and hour action
24 pursuant to PAGA.
- 25 • *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No.
26 21STCV40168, approved as class counsel in final settlement of wage and hour class and
27 PAGA action.
- 28 • *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-

2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class

1 and PAGA action.

- 2 • *Sasha Aiono v. Benefit Cosmetics*, Los Angeles County Superior Court, Case No.
3 21STCV33719, approved as counsel in settlement of representative wage and hour
4 action pursuant to PAGA.
- 5 • *Travis Sanford v. Santa Cruz Seaside Company*, Santa Cruz Superior Court, Case No.
6 23CV01762, approved as class counsel in final settlement of wage and hour class and
7 PAGA action.

8 Marissa Mayhood

9 15. Marissa Mayhood is a Senior Attorney at Blackstone Law. She graduated from
10 Pepperdine University School of Law with a juris doctorate and a certificate in dispute resolution from
11 Pepperdine's Straus Institute. Ms. Mayhood spent approximately five years working for Marlin &
12 Saltzman, LLP, which is a well-known plaintiff-side wage and hour law firm in Los Angeles. While
13 working for Marlin & Saltzman, LLP, she litigated and helped settle a \$72.5 million case, *Utne v.*
14 *Home Depot U.S.A., Inc.*, United States District Court for the Northern District of California, Case
15 No. 3:16-cv-01854-RS, and was approved as class counsel. Her hourly rate of \$750 is reasonable
16 based on her education and experience and is in line with the market rate.

17 Sara Pezeshkpour

18 16. Sara Pezeshkpour, a 2008 graduate of the UCLA School of Law with an emphasis in
19 Public Interest Law and Policy, is a Law and Motion Attorney at Blackstone Law. Ms. Pezeshkpour
20 has spent her legal career exclusively representing plaintiffs in civil rights matters, including wage-
21 and-hour class and PAGA actions. She has significant experience in all stages of litigation, including
22 trial and appellate work, in both California and Federal courts. Her hourly rate of \$850 is reasonable
23 based on her education and experience and is in line with the market rate.

24 Junior Attorneys, Paralegal(s), and Staff

25 17. Junior attorneys, a paralegal and various staff members assisted with numerous discreet
26 tasks related to this case on an as-needed basis. Their time is not included in the lodestar amount
27 provided below as only those attorneys tasked with overseeing this litigation were included below.

28 ///

Procedural History of the Action

18. On January 16, 2024, Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendant, pursuant to California Labor Code Section 2699.3, of the specific provision of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”).

19. On January 25, 2024, Plaintiff filed a Class Action Complaint for damages in the action entitled *Tyler Emery v. Santa Cruz Bicycles*, Santa Cruz County Superior Court, Case No. 24CV00244 (“Class Action”), thereby commencing a putative class action against Defendant Santa Cruz Bicycles LLC (“Defendant”).

20. On March 22, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.*, in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00839 (“PAGA Action”), thereby commencing a separate representative action against Defendant.

21. On July 12, 2024, the Parties participated in a formal mediation conducted by Paul Haines, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour matters. After a full day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve the Class Action & PAGA Action.

22. On September 10, 2024, the Parties executed a Class Action and PAGA Representative Action Settlement and Release (“Settlement Agreement”). Attached hereto as **Exhibit 1** is a true and correct copy of the fully executed Settlement Agreement.

23. On September 12, 2024, Class Counsel submitted a copy of the Settlement Agreement to the LWDA through its online submission portal in compliance with California Labor Code § 2699(l)(2). The LWDA has not objected to or otherwise responded to the submissions.

24. On September 12, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents. A true and correct copy of the Motion for Preliminary Approval is attached hereto as **Exhibit 2**.

25. On October 7, 2024, the Court entered the Order Granting Preliminary Approval of Class Action and PAGA Settlement (“Preliminary Approval Order”), thereby preliminarily approving

1 the terms of the Settlement Agreement, the Notice of Class Action Settlement (“Class Notice”), and
2 the proposed administration procedures and associated deadlines. A true and correct copy of the
3 Preliminary Approval Order is attached hereto as **Exhibit 3**.

4 **The Settlement Is Fair and Reasonable**

5 ***Discovery and Informed Arms-Length Negotiations***

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

10 27. The Parties engaged in extensive informal discovery prior to reaching a settlement at
11 the mediation. Prior to mediation, Defendant produced putative class members’ time and pay data, as
12 well as Defendant’s employee handbook, relevant wage and hour policies, and information to
13 determine the total number of putative class members, the number of current versus former employees,
14 the total workweeks worked by the putative class members, and the average rate of pay for the putative
15 class members.

16 28. This allowed Plaintiff’s counsel to conduct an informed assessment and analysis of the
17 strengths and weaknesses of the claims and the potential class-wide damages.

18 29. Based on the information exchanged, the Parties extensively briefed issues regarding
19 class certification and liability and provided their analyses to the mediator who helped the Parties
20 debate the strengths and weakness of their respective positions. At all times, Plaintiff was willing and
21 prepared to litigate this matter through class certification and trial if the Parties had been unable to
22 reach a favorable resolution. Additionally, and as explained in detail below, settlement negotiations
23 were conducted by highly capable and experienced counsel. Class Counsel are respected members of
24 the California State Bar with strong records of vigorous and effective advocacy and are experienced
25 in handling complex wage and hour class action litigation. Accordingly, Class Counsel had sufficient
26 information and experience to act intelligently in negotiating the Settlement.

27 30. Although the investigation and information discovered supports Plaintiff’s contentions,
28 Defendant raised potential defenses and other circumstances that impacted the risk of proceeding on

1 a class-wide basis. Consideration of these risks factored into the decision to enter the Settlement.

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

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

17 33. My office also recognized that, even if Plaintiff prevailed at class certification, proving
18 the amount of wages due to each Class Member would be an expensive, time-consuming, and
19 extremely uncertain proposition. In order to prove liability and damages, my office would need to
20 request and analyze hundreds of pages of documents, obtain the Class Members' contact information,
21 contact them, and obtain declarations. Plaintiff also faced the very real risk that Defendant would
22 engage in settlements with current and former employees using the "Pickup Stix" procedure.
23 Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to
24 aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely
25 be able to obtain the cooperation of its employees. Moreover, even if Plaintiff prevailed at class
26 certification and trial, possible appeals would substantially delay any recovery by the Class.

27 34. The Parties agreed to settle the Class and PAGA claims at issue in the Action for a non-
28 reversionary Gross Settlement Amount of \$949,285.00, exclusive of employer-side payroll taxes.

Defendant has already paid \$149,285.00 of this amount to the putative class members, and is required to pay the remaining \$800,000.00 in accordance with the terms of the Settlement Agreement. The Gross Settlement Amount includes: (1) Class Counsel's fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00); (2) Class Counsel's actual litigation costs and expenses not to exceed \$24,000.00; (3) Settlement Administration Costs not to exceed \$9,000.00; (4) Class Representative Incentive Payment in the amount of \$7,500.00; and (5) a PAGA allocation of \$50,000.00 (\$75% to the LWDA and 25% to the PAGA Employees). After the above amounts are deducted from the Gross Settlement Amount, *the Participating Class Members will share in a Net Settlement Amount of approximately \$526,535.25, which is over 55% of the Gross Settlement Amount.*

35. The Settlement does not require Participating Class Members to submit claims as a prerequisite to receiving their *pro rata* share of the Net Settlement Amount ("Class Member Payment") nor does it require PAGA Employees to submit claims as a prerequisite to receiving their *pro rata* share of twenty-five percent (25%) of the net PAGA Amount ("PAGA Settlement Payment").

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

Attorneys' Fees and Costs

Work Performed by Plaintiff's Counsel/ Lodestar

37. Class Counsel seeks thirty-five percent (35%) of the Gross Settlement Amount, equaling \$332,249.75 for fees for the time spent litigating this matter and reimbursement of actual costs and expenses not to exceed \$22,039.48 incurred in the prosecution of the Class Action and PAGA Action. Attached hereto as **Exhibit 4** is a document detailing the costs and expenses. I am informed and believe that the requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members.

1 38. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
2 into tangible monetary benefits for the Participating Class Members as follows: (1) Participating Class
3 Members will obtain monetary recovery quickly, as opposed to waiting years for the same, or
4 potentially an even worse, result; (2) a guaranteed result that compares favorably with other similar
5 class action settlements of this type, given the strengths and weaknesses of the Class Action; and (3)
6 significant savings in Class Counsel's costs that would have only increased significantly had the
7 Action progressed through trial and/or appeals. Class Counsel has litigated this matter diligently and
8 was prepared to continue litigating this matter through class certification and trial.

9 39. The requested award of fees and costs was included and set forth clearly in the Class
10 Notice provided to the Class Members.

11 40. My team is somewhat unique in our approach to mediations. We treat early mediations
12 as "practice trials" of sorts, and spend extensive time gathering evidence, interviewing witnesses,
13 researching legal issues, and developing our legal and factual theories in advance of the mediation.
14 We believe that investing substantial time, energy and money up front often results in far better results
15 at mediation, and saves the plaintiffs, putative class members, and the firm years of potential delay
16 and additional costs should the case not settle at early mediation. Consistent with this approach, my
17 team extensively worked-up this case informally prior to mediation, which I am informed and believe
18 was a substantial contributing factor in obtaining the strong result achieved at mediation. Accordingly,
19 Blackstone Law has spent a considerable number of hours litigating this matter. Attorneys who worked
20 on this matter to date engaged in a multitude of tasks including, *inter alia*: (1) communicating with
21 the client; (2) performing preliminary legal research, (3) drafting the operative class action complaint,
22 (4) drafting the PAGA notice, (5) drafting the PAGA complaint, (6) locating and interviewing
23 witnesses, (7) negotiating with defense counsel to schedule the mediation and obtain the necessary
24 informal discovery documents sufficiently in advance of mediation; (8) hiring and interfacing with a
25 damages expert to calculate a damages model for use at mediation and multiple revisions and iterations
26 of the same; (9) reviewing and analyzing all documents produced by Defendant; (10) thoroughly
27 researching the legal and factual theories and investigating additional potential avenues of liability;
28 (11) drafting a comprehensive mediation brief; (12) preparing for and attending mediation; (13)

following-up on conversations and negotiations with the mediator and opposing counsel; (14) negotiating the terms of the long form settlement agreement and Class Notice documents; (15) obtaining administrative quotes from potential Settlement Administrators; (16) researching and drafting a Motion for Preliminary Approval and all supporting documents; (17) preparing for and attending the hearing on the Motion for Preliminary Approval; (18) interfacing with opposing counsel and the Settlement Administrator as necessary to effectuate the disbursement of class notice; (19) responding to questions from class members; and (20) drafting and reviewing the Motion for Final Approval and all supporting documents.

41. A summary of Blackstone's estimated lodestar to-date to complete these tasks is as follows:

<u>Attorney</u>	<u>Position</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Jonathan M. Genish	Managing Partner	45.50	\$1,150	\$52,325.00
Karen I. Gold	Senior Counsel	97.50	\$985	\$96,037.50
Sara Pezeshkpour	Law & Motion Attorney	14.25	\$850	\$12,112.50
Marissa Mayhood	Senior Associate	165.75	\$750	\$124,312.50
Total Hours		323 hours		
Total Fees		\$284,787.50		

42. I expect my team to spend an additional 35 hours at a blended rate for myself, Ms. Pezeshkpour, and Ms. Mayhood of \$861.66, resulting in an additional \$30,158.33 in attorneys' fees to be incurred finalizing the motion for final approval and supporting documents, preparing for and attending the Final Approval Hearing, managing the Settlement through its conclusion, including anticipated communications with defense counsel, the Settlement Administrator, our client, and Class Members, as well as any additional procedural issues that require attention. Based thereon, the total amount of Blackstone Law's estimated lodestar fees through closure of this case are approximately **\$314,945.83**.

43. One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis for such litigation, and thus retainer agreements in such cases are based on a stepped-up contingency fee (with

1 the percentage increasing from one third to forty-five – and sometimes even fifty percent, which in
2 my experience is on par with personal injury contingency fee agreements – if the case goes to trial).
3 Therefore, based on my experience, there really is no customary hourly billing rate for work that is
4 routinely based on a contingent fee relationship, but the nature of class action work and the contingency
5 relationship should be strongly considered by the Court.

6 44. Wage and hour work presents a specialized, challenging and complex area of law that
7 is not within the knowledge of many lawyers. This kind of class action work requires specialized
8 learning and the willingness to take large risks, particularly in light of the very real possibility that
9 some portion of the cases accepted will result in little to no recovery, and therefore no fees to the firm.
10 Thus, prosecution of this case has involved significant financial risk, as we undertook this matter solely
11 on a contingency fee basis with no guarantee of recovery, and fronted all costs necessary for its
12 prosecution. The risks of this matter are also apparent in that class certification would likely have been
13 a hard-fought issue, and even if class certification were granted over Defendant's opposition, there
14 was no assurance that Plaintiff would prevail on the inevitable motion for decertification, at trial,
15 and/or on any subsequent appeal(s) regarding the same.

16 45. As with all contingency cases, I understand that my firm had to consider its workload
17 when agreeing to pursue this litigation. Specifically, the firm had to be mindful of its attorneys'
18 caseload when it took on this matter, and necessarily had to forgo other cases when it decided to do
19 so, as my team and the other class action teams are currently at or near capacity.

20 ***Settlement Administration Costs***

21 46. In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court
22 approved, Settlement Administration Costs not to exceed \$9,000.00. ILYM Group, Inc., the approved
23 Settlement Administrator, provided my firm with its quote stating that its cost to administer the
24 Settlement will not exceed \$9,000.00.

25 ***Allocation to the LDWA***

26 47. As part of the Settlement, Defendant has agreed to pay Fifty Thousand Dollars and
27 Zero Cents (\$50,000.00) to settle the claims of the Aggrieved Employees brought pursuant to PAGA,
28 of which the payment of \$37,500 (75% of the PAGA Amount) will be paid to the LDWA for education

1 and enforcement purposes.

2 *Notice to the Class*

3 48. The Class Notice approved by the Court met the requirements for proper notice of
4 settlement to a class: it identified the Parties and described the Action, the Class, the Gross Settlement
5 Amount, the proposed method for distribution of the Gross Settlement Amount, the amounts proposed
6 to be paid as the Class Representative Incentive Payment to Plaintiff, the Settlement Administration
7 Costs to the Settlement Administrator, and the Attorneys' Fees and Costs to Class Counsel. The Class
8 Notice described the proposed Settlement with enough specificity to allow each Class Member to
9 make an informed choice whether to accept and participate in it. It also explained how and when Class
10 Members may object to or opt out of the Class Settlement. Finally, the Class Notice provided the date
11 and time of the hearing on final approval of the Settlement and informed Class Members how to obtain
12 additional information about the Settlement.

13
14
15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct.

17
18 Executed on February 5, 2025, at Westlake Village, California.

19
20 
21 Karen I. Gold

EXHIBIT 1

**CLASS ACTION AND PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

This Class Action and PAGA Representative Action Settlement and Release (“Settlement,” “Settlement Agreement,” or “Agreement”) is being entered into between Plaintiff Tyler Emery (“Plaintiff”), individually and on behalf of all other similarly situated Class Members and Aggrieved Employees, and Defendant Santa Cruz Bicycles, LLC (“Defendant”) (Plaintiff and Defendant are collectively referred to hereinafter as, the “Parties”) with regard to the actions pending in the Superior Court of the State of California, County of Santa Cruz, entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Case No. 24CV00244 and Case No. 24CV00839. Accordingly, and in exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt of which is expressly acknowledged, the Parties agree as follows:

RECITALS

WHEREAS, on July 12, 2024, the Parties participated in an all-day mediation presided over by Paul Haines, Esq., which led to this agreement to settle the actions described above;

WHEREAS, prior to mediation, Plaintiff obtained, through informal discovery, Defendant’s payroll records, timekeeping records, employment policies, and employee handbooks. 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”);

WHEREAS, the Court has not granted class certification, and Plaintiff has not filed a motion for class certification; and

WHEREAS, the Parties, Class Counsel, and Defendant’s Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the settlement herein;

NOW THEREFORE, the Parties enter into this Settlement Agreement as set forth below. These recitals are herewith incorporated into this Agreement as though fully set forth therein.

AGREEMENT

1. DEFINITIONS

1.1 “Actions” or “Litigation” means the civil actions captioned: (i) *Tyler Emery v. Santa Cruz Bicycles, LLC*, Case No. 24CV00244 (the “Class Action”); and (ii) *Tyler Emery v. Santa Cruz Bicycles, LLC*, Case No. 24CV00839 (the “PAGA Action”), pending in the Superior Court of the State of California, County of Santa Cruz.

1.2 “Aggrieved Employees” refers to all current and former hourly paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period.

1.3 “Class Counsel” or “Plaintiff’s Counsel” means Plaintiff’s counsel Jonathan M. Genish, Esq., Karen I. Gold, Esq., Ashley H. Cruz, Esq., and Marissa A. Mayhood, Esq. of Blackstone Law, APC.

1.4 “Class Counsel’s Attorneys’ Fees” means the amount of attorneys’ fees that Plaintiff will request, and Defendant will not oppose, to compensate Class Counsel for their time and efforts spent pursuing the Litigation. Plaintiff will request attorneys’ fees payable to Class Counsel in the amount of thirty-five percent (35%) of the Gross Settlement Amount, and payable out of the Gross Settlement Amount, subject to Court approval. Any amount awarded by the Court which is less than this request of 35% will revert back to the Net Settlement Amount and be distributed to Participating Class Members.

1.5 “Class Counsel’s Litigation Costs” means the amount that Plaintiff will request, and Defendant will not oppose, to reimburse Class Counsel for reasonable litigation costs actually incurred during the course of the Litigation not to exceed Twenty-Four Thousand Dollars and No Cents (\$24,000.00), subject to Court approval. Class Counsel’s Litigation Costs shall be paid out of the Gross Settlement Amount.

1.6 “Class List” means a complete list of all Class Members and Aggrieved Employees that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator in Excel format, where possible. The Class List will contain the following information for each Class Member: (1) full name; (2) last known address; (3) Social Security Number or Individual Taxpayer Identification Number; (4) dates worked for the Defendant during the Class Period; (5) last known telephone number; (6) names and amounts paid to each Class Member in connection with any prior settlement efforts obtained in connection to the Actions; and (7) the number of workweeks worked during the Class Period and PAGA Period (or information allowing the Settlement Administrator to calculate same). The Class List will be provided by Defendant to the Settlement Administrator only as described in Section 5.3(a) below.

1.7 “Class Members” or “Class” shall refer to all current and former hourly paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period.

1.8 “Class Member Payment” means the portion of the Net Settlement Amount that each Participating Class Member shall be entitled to receive from the Net Settlement Amount.

1.9 “Class Notice” means the Court-approved form of the Notice of Proposed Class Action and PAGA Representative Action Settlement.

1.10 “Class Period” means the period from January 25, 2020 to October 15, 2024, inclusive.

1.11 “Class Representative” or “Plaintiff” means Tyler Emery.

1.12 “Class Representative Incentive Payment” is the amount that the Class Representative will request, and Defendant agrees not to oppose, for his provision of services to the Class Members during the Litigation. Defendant shall not oppose a service award to Class Representative Tyler Emery in the amount of \$7,500 to be payable out of the Gross Settlement Amount. In exchange for the Class Representative Incentive Payment, the Class Representative will also execute a general release with a California Civil Code section 1542 waiver.

1.13 “Class Settlement” means the settlement and resolution of all Class Released Claims.

1.14 “Complaints” means the Class Action Complaint filed on January 25, 2024 and the PAGA Action Complaint filed on March 22, 2204 in the Actions.

1.15 “Court” as used herein means the Superior Court of California in and for the County of Santa Cruz.

1.16 “Credited Workweeks” as used herein means the number of workweeks worked by Class Members during the Class Period and/or the number of workweeks worked by the Aggrieved Employees during the PAGA Period.

1.17 “Defendant’s Counsel” means Amanda Luftman, Esq. and Jeremy Osher, Esq. of Boren, Osher & Luftman, LLP.

1.18 “Effective Date” means the later of: (i) the date of Final Approval if no timely objections are filed, or if objections are withdrawn prior to the Final Approval Hearing; or (ii) the time to appeal has expired if an objection has been filed and no appeal was filed; or (iii) the date of final resolution of any appeal that has been filed.

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

1.20 “Final Approval Hearing” means the hearing set by the Court, pursuant to class action procedures and requirements, for the purpose of determining the fairness, adequacy, and reasonableness of the Settlement.

1.21 “Funding Date” is thirty (30) calendar days after the Effective Date.

1.22 “Gross Settlement Amount” means the amount of Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five Dollars and No Cents (\$949,285.00) (unless such Gross Settlement Amount is increased pursuant to Section 4.7 below) that Defendant will pay to fully, finally, and forever settle and release the claims in the Actions. The Gross Settlement Amount represents the total amount payable under this Agreement by Defendant, including, without limitation, the Individual Settlement Payments, the PAGA Payment, Class Counsel’s Attorneys’ Fees, Class Counsel’s Litigation Costs, Settlement Administration Costs, and the Class Representative Incentive Payment. The Parties agree that One Hundred Forty-Nine Thousand Two Hundred Eighty-Five Dollars and No Cents (\$149,285.00) of the Gross Settlement Amount has already been paid to certain members of the Class by Defendant. Defendant’s share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

1.23 “Individual Settlement Payment” means the Class Member Payment and PAGA Settlement Payment combined.

1.24 “Net Settlement Amount” means the amount remaining to distribute to Participating Class Members after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (i) Class Counsel’s Attorneys’ Fees up to thirty-five percent (35%) of the Gross Settlement Amount; (ii) Class Counsel’s Litigation Costs of up to Twenty-Four Thousand Dollars and No Cents (\$24,000.00); (iii) the Class Representative Incentive Payment of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00); (iv) the PAGA Payment in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00); and (v) Settlement Administration Costs.

1.25 “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*

1.26 “PAGA Payment” means the amount the Parties agree to allocate from the Gross Settlement Amount totaling Fifty Thousand Dollars and No Cents (\$50,000.00) to cover Plaintiff’s claim for civil penalties under the PAGA. Seventy-five percent (75%) of the PAGA Payment (*i.e.*, \$37,500.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”); and the remaining twenty-five percent (25%) of the PAGA Payment (*i.e.*, \$12,500.00) will be distributed to Aggrieved Employees based on their number of Credited Workweeks worked during the PAGA Period. Each Individual PAGA Payment to the Aggrieved Employees will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

1.27 “PAGA Period” means the period from January 16, 2023 through October 15, 2024, inclusive.

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

1.29 “PAGA Settlement Payment” means the amount payable to each Aggrieved Employee from the 25% portion of the PAGA Payment.

1.30 “Participating Class Member(s)” means a Class Member who does not submit a timely and valid Request for Exclusion.

1.31 “Payment Date” means the date which is ten (10) business days after the Funding Date.

1.32 “Preliminary Approval Order” means an order of the Court preliminarily approving this Settlement and setting a hearing for Final Approval of the Settlement.

1.33 “Preliminary Approval Date” means the date on which the Court signs the Preliminary Approval Order.

1.34 “Class Released Claims” means all claims made or which could have been made based on the facts pled in the Class Action Complaint, arising during the Class Period, including, but not limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201, 202 and 203); (viii) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802); and (ix) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).

The Class Released Claims expressly exclude the PAGA Released Claims, and Participating Class Members will not release the PAGA Released Claims unless such Participating Class Members are also Aggrieved Employees. Participating Class Members who are also Aggrieved Employees shall

release the PAGA Released Claims, in addition to releasing the Class Released Claims.

1.35 “PAGA Released Claims” means all claims made or which could have been made for civil penalties under the PAGA, Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff’s letter to the LWDA and the PAGA Action Complaint, arising during the PAGA Period, including, but not limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201, 202 and 203); (viii) Failure to Keep Complete and Accurate Payroll Records (Labor Code § 1174(d)); and (ix) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802).

1.36 “Released Parties” means Santa Cruz Bicycles, LLC, their present and former officers, directors, members, managers, shareholders, employees, agents, parents, subsidiaries, affiliates, insurers, operators, partners, joint ventures, consultants, attorneys, successors, or assignees.

1.37 “Response Deadline” is forty-five (45) days after the date the Class Notice is first mailed by the Settlement Administrator to the Class Members, by which time Class Members must submit a Request for Exclusion, written objection, or Credited Workweeks dispute.

1.38 “Request for Exclusion” means a letter or written request submitted by a Class Member to the Settlement Administrator to request exclusion from the Class Settlement that includes the requirements in Section 5.7.

1.39 “Returned Check” is a Class Member Payment and/or PAGA Settlement Payment check which is returned as undeliverable before the expiration of the 180-day period.

1.40 “Settlement Administrator” means IYLM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement, subject to Court approval.

1.41 “Settlement Administration Costs” means the fees, costs, and expenses relating to the administration of this Settlement, including, without limitation, printing and mailing the Class Notice, receiving and processing objections, Requests for Exclusion, and Credited Workweeks disputes, calculating and determining Class Member Payments and PAGA Settlement Payments and other payments due from the Gross Settlement Amount, regularly updating Class Counsel and Defendant’s Counsel on the status of administration, and the accounting and maintenance of the Gross Settlement Amount. Settlement Administration Costs shall be paid out of the Gross Settlement Amount and will not exceed Nine Thousand Dollars and No Cents (\$9,000.00).

2. STATEMENT OF NO ADMISSION

2.1 This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Litigation.

2.2 This Agreement, and any action taken in negotiation or implementation thereof, and all acts performed or documents executed pursuant to or in furtherance of this Agreement, including but not limited to any and all payments made to Plaintiff, Class Members, or Plaintiff's Counsel pursuant to the Agreement: (i) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Litigation; (ii) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal, administrative, or arbitral proceeding in any court, administrative agency, or other tribunal; and (iii) are not, shall not be deemed to be, and may not be used as an admission or evidence of the appropriateness of Plaintiff's or Class Members' claims, or any similar claims, for class action or representative treatment. This Agreement is a settlement document and shall be inadmissible as evidence in any proceeding, except as necessary in any action or proceeding to approve, interpret, or enforce the terms of this Agreement.

3. CERTIFICATION OF SETTLEMENT CLASS

3.1 The Parties agree that class certification under the terms of this Agreement is for settlement purposes only. Defendant contends that, except for purposes of settlement, certification of any class would not be appropriate, and that Plaintiff and Class Members would not successfully obtain class treatment or, if obtained, survive a motion for decertification. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified or maintained in the Litigation or in any other action or proceeding. Further, this Agreement and the Court's actions with regard to this Agreement will not be admissible in any court or other tribunal regarding the propriety of class certification or the maintenance of a class action. In the event this Agreement is not finally approved by the Court, any appellate court, or otherwise fails to be effective and enforceable or is terminated or voided, Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation. Such objections and defenses include but are not limited to Defendant's objections and defenses to class certification.

3.2 The Parties acknowledge that factual and legal issues have not yet been resolved and that if the Litigation were to proceed, the Court would specifically need to resolve, among other issues, whether Plaintiff, Class Members, and Aggrieved Employees: (i) were not compensated for all hours worked under the California Labor Code and/or applicable Industrial Welfare Commission Wage Order; (ii) worked hours for which they were not properly compensated with appropriate minimum, hourly, and/or overtime wages as required by California law; (iii) were not provided legally compliant meal breaks and rest periods or violation premiums; (iv) were not provided with accurate itemized wage statements; (v) were not timely paid wages during their employment; (vi) were not timely paid final wages due upon the termination of their employment with Defendant and/or were owed waiting time penalties under California Labor Code section 203; (vii) were not reimbursed for all business expenses; (viii) suffered any unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*; and/or (ix) were entitled to penalties under the PAGA.

4. PAYMENTS BY DEFENDANT TO PLAINTIFF AND CLASS MEMBERS

4.1 **Deposit with Settlement Administrator:** Defendant will deposit the total amount of the Gross Settlement Amount, minus the \$149,285.00 which has already been paid to certain members of the Class by Defendant, with the Settlement Administrator no later than the Funding Date. No later than the Payment Date, the Settlement Administrator will prepare and mail the

payments identified in this Agreement.

4.2 Individual Settlement Payments: In exchange for the provisions set forth in the Settlement Agreement, on the Payment Date, the Settlement Administrator will distribute from the Gross Settlement Amount each Participating Class Member's pro rata share of the Net Settlement Amount and each Aggrieved Employee's pro rata share of the 25% portion of the PAGA Payment. Participating Class Members and Aggrieved Employees will not have to submit a claim form to receive their Individual Settlement Payment. Each Class Member who does not submit a timely and valid Request for Exclusion will automatically become a Participating Class Member and will be mailed their Individual Settlement Payment in accordance with the terms herein. Individual Settlement Payments will consist of the amount to be paid to each Class Member as a Class Member Payment and the PAGA Settlement Payment if the Class Member is also an Aggrieved Employee.

a. Calculation of Class Member Payments: Each Participating Class Member's Class Member Payment will be calculated based on the following formula: Each Participating Class Member will receive a proportionate settlement share based on the number of Credited Workweeks that each Participating Class Member worked during the Class Period, to be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's Credited Workweeks during the Class Period, and the denominator of which is the total Credited Workweeks worked by all Participating Class Members during the Class Period. Participating Class Members who have already received a payment from the Gross Settlement Amount shall only receive an additional settlement payment to the extent required to ensure they receive the total amount to which they are entitled based on the calculations for their Class Member Payments. For example, if a Participating Class Member's Class Member Payment is \$100 and the Participating Class Member previously received a \$20 payment from the Gross Settlement Amount then the Participating Class Member will only receive \$80 (the net amount owed after subtracting the prior payment).

b. Calculation of PAGA Settlement Payments: Each PAGA Settlement Payment will be calculated based on the following formula: Each Aggrieved Employee will receive a proportionate settlement share based on the number of Credited Workweeks that each Aggrieved Employee worked during the PAGA Period, to be calculated by multiplying the 25% portion of the PAGA Payment by a fraction, the numerator of which is the Aggrieved Employee's Credited Workweeks during the PAGA Period, and the denominator of which is the total Credited Workweeks worked by all Aggrieved Employees during the PAGA Period.

c. Returned Checks: Class Member Payment and PAGA Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days after the date of mailing. If a Class Member Payment and PAGA Settlement Payment check is returned before the expiration of the 180-day period (i.e., Returned Check), within five (5) business days of receipt of the Returned Check, the Settlement Administrator shall undertake a skip-trace search for an alternate mailing address and re-mail the Returned Check to an alternate mailing address (if one is located), under a cover letter indicating that the Returned Check will continue to be valid and negotiable for thirty (30) days after the date of re-mailing. If a Returned Check is returned with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly re-mail the check to the Participating Class Member and/or Aggrieved Employee's forwarding address within five (5) days of receipt of the Returned Check with a cover letter indicating that the Returned Check will continue to be valid and negotiable for thirty (30) calendar days after the date of re-mailing. In the event the Settlement Administrator is unable to locate an updated address for a Participating

Class Member and/or Aggrieved Employee after making these reasonable efforts, neither the Settlement Administrator, Class Counsel, or Defendant's Counsel shall be required to take further action to achieve delivery of the check to the Participating Class Member and/or Aggrieved Employee. If within the 180-day period the Participating Class Member and/or Aggrieved Employee contacts the Settlement Administrator, or if Class Counsel does so on behalf of the Participating Class Member and/or Aggrieved Employee, the Class Member Payment and/or PAGA Settlement Payment check shall be re-issued and mailed to the address provided by the Participating Class Member and/or Aggrieved Employee (or by Class Counsel on their behalf). Any such reissued check will indicate on its face that it is void if not cashed within one hundred and eighty (180) days of its issuance.

d. Uncashed Checks: In the event that any checks mailed to Participating Class Members and/or Aggrieved Employees are not cashed, deposited, or otherwise negotiated within the 180-day period, no forwarding address can be located for a Returned Check, or a Returned Check is remailed but not cashed, deposited, or otherwise negotiated within the 30-day period from the re-mailing of the Returned Check, then the checks shall be cancelled by the Settlement Administrator, and the funds associated with such cancelled checks shall be transmitted by the Settlement Administrator pursuant to governing California law to the State of California Unclaimed Property Fund, to be held there in the name of and for the benefit of such Participating Class Members and/or Aggrieved Employees under California's escheatment laws, and such Participating Class Members and/or Aggrieved Employees shall nevertheless be bound to the Settlement and the Final Approval Order and Judgment.

e. Taxation and Withholding: Class Member Payments shall be allocated in three parts: (i) twenty percent (20%) as wages; (ii) sixty-five percent (65%) as penalties; and (iii) fifteen percent (15%) as interest. The wages will be reported on an IRS Form W-2, and the interest and penalties will be reported on an IRS Form 1099 to the extent required by law. The Class Member Payments will be reduced by any required deductions and withholdings with respect to the wage portion of the Class Member Payments, including employee taxes. Defendant shall be responsible for employer payroll taxes, which Defendant shall pay separate and apart from the Gross Settlement Amount. PAGA Settlement Payments shall be allocated as one hundred percent (100%) penalties, which will be reported on IRS Form 1099 to the extent required by law. Participating Class Members and Aggrieved Employees otherwise shall be responsible for their own tax obligations with respect to the Class Member Payments and PAGA Settlement Payments sent to them and agree that they are not relying on any information provided by Defendant concerning the tax consequences of payments made under this Agreement.

4.3 Payment of Class Counsel's Attorneys' Fees and Class Counsel's Litigation Costs: On or before the Payment Date, the Settlement Administrator will distribute from the Gross Settlement Amount to Class Counsel the total amount of Class Counsel's Attorneys' Fees awarded by the Court, not to exceed thirty-five percent (35%) of the Gross Settlement Amount, as well as the total amount of Class Counsel's Litigation Costs awarded by the Court in an amount not to exceed Twenty-Four Thousand Dollars and No cents (\$24,000.00). This combined sum will be paid by the Settlement Administrator by wire transfer payable to Blackstone Law, APC, which will be responsible for providing wiring instructions to the Settlement Administrator.

4.4 Class Representative Incentive Payment: On or before the Payment Date, the Settlement Administrator will distribute from the Gross Settlement Amount the Class Representative Incentive Payment awarded by the Court not to exceed the amount of Seven Thousand Five Hundred

Dollars and No Cents (\$7,5000.00) to Plaintiff for his provision of services to the Class Members during the Litigation. The Class Representative Incentive Payment is to compensate Plaintiff for his service and risk incurred in connection with serving as a Class Representative. The Class Representative Incentive Payment is also provided in consideration for Plaintiff executing a full and separate release of claims not required from other Class Members, as set forth below. The Class Representative Incentive Payment will be paid to Plaintiff in addition to Plaintiff's Individual Settlement Payment. The Class Representative Incentive Payment shall not be considered wages, and therefore, is not subject to any tax withholding or contribution, and an IRS Form 1099 will be issued with respect to the payment. Plaintiff shall be responsible for his own tax obligations with respect to the Class Representative Incentive Payment. The Parties agree that the Class Representative Incentive Payment to Plaintiff is fair and reasonable. Should the Court award the Class Representative Incentive Payment less than the amount being requested, the difference shall revert to the Net Settlement Amount.

4.5 LWDA Payment: On or before the Payment Date, the Settlement Administrator shall distribute from the Gross Settlement Amount the seventy-five percent (75%) portion of the PAGA payment (*i.e.*, \$37,500.00) that is payable to the LWDA.

4.6 No Additional Payments: The Parties agree that the payments set forth in this Agreement constitute Defendant's sole and entire monetary obligation to Plaintiff, Class Members, the LWDA, the Settlement Administrator, and Plaintiff's Counsel under this Agreement, and that, once made by Defendant in accordance with this Agreement, shall completely and finally discharge Defendant's obligations to pay Plaintiff, Class Members, the LWDA, the Settlement Administrator, and Plaintiff's Counsel under this Agreement, and that the payment process does not create any residual funds. Notwithstanding the above, Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

4.7 Unexpected Workweeks/Escalator Clause. Defendant represents that there are an estimated Thirty Thousand (30,000) workweeks during the Class Period worked by two hundred and ninety-one (291) putative Class Members. If the number of workweeks during the Class Period is more than five percent (5%) greater than this figure (*i.e.*, if there are more than 31,500 workweeks worked by the Class Members during the Class Period), Defendant shall have the option to either: (i) end the Class Period and the PAGA Period on the date on which the workweeks reach 31,500; or (ii) increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 5% (*i.e.*, if there was a 6% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).

4.8 Withdrawal From Settlement Based on Request for Exclusion. If more than ten percent (10%) of the Class Members submit timely and valid Requests for Exclusion, Defendant may, at its election, rescind the Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel within fifteen (15) calendar days after the Settlement Administrator notifies the Parties of a greater than 10% opt-out rate.

5. NOTICE OF CLASS ACTION SETTLEMENT AND SETTLEMENT OPT-OUT FORM

5.1 Filing of Motion for Preliminary Approval: Within thirty (30) calendar days after this Settlement Agreement becomes fully executed by the Parties, Plaintiff shall file a motion

for preliminary approval of this Settlement, requesting a Preliminary Approval Order that contains the following provisions:

- a. Preliminarily approving the Settlement Agreement and its terms;
- b. Preliminarily approving and certifying the Class for settlement purposes only;
- c. Approving the form of the Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of due process and is the best notice practicable under the circumstances;
- d. Establishing the procedures and the deadline by which Class Members may request exclusion from the Class Settlement, assert objections to the Settlement, and/or dispute their Credited Workweeks; and
- e. Setting a date for the Final Approval Hearing.

Defendant's Counsel will be given an opportunity to review and comment on the motion for preliminary approval of the Settlement prior to its being filed with the Court, and such comments will be implemented to the extent reasonable.

5.2 Appointment of Settlement Administrator: The Parties have selected ILYM Group, Inc. as the Settlement Administrator to handle the notice and administration of the Settlement. The Settlement Administrator will mail a Class Notice to each Class Member; review and re-mail any returned and/or undeliverable Class Notices; receive, review, and process Requests for Exclusion, objections, and Credited Workweeks disputes; calculate Class Member Payments and PAGA Settlement Payments; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. The Settlement Administrator will also respond to inquiries from Class Members regarding the Settlement and perform any other usual and customary duties for administering a class action settlement.

5.3 Mailing Class Notice:

a. Within fifteen (15) calendar days following the Preliminary Approval Date, Defendant will provide the Settlement Administrator with the Class List. Within five (5) business days of receipt of the Class List, the Settlement Administrator will send by first-class mail to all Class Members the Class Notice in a form that conforms to the form agreed to by the Parties and approved by the Court. Prior to mailing the Class Notice, the Settlement Administrator shall attempt to locate the Class Members' updated addresses by a search of the National Change of Address Database and an Accurint (or substantially similar) skip trace search.

b. The Settlement Administrator will verify, in writing, that the Class Notice has been disseminated in accordance with the Court's Preliminary Approval Order and will provide such verification to Class Counsel and Defendant's Counsel at the time of mailing. The Settlement Administrator shall also verify the Settlement Administration Costs and provide the total number of objections, Requests for Exclusion, and Credited Workweeks disputes submitted by Class Members no later than twelve (12) calendar days prior to the date of the Final Approval Hearing.

c. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with weekly reports, including the total number of Class Notices that were returned as

undeliverable, the total number of objections, and disputes regarding Credited Workweeks, and or Requests for Exclusion. The Settlement Administrator shall maintain records of its work, which will be available for inspection upon request by Defendant's Counsel.

5.4 The Class List and any other data provided by Defendant to the Settlement Administrator shall be treated as confidential and shall not be used by the Settlement Administrator for any purpose other than as permitted by the Settlement. Further, the Settlement Administrator shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by the Settlement. At no time during the Settlement process will any Class Member's full Social Security Number be filed by the Parties or the Settlement Administrator with the Court, except under seal as may be ordered by the Court. The Settlement Administrator shall ensure that the Class Notice and any other communications to Class Members shall not include any Class Member's Social Security Number, except the last four digits, if necessary.

5.5 Returned and/or Undeliverable Notices:

a. If a Class Notice is returned as undeliverable, the Settlement Administrator will promptly re-mail it to a forwarding address, if provided, or to an updated address obtained from a skip-trace search if no forwarding address is provided. The Settlement Administrator shall also send with any re-mailed notice a brief letter stating that the recipient of the re-mailed Notice has until the original deadline set forth on the Notice, or ten (10) calendar days after the re-mailing of the Notice (whichever is later), to submit a Request for Exclusion or an objection to the Settlement, or to dispute the number of Credited Workweeks credited to them.

b. In the event the procedures set forth above are followed and the intended recipient of a Class Notice still does not receive the Class Notice, the intended recipient will be a Participating Class Member and will be bound by all terms of the Settlement and the Final Approval Order. That Class Member's Individual Settlement Payment will still be mailed to that Class Member's last known address. If returned, the Settlement Administrator will use reasonable efforts to locate a better address and re-mail the Returned Check, if possible.

5.6 **Form of the Class Notice:** The Class Notice will advise individual Class Members of their right to opt out of the Class Settlement, object to the Class Settlement, and/or dispute the number of Credited Workweeks credited to them.

5.7 **Requests for Exclusion:** To be timely and valid, the Request for Exclusion must: (i) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the Class Members' full name, signature, address, telephone number, and last four (4) digits of the Class Members' Social Security number or Employee Identification Number; (iii) contain a statement that the Class Member wishes to be excluded from the Class Settlement; and (iv) be postmarked no later than the Exclusion Deadline. Upon expiration of the Response Deadline, any Class Member who fails to submit a Request for Exclusion will be bound by all terms of the Agreement, including the releases.

Any Class Member who mails a timely and valid Request for Exclusion will, upon receipt thereof by the Settlement Administrator, not be a Participating Class Member, will not be issued a Class Member Payment, will not release the Class Released Claims, and will have no right to object to or appeal the Settlement. Aggrieved Employees cannot exclude themselves from the PAGA Settlement

and, therefore, they will be issued a PAGA Settlement Payment and release the PAGA Released Claims regardless of whether or not the Aggrieved Employee excludes themselves from being a Participating Class Member. If a Class Member submits a deficient Request for Exclusion, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have until five (5) business days following the mailing of such notification to cure said deficiencies, at which point their request will be rejected if not received.

The Settlement Administrator shall immediately send all Requests for Exclusion to Class Counsel and Defendant's Counsel.

5.8 Objections: Only Participating Class Members have the right to object to the Class Settlement. A Participating Class Member may: (i) mail a written objection in accordance with the terms of this Paragraph; or (ii) appear (in person or through an attorney) and object at the Final Approval Hearing. The Participating Class Member's written objection must: (i) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the Participating Class Members' full name, signature, address, telephone number, and last four (4) digits of the Participating Class Member's Social Security number or Employee Identification Number; (iii) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iv) be postmarked no later than the Response Deadline. Further, if any objector intends to appear at the Final Approval Hearing, either in person or through counsel, they will include notice of that fact and state the purpose for their appearance in their objection.

The Settlement Administrator shall immediately send all objections to Class Counsel and Defendant's Counsel. The Settlement Administrator will certify jointly to Class Counsel and Defendant's Counsel the number of objections that are submitted (specifying which ones were timely and complete and which were not), and also attach them to a declaration that is to be filed with the Court in advance of the Final Approval Hearing.

The Parties will be permitted to respond in writing to such objections within the time period set by the Court and/or with their motion for final approval papers. If a Participating Class Member objects to the Class Settlement but the Court ultimately approves the Settlement nonetheless, the Participating Class Member will still be entitled to receive their Class Member Payment. Any Class Member who submits a timely and valid Request for Exclusion shall have no right to object to the Settlement.

5.9 No Solicitation: The Parties and their counsel agree not to take any action to solicit or otherwise encourage any Class Member to opt out of, or object to the Settlement, or appeal from the Final Approval Order and Judgment.

5.10 Credited Workweeks Disputes:

a. Class Members and Aggrieved Employees will be entitled to dispute their number of Credited Workweeks by mailing a Credited Workweeks dispute to the Settlement Administrator. A Credited Workweeks dispute must: (i) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the full name, signature, address, telephone number, and last four digits of the Social Security number or Employee Identification Number of the disputing Class Member; (iii) contain a statement indicating that the Class Member seeks to dispute the number of Credited Workweeks credited to

them, the time period(s) they worked for Defendant in an hourly paid or non-exempt position in California during the Class Period and/or PAGA Period, and the number of Credited Workweeks that they contend should be credited to them; (iv) contain documentation and/or other facts supporting the Class Member's position; and (iv) be postmarked no later than the Response Deadline. Defendant will review its records and provide information to the Settlement Administrator in response to any such disputes. Within seven (7) business days of receiving the necessary records and/or information from Defendant, the Settlement Administrator shall review all information and documents received from the Class Member and from Defendant and shall inform Class Counsel and Defendant's Counsel of its decision as to whether it accepts or rejects the dispute. The Settlement Administrator's determination regarding any such dispute shall be final. The disputing Class Member bears the burden of proof. Unless the Class Member can establish that the number of Credited Workweeks credited to them is incorrect, by providing documentation in support thereof or other details to substantiate their position, the total number of Credited Workweeks established by Defendant's records will control.

b. Class Counsel and Defendant's Counsel will timely and effectively cooperate to resolve any disagreements regarding disputed Credited Workweeks. In the event Class Counsel and Defendant's Counsel are not able to reach an agreement regarding a dispute, either Party may request that the Court make a final decision.

c. Upon resolution of all disputes regarding Credited Workweeks, the Settlement Administrator will prepare and circulate to all counsel an updated Class List. Any changes to a Class Member's Credited Workweeks will be reflected in the total Credited Workweeks for the entire Class on the updated Class List.

5.11 Payment of Settlement Administration Costs: Settlement Administration Costs shall not exceed Nine Thousand Dollars and No Cents (\$9,000.00) and will be paid out of the Gross Settlement Amount. Should the actual Settlement Administration Costs incurred be less than \$9,000.00, the difference will revert to the Net Settlement Amount for distribution to Participating Class Members.

6. PLAINTIFF'S AND CLASS MEMBERS' OBLIGATIONS TO DEFENDANT

6.1 Representations: Plaintiff represents and warrants to Defendant that, other than the Litigation, Plaintiff has no pending charges, complaints, claims, or actions against Defendant arising out of their employment with Defendant in which they assert a claim for unpaid wages or compensation.

6.2 Release by Participating Class Members: In exchange for the consideration under this Settlement, and upon Defendant's delivery of the Gross Settlement Amount and employer-side payroll taxes on wages paid to Class Members to the Settlement Administrator, all Participating Class Members, on behalf of themselves and their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will and hereby do forever release, waive, acquit, and discharge the Released Parties from the Class Released Claims, as defined in Section 1 of this Agreement.

6.3 Release by Class Representative: In exchange for the Class Representative Incentive Payment, and upon Defendant's delivery of the Gross Settlement Amount and employer-side payroll taxes on wages paid to Class Members to the Settlement Administrator, Plaintiff agrees

to release, in addition to the Released Class Claims and Released PAGA Claims described above, all claims whether known or unknown, under federal law and state law against the Released Parties. The Class Representative Incentive Payment shall be paid to Plaintiff specifically in exchange for the general release of the Released Parties from all claims set forth in this Agreement, including those specified in this Paragraph.

Plaintiff expressly waives the protections and any and all benefits of California Civil Code section 1542 which provides as follows:

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

Plaintiff has read and understand California Civil Code section 1542, and expressly acknowledges and agrees that any and all rights under section 1542 of the California Civil Code, other than any rights specifically reserved by law or regulation, are waived. Moreover, Plaintiff acknowledges and expressly assumes the risk of unknown and unanticipated facts and claims that may be discovered at a later point in time to effect a full and complete waiver and release.

Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Agreement does not apply to: (i) those rights that as a matter of law cannot be waived, including but not limited to workers' compensation claims; and (ii) right or claims arising out of this Agreement.

6.4 Release of PAGA Settlement: In exchange for the consideration under this Settlement, and upon Defendant's delivery of the Gross Settlement Amount to the Settlement Administrator, Plaintiff, the LWDA, and the Aggrieved Employees, will fully and finally release and discharge the Released Parties from the PAGA Released Claims.

7. FINAL APPROVAL OF SETTLEMENT

Following Preliminary Approval and the Response Deadline, Plaintiff shall apply to the Court for entry of an order:

- a. Granting final approval to the Agreement and adjudging its terms to be fair, reasonable, and adequate;
- b. Awarding reasonable attorneys' fees and litigation costs to Class Counsel as determined by the Court;
- c. Approving the Class Representative Incentive Payment, Settlement Administration Costs, and the allocation of the PAGA Payment; and
- d. Entering judgment pursuant to California Rule of Court 3.769 and preserving continuing and exclusive jurisdiction over all matters related to the administration and consummation of the terms of this Settlement and enforcement of the final judgment.

Defendant's Counsel will be given an opportunity to comment on the motion for final approval of the

Settlement prior to its being filed with the Court, and such comments will be implemented to the extent reasonable.

8. CONDITIONS OF SETTLEMENT

Performance by Defendant of the obligations set forth in this Agreement is subject to all of the following material conditions:

- a. Entry by the Court of the Preliminary Approval Order and certification of the Class;
- b. Mailing of the Class Notice to the Class Members in accordance with the Court's Preliminary Approval Order and certification of the Class;
- c. Entry by the Court of the Final Approval Order and Judgment; and
- d. Occurrence of the Effective Date, as defined in Section 1 of this Agreement.

Until and unless all events listed in (a) – (d) above occur, Defendant shall have no obligation to perform under this Agreement, except for obligations provided in this Agreement that are necessary to support achievement of the material conditions listed above. Defendant may only waive the above-listed material conditions to its performance in a separate writing signed by Defendant's counsel after the date this Agreement has been signed by all signatories listed at the end of this Agreement.

9. EFFECT OF SETTLEMENT NOT BEING FINAL

In the event the Settlement does not become final, then the Agreement will become null and void, and all negotiations, proceedings, and statements relating thereto will be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors will be deemed to have reverted to their respective positions in the Actions as of the date and time immediately prior to the execution of this Agreement. If the Court does not approve either preliminarily or finally any material term or condition of the Agreement, or if the Court effects a material change to the Parties' Agreement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

10. MISCELLANEOUS PROVISIONS

10.1 Governing Law: All terms of the Settlement will be governed by and interpreted according to the laws of the State of California.

10.2 No-Publication Provision: Plaintiff and Plaintiff's Counsel shall not, other than necessary filings related to completing the Settlement and obtaining preliminary and final approval, publicize, advertise, or otherwise draw public or media attention to the fact or terms of settlement, including but not limited to postings on social media (such as Twitter, Instagram, Facebook, TikTok, LinkedIn, Plaintiff's Counsel's firm website, or other social media platform).

10.3 Attorneys' Fees and Costs: Other than as set forth in Section 4.3, above, the Parties agree to bear their own attorneys' fees and costs in connection with the Litigation, including in

the preparation and implementation of this Agreement.

10.4 Joint Drafting: Should any provision of this Agreement require interpretation or construction, the person or court interpreting or construing this Agreement, will not apply a presumption that the provision will be more strictly construed against one party by reason of the rule of construction that a document is to be construed against the party who prepared the Agreement. It is agreed that both parties participated in the negotiation and preparation of the provisions of this Agreement.

10.5 Entire Agreement: The Agreement represents the sole and entire agreement between the Parties and supersedes any and all prior agreements, negotiations, or discussions between the Parties and/or their respective counsel with respect to the subject matter covered in the Agreement. The Parties further agree that the Agreement may not be modified orally and that any modification of this Agreement must be in writing and executed by the Parties.

10.6 Severability: All provisions of this Agreement are severable. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provisions, which shall remain in full force and effect.

10.7 Captions: Section or paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of the Agreement or any provision hereof.

10.8 Counterparts: This Agreement may be executed in counterparts, all of which together will constitute one and the same instrument. Photographic and electronic copies of such signed counterparts may be used in lieu of the originals for any purpose. Electronic signatures created through the use of electronic signature technology shall be considered equivalent to traditional signatures in conformity with applicable law. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

10.9 Informed, Voluntary Signature: In entering into this Agreement, Plaintiff, individually and on behalf of the Class Members and Aggrieved Employees, represents that, before executing this Agreement, he has completely read all the terms herein and that he fully understands and voluntarily accepts the terms after having the opportunity to consult adequate legal counsel of his choice. Plaintiff, individually and on behalf of the Class Members and Aggrieved Employees, further acknowledges and agrees that he has received a reasonable period of time of at least five (5) business days to consider this Agreement and that the subsequent discovery of any facts by him, whether or not existing on the date of this Agreement and no matter how material, shall have no effect on the validity of the Agreement.

10.10 Mutual Full Cooperation: The Parties and their counsel agree to fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to execution of such documents and to take any such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or other to effectuate this Settlement and the terms set forth herein. In the event the Parties are

unable to reach an agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of the Settlement, the Parties shall seek the assistance of the Court or the Mediator to resolve such disagreement.

10.11 Enforcement and Continuing Jurisdiction of the Court: Pursuant to California Rules of Court, Rules 3.769 and 3.771, the Settlement will be approved by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even after the Final Approval Order and Judgment is entered, and notwithstanding it, the Court will have and shall fully retain continuing jurisdiction over the Actions and over the Parties and Class Members necessary or convenient to enforce and effectuate the terms and intent of this Settlement and all matters provided for in it, and to interpret it.

10.12 Use and Return of Class Data: Information provided to Class Counsel pursuant to California Evidence Code section 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 ninety (90) calendar days after the date when the Court discharges the Settlement 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 unless, prior to the Court's discharge of the Settlement Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of class data.

10.13 Notices. Any notices, requests, demands, or other communications to be provided concerning this Agreement shall be in writing and delivered by receipted delivery and e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

- a. **If to Plaintiff:** Jonathan M. Genish, Karen I. Gold, Ashley H. Cruz,
and Marissa A. Mayhood
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, CA 90211
jgenish@blackstonepc.com
kgold@blackstonepc.com
acruz@blackstonepc.com
mmayhood@blackstonepc.com
- b. **If to Defendant:** Amanda N. Luftman and Jeremy J. Osher
Boren, Osher & Luftman, LLP
222 N. Pacific Coast Highway, Suite 2222
El Segundo, CA 90245
anluftman@bollaw.com
josher@bollaw.com

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties as follows:

Dated: September 9, 2024

PLAINTIFF'S COUNSEL:
BLACKSTONE LAW, APC



By: KAREN I. GOLD

Dated: September 9, 2024

PLAINTIFF:



TYLER EMERY

Dated: September 10, 2024

DEFENDANT'S COUNSEL:
BOREN, OSHER & LUFTMAN, LLP



By: AMANDA N. LUFTMAN

Dated: September __, 2024

DEFENDANT:
SANTA CRUZ BICYCLES, LLC



Robert Nava (Sep 10, 2024 18:20 PDT)

By: Robert Nava

Title: Head of People

NOTICE OF PROPOSED CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Tyler Emery v. Santa Cruz Bicycles, LLC

Superior Court of California for the County of Santa Cruz, Case Nos. 24CV00244 and 24CV00839

PLEASE READ THIS CLASS NOTICE CAREFULLY.

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

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

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

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Tyler Emery ("Plaintiff") and Defendant Santa Cruz Bicycles, LLC ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the cases entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case Nos. 24CV00244 and 24CV00839 (together, "Actions"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

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

"Class Period" means the period from January 25, 2020 through October 15, 2024, inclusive.

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

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

"PAGA Period" means the period from January 16, 2023 through October 15, 2024, inclusive.

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

II. BACKGROUND OF THE ACTION

On January 16, 2024, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated. On January 25, 2024, Plaintiff commenced a putative class action lawsuit against Defendant by filing a Class Action Complaint for Damages. On March 22, 2024, Plaintiff filed a separate Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. for the same wage and hour violations alleged in the class action lawsuit.

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

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

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Class Action and PAGA Representative Action Settlement and Release (“Settlement” or “Settlement Agreement”).

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

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

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

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

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five Dollars and No Cents (\$949,285.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (*i.e.*, \$332,249.75 if the Gross Settlement Amount is \$949,285.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty-Four Thousand Dollars and No Cents (\$24,000.00) to Class Counsel; (2) Class Representative Incentive Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to Plaintiff for his services in the Actions; (3) the amount of Fifty Thousand Dollars and No Cents (\$50,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Payment”), of which the LWDA will be paid 75% (\$37,500.00) and the remaining 25% (\$12,500.00) will be distributed to Aggrieved Employees; and (4) Settlement Administration Costs in an amount not to exceed Nine Thousand Dollars and No Cents (\$9,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Class Member Payment”) and Aggrieved Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the 25% portion of the PAGA Payment (“Individual PAGA Payment”). Class Member Payments and Individual PAGA Payments are based on the number of workweeks worked by the Class Members during the Class Period and the number of workweeks worked by the Aggrieved Employees during the PAGA Period (“Credited Workweeks”).

To calculate Class Member Payments, the Settlement Administrator has multiplied the Net Settlement Amount by a

fraction, the numerator of which is the Class Member's Credited Workweeks during the Class Period, and the denominator of which is the total Credited Workweeks worked by all Class Members during the Class Period. If the Class Member has previously entered into a settlement agreement and received a settlement payment from Defendant, the amount of the settlement payment you already received will be deducted from the Class Member's Class Member Payment.

Class Members who do not submit a timely and valid Request for Exclusion ("Participating Class Members") will be issued their final Class Member Payment.

Each Class Member Payments will be allocated as twenty percent (20%) as wages; sixty-five percent (65%) as penalties; and fifteen (15%) as interest. The wages will be reported on an IRS Form W-2, and the interest and penalties will be reported on IRS Forms 1099-MISC and/or 1099-INT to the extent required by law. Each Class Member Payment will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Class Member Payment resulting in a net payment to the Participating Class Member. The employer's share of taxes and contributions in connection with the wages portion of Class Member Payments will be paid by Defendant separately and in addition to the Gross Settlement Amount.

To calculate PAGA Settlement Payments, the Settlement Administrator has multiplied the 25% portion of the PAGA Payment by a fraction, the numerator of which is the Aggrieved Employee's Credited Workweeks during the PAGA Period, and the denominator of which is the total Credited Workweeks worked by all Aggrieved Employees during the PAGA Period

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

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

B. Your Covered Workweeks Based on Defendant's Records

According to Defendant's records:

- **From January 25, 2020 through October 15, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Covered Workweeks.**
- **From January 16, 2023 through October 15, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] Covered Workweeks.**

If you wish to dispute the Covered Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator. The Covered Workweeks dispute must: (a) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number or Employee Identification Number; (c) contain a statement indicating that you seek to dispute the number of Credited Workweeks credited to you, the time period(s) you worked for Defendant in an hourly paid or non-exempt position in California during the Class Period and/or PAGA Period, and the number of Credited Workweeks that you contend should be credited to you; (d) contain documentation and/or other facts supporting your position; and (e) be postmarked no later than **[Response Deadline]**.

C. Your Estimated Class Member Payment and PAGA Settlement Payment (if applicable)

As explained above, your estimated Class Member Payment and PAGA Settlement Payment (if applicable) is based on the number of Covered Workweeks credited to you. If you already entered into a settlement agreement and received a settlement payment from Defendant, then your portion of your Class Member Payment will be reduced to account for that previous payment.

Under the terms of the Settlement, your Class Member Payment is estimated to be \$ [REDACTED].

Based on Defendant's records, you already received \$ [REDACTED] in settlement funds related to the claims asserted in this lawsuit. Accordingly, that amount has been deducted from your Class Member Payment.

The Class Member Payment is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Class Member Payment and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

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

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

D. Release of Claims

In exchange for the consideration under the Settlement, and upon Defendant's delivery of the Gross Settlement Amount and employer-side payroll taxes on wages paid to Class Members to the Settlement Administrator, all Participating Class Members, on behalf of themselves and their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will and hereby do forever release, waive, acquit, and discharge the Released Parties from the Class Released Claims.

In exchange for the consideration under the Settlement, and upon Defendant's delivery of the Gross Settlement Amount to the Settlement Administrator, Plaintiff, the LWDA, and the Aggrieved Employees, will fully and finally release and discharge the Released Parties from the PAGA Released Claims.

"Class Released Claims" means all claims made or which could have been made based on the facts pled in the Class Action Complaint, arising during the Class Period, including, but not limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201, 202 and 203); (viii) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802); and (ix) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).

"PAGA Released Claims" means all claims made or which could have been made for civil penalties under the PAGA, Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff's letter to the LWDA and the PAGA Action Complaint, arising during the PAGA Period, including, but not limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201, 202 and 203); (viii) Failure to Keep Complete and Accurate Payroll Records (Labor Code § 1174(d)); and (ix) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802).

"Released Parties" means Santa Cruz Bicycles, LLC, their present and former officers, directors, members, managers, shareholders, employees, agents, parents, subsidiaries, affiliates, insurers, operators, partners, joint ventures, consultants, attorneys, successors, or assignees.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount not to exceed (35%) of the Gross Settlement Amount (*i.e.*, \$332,249.75 if the Gross Settlement Amount is \$949,285.00) ("Class Counsel's Attorneys' Fees") and reimbursement of litigation costs and expenses in an amount not to exceed Twenty-Four Thousand Dollars and No Cents (\$24,000.00) ("Class Counsel's Litigation Costs"), subject to approval by the Court. The Class Counsel's Attorneys' Fees and Class Counsel's Litigation Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Actions on behalf of Plaintiff, Class Members, and Aggrieved Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Class Representative Incentive Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) ("Class Representative Incentive Payment"), in recognition of his services in connection with the Actions. The Class Representative Incentive Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Class Member Payment and PAGA Settlement Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Nine Thousand Dollars and No Cents (\$9,000.00) ("Settlement Administration Costs") for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, written objections, and Covered Workweeks disputes, calculating Class Member Payments and PAGA Settlement Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

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

A. Participate in the Settlement

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

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

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

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

B. Request Exclusion from the Class Settlement

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

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number or Employee Identification Number; (c) contain a statement that you

wish to be excluded from the Class Settlement; and (d) be postmarked no later than **[Response Deadline]**.

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

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection to the Settlement Administrator.

The written objection must: (a) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number or Employee Identification Number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) be postmarked no later than **[Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a written objection.

If the Court overrules your objection, you will be bound by the Settlement and will receive your Class Member Payment.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 5 of the Santa Cruz County Superior Court, located at 701 Ocean Street, Santa Cruz, California, 95060, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Class Counsel's Attorneys' Fees and Class Counsel's Litigation Costs to Class Counsel, Class Representative Incentive Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

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

You can appear remotely at <https://santacruzcourt-org.zoomgov.com/j/1615592790> or Dial: 1 (669) 216-1590 and provide the Meeting ID: 161 559 2790.

VI. ADDITIONAL INFORMATION

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

You may view the Settlement Agreement and other documents filed in the Action for free by visiting the civil clerk's office located at Santa Cruz Courthouse, 701 Ocean Street, Santa Cruz, California 95060, during business hours, or online by visiting the following website: <https://portal.santacruzcourt.org/portal>, clicking "Smart Search" and typing in the Court Case Numbers "24CV00244" and/or "24CV00839."

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

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

EXHIBIT 2

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Karen I. Gold (SBN 258360)
kgold@blackstonepc.com
Ashley Cruz (SBN 306235)
acruz@blackstonepc.com
Marissa A. Mayhood (SBN 334376)
mmayhood@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff TYLER EMERY, individually
and on behalf of others similarly situated

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

TYLER EMERY individually and on behalf of
others similarly situated,
Plaintiff,

vs.

SANTA CRUZ BICYCLES, LLC; and DOES 1
through 25, inclusive, Defendants.

Defendants.

Case No.: 24CV00244

*Assigned for all purposes to the Honorable
Syda K. Cogliati, Dept. 5*

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 7, 2024
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: January 25, 2024
Trial Date: Not Set

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
9/12/2024 9:04 PM
Clerk of the Court by Deputy,
Karen Broughton



1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **October 7, 2024** at **8:30 a.m.** in **Department 5** of the
3 above-captioned Court located at 701 Ocean Street, Santa Cruz, California 95060 pursuant to California
4 Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Tyler
5 Emery (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of
6 the proposed class action and PAGA settlement between Plaintiff and Defendant Santa Cruz Bicycles,
7 LLC (“Defendant”).

8 Plaintiff requests that the Court enter an Order:

9 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
10 (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Karen I. Gold in
11 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Gold
12 Decl.”);

13 2. Certifying the Class for Settlement purposes;

14 3. Appointing Plaintiff Tyler Emery as the Class Representative for Settlement purposes;

15 4. Appointing Jonathan M. Genish, Karen I. Gold, Ashley H. Cruz, and Marissa A. Mayhood
16 of Blackstone Law, APC as Class Counsel for Settlement purposes;

17 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
18 Exhibit A to the Settlement Agreement, to be mailed to the Class;

19 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
20 and set forth in the Class Notice;

21 7. Directing Defendant to furnish, for each Class Member, their full name, last known
22 mailing address, Social Security number or Individual Taxpayer Identification Number, dates worked for
23 the Defendant during the Class Period, last known telephone number, names and amounts paid to each
24 Class Member in connection with any prior settlement efforts in connection with the actions titled *Emery*
25 *v. Santa Cruz Bicycles, LLC*, Santa Cruz Superior Court, Case No. 24CV00244 (“Class Action”), and
26 *Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz Superior Court, Case No. 24CV00839 (“PAGA Action”)
27 (together, the “Actions”); and the number of workweeks worked during the Class Period and PAGA
28 Period (or information allowing the Settlement Administrator to calculate the same) to the Settlement

1 Administrator within fifteen (15) calendar days after entry of the order granting preliminary approval of
2 the Settlement;

3 8. Approving the proposed deadlines for the settlement administration process; and

4 9. Setting a Final Approval Hearing.

5 Pursuant to California Labor Code section 2699(s)(2) and concurrently with the filing of this
6 Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development
7 Agency (“LWDA”) via online submission through the LWDA’s website. Gold Decl., ¶ 53, Ex. 3.

8 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
9 Declaration of Karen I. Gold, the Declaration of Plaintiff Tyler Emery, the pleadings and other records
10 on file with the Court in this matter, and any other further evidence or argument that the Court may
11 properly receive at or before the hearing.

12 Respectfully submitted,

13 Dated: September 12, 2024

BLACKSTONE LAW, APC

14
15 By: 
16 Jonathan M. Genish
17 Karen I. Gold
18 Ashley H. Cruz
19 Marissa A. Mayhood

20
21 Attorneys for Plaintiff TYLER EMERY, individually
22 and on behalf of others similarly situated
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	2
	A. Class Definition	2
	B. Amount of Settlement.....	3
	C. Allocation and Funding of the Gross Settlement Amount	3
	D. Released Claims	6
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	7
V.	THE SETTLEMENT IS PRESUMED FAIR.....	8
	A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining	8
	B. Sufficient Investigation and Discovery by Experienced Class Counsel	9
	C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks	9
	1. Class Counsel’s Analysis of the Maximum Available Liability and Damages	10
	2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments	10
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	15
	A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable.....	15
	B. The Class Shares a Well-Defined Community of Interest	16
	C. A Class Action is Superior to a Multiplicity of Litigation.....	17
VII.	THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT IS REASONABLE	17
VIII.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	18
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS.....	18
X.	SCHEDULE FOR COMPLETION OF ITEMS PRIOR TO FINAL APPROVAL HEARING	21
XI.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980).....	8
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	16
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	11
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	10
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460, 1468 (2013)	13
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	8
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987)	16
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967).....	15, 16
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	10
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008).....	14
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015)	18
<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	15
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	19
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014)	18
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	13
<i>Kullar v. Foot Locker Retail, Inc.</i> 168 Cal.App.4th 116, (2008).....	9
<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000)	18
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	17
<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	17
<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).....	15
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010).....	17
<i>Naranjo v. Specturm Security Services, Inc.</i> , 40 Cal.App.5th 444 (2019).....	13
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982).....	8
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	13
<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981)	15
<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007)	16

1	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	8
2	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	7, 8, 9
3	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021).....	14

Statutes

5	Business & Professions Code § 17200	7
6	Cal. Labor Code §§ 2689	2
7	Labor Code § 226(a)	7
8	Labor Code §§ 1194.....	6, 7
9	Labor Code §§ 201.....	7
10	Labor Code §§ 204.....	7
11	Labor Code §§ 226.7.....	7
12	Labor Code §§ 2800.....	7
13	Labor Code §§ 510.....	6, 7

Other Authorities

15	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf	11
----	--	----

Rules

17	Cal. Rules of Court, Rule 3.769(c)	8
18	Cal. Rules of Court, Rule 3.769(g)	8

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Tyler Emery (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff and Defendant Santa Cruz Bicycles, LLC (“Defendant”) (together, with Plaintiff, the “Parties”). Declaration of Karen I. Gold in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Gold Decl.”), Ex. 2. The main Settlement terms are as follows:

- Class Size: Approximately 291 individuals (as of July 22, 2024).
- Gross Settlement Amount: Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five Dollars and Zero Cents (\$949,285.00).
- Settlement is non-revisionary, and all class members who do not opt out will be automatically sent their share of the Gross Settlement Amount without filing a claim.
- Settlement Administration Costs: Not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00), to be paid from the Gross Settlement Amount.
- Class Representative Incentive Payment: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Tyler Emery, to be paid from the Gross Settlement Amount.
- PAGA Payment: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved Employees.
- Attorneys’ Fees and Costs: Attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00) plus actual litigation costs and expenses not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00), to be paid from the Gross Settlement Amount.
- Estimated Net Settlement Amount: Five Hundred Twenty-Six Thousand Five Hundred Thirty-Five Dollars and Twenty-Five Cents (\$526,535.25) to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the

Class, approve the Notice of Proposed Class Action and PAGA Representative Action Settlement (“Class Notice”), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant manufactures and ships high-end bicycles out of its facility in Santa Cruz, California. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Shipper from approximately August 2017 to approximately May 2023. Declaration of Plaintiff Tyler Emery in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (“Emery Decl.”), ¶ 2.

On January 16, 2024, Plaintiff provided written notice to the LWDA and to Defendant, pursuant to California Labor Code Section 2699.3, of the specific provision of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). Gold Decl., ¶ 10 & Exh. 1.

On January 25, 2024, Plaintiff filed a Class Action Complaint for damages in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00244 (“Class Action”), thereby commencing a putative class action against Defendant. Gold Decl., ¶ 11.

On March 22, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.*, in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00839 (“PAGA Action”), thereby commencing a separate representative action against Defendant. Gold Decl., ¶ 12.

On July 12, 2024, the Parties participated in a formal mediation conducted by Paul Haines, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour matters. *Id.*, ¶ 13. After a full day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and PAGA basis. *Id.*

On September 10, 2024, the Parties executed the Settlement Agreement. *Id.*, ¶ 14.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period” (“Class Members” or “Class”). Gold Decl., ¶ 14; Settlement Agreement, ¶ 1.7. The Class Period is defined as the period from January 25, 2020, to October

1 15, 2024, inclusive. Gold Decl., ¶ 14, Ex. 2 (“Settlement Agreement”), ¶ 1.10. Based on information
2 provided by Defendant, as of July 22, 2024, it is estimated that there are a total of two hundred and ninety-
3 one (291) Class Members. Gold Decl., ¶ 15.

4 **B. Amount of Settlement**

5 The Parties have agreed to settle the claims in the Class Action and PAGA Action for a non-
6 reversionary Gross Settlement Amount of Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five
7 Dollars and Zero Cents (\$949,285.00), exclusive of employer-side payroll taxes. Settlement Agreement,
8 ¶ 1.22.

9 **C. Allocation and Funding of the Gross Settlement Amount**

10 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees,
11 and other allocations. Settlement Agreement, ¶ 1.22. The Gross Settlement Amount includes: (1) Class
12 Counsel’s Attorney’s Fees in the amount not to exceed thirty-five percent (35%) of the Gross Settlement
13 Amount (*i.e.*, \$332,249.75 if the Gross Settlement Amount is \$949,285.00); (2) Class Counsel’s actual
14 litigation costs and expenses, not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00);
15 (3) Settlement Administration Costs, not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00);
16 (4) Class Representative Incentive Payment in the amount of Seven Thousand Five Dollars and Zero
17 Cents (\$7,500.00); and (5) PAGA Payment in the amount of Fifty Thousand Dollars and Zero Cents
18 (\$50,000.00). Settlement Agreement, ¶¶ 1.24; 1.41. After the above-estimated amounts are deducted from
19 the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is
20 currently estimated to be Five Hundred Twenty-Six Thousand Five Hundred Thirty-Five Dollars and
21 Twenty-Five Cents (\$526,535.25). Gold Decl., ¶ 16. Additionally, 25% of the PAGA Payment (“PAGA
22 Settlement Payment”), which is \$12,500.00 out of \$50,000.00, will be fully distributed to all current and
23 former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California
24 at any time during the PAGA Period (“Aggrieved Employees”). Settlement Agreement, ¶ 1.26. The
25 “PAGA Period” is defined as the period from January 16, 2023, through October 15, 2024. Settlement
26 Agreement, ¶¶ 1.27.

27 Based on information from Defendant, it is estimated that the Class Members worked a total of
28 approximately 30,000 workweeks during the period from January 25, 2020, through October 15, 2024.

1 Settlement Agreement, ¶ 4.7. If it is determined by the Settlement Administrator that the total number of
2 workweeks worked by the Class Members during the Class Period actually exceeds 30,000 by more than
3 5% (i.e., if there are more than 31,500 workweeks), then Defendant shall have the option to either: (i)
4 end the Class Period and the PAGA Period on the date on which the workweeks reach 31,500; or (ii)
5 increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 5%
6 (i.e., if there was a 6% increase in the number of workweeks during the Class Period, Defendant would
7 agree to increase the Gross Settlement Amount by 1%). Settlement Agreement, ¶ 4.7.

8 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
9 a timely and valid Request for Exclusion (“Participating Class Members”) on a *pro rata* basis based on
10 the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt
11 employee in California during the Class Period (“Credited Workweeks”). Settlement Agreement, ¶¶ 1.16,
12 1.24, and 1.30. The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to
13 receive under the Class Settlement (“Class Member Payment”) will be calculated by the Settlement
14 Administrator, in accordance with the Settlement Agreement. Settlement Agreement, ¶¶ 1.8 and 4.2(a).

15 Prior to mediation, Defendant engaged in a “Pick-Up Stix” style campaign, in which it offered its
16 employees the option to settle out their claims in this lawsuit in exchange for a monetary payment ranging
17 from \$500 to \$11,760 per employee. Gold Decl., ¶ 41. Defendant paid a total of \$149,285.00 to its
18 employees as part of its Pick-Up Stix campaign, which is included in the Gross Settlement Amount. Gold
19 Decl., ¶ 16.

20 Participating Class Members who already received a settlement payment from the Gross
21 Settlement Amount shall receive an additional settlement payment to the extent required to ensure they
22 receive the total amount to which they are entitled based on the calculations for their Class Member
23 Payments under the terms of the Settlement Agreement. Settlement Agreement, ¶¶ 1.8 and 4.2(a). For
24 example, if a Participating Class Member’s Class Member Payment is \$100 and the Participating Class
25 Member previously received a \$20 payment from the Gross Settlement Amount then the Participating
26 Class Member will receive an additional \$80 (the net amount owed after subtracting the prior payment).
27 Settlement Agreement, ¶¶ 1.8 and 4.2(a).

28 The PAGA Settlement Payment will be distributed and paid to all Aggrieved Employees on a *pro*

1 *rata* basis based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid
2 and/or non-exempt employee in California during the PAGA Period (“Credited Workweeks”). Settlement
3 Agreement, ¶¶ 1.29 and 4.2(b). The *pro rata* share of the PAGA Settlement Payment that a PAGA
4 Employee may be eligible to receive under the PAGA Settlement (“PAGA Settlement Payment”) will be
5 calculated by the Settlement Administrator, in accordance with the Settlement Agreement. Settlement
6 Agreement, ¶¶ 1.8 and 4.2(b).

7 Each Class Member Payment will be allocated as twenty percent (20%) wages and sixty-five
8 percent (65%) penalties, and fifteen percent (15%) as interest. Settlement Agreement, ¶ 4.2(e). The
9 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and
10 penalties will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.
11 Settlement Agreement, ¶ 4.2(e). The Settlement Administrator will withhold the employee’s share of
12 taxes and withholdings with respect to the wages portion of the Class Member Payments, and issue checks
13 to Participating Class Members for their net payment of their Class Member Payment. Settlement
14 Agreement, ¶¶ 4.2(e) and 5.2. The employer’s share of taxes and contributions in connection with the
15 wages portion of Class Member Payments will be paid by Defendant separately and in addition to the
16 Gross Settlement Amount. Settlement Agreement, ¶ 4.2(e). Each PAGA Settlement Payment will be
17 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 by the
18 Settlement Administrator. Settlement Agreement, ¶ 4.2(e).

19 The Settlement Agreement is a non-reversionary and non-claims made settlement. Settlement
20 Agreement, ¶ 4.2(d). The Net Settlement Amount will be fully distributed to Participating Class Members
21 and the PAGA Payment will be fully distributed to the LWDA and Aggrieved Employees, in accordance
22 with the Settlement Agreement. Settlement Agreement, ¶¶ 1.26, 4.2(a), and 4.2(b). No money will revert
23 to Defendant. Settlement Agreement, ¶ 4.2(d).

24 Each Class Member Payment and PAGA Settlement Payment check will be valid and negotiable
25 for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall
26 be canceled. Settlement Agreement, ¶ 4.2(c). If a Class Member Payment and PAGA Settlement Payment
27 check is returned before the expiration of the 180-day period (i.e., Returned Check), within five (5)
28 business days of receipt of the Returned Check, the Settlement Administrator shall undertake a skip-trace

1 search for an alternate mailing address and re-mail the Returned Check to an alternate mailing address (if
2 one is located), under a cover letter indicating that the Returned Check will continue to be valid and
3 negotiable for thirty (30) days after the date of re-mailing. Settlement Agreement, ¶ 4.2(c). If a Returned
4 Check is returned with a forwarding address provided by the United States Postal Service, the Settlement
5 Administrator will promptly re-mail the check to the Participating Class Member and/or Aggrieved
6 Employee's forwarding address within five (5) days of receipt of the Returned Check with a cover letter
7 indicating that the Returned Check will continue to be valid and negotiable for thirty (30) calendar days
8 after the date of re-mailing. Settlement Agreement, ¶ 4.2(c). Any funds associated with such canceled
9 checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property
10 Division in the name of the Participating Class Member and/or PAGA Employee. Settlement Agreement,
11 ¶ 4.2(d). The Parties agree that this disposition results in no "unpaid residue" under California Civil
12 Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class
13 Members, whether or not they cash their settlement checks. Settlement Agreement, ¶ 4.2(d).

14 **D. Released Claims**

15 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Participating Class
16 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
17 and discharged the Released Parties of all Class Released Claims. Settlement Agreement, ¶¶ 1.34, 1.36,
18 6.2, and 6.3.

19 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
20 respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally,
21 and forever released, settled, compromised, relinquished, and discharged the Released Parties of all
22 PAGA Released Claims. *Id.*, ¶ 1.35, 1.36, and 6.4.

23 "Class Released Claims" means all claims made or which could have been made based on the
24 facts pled in the Class Action Complaint, arising during the Class Period, including, but not limited to,
25 claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to
26 Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or
27 Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty
28 Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages

1 During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage
2 Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor Code
3 §§ 201, 202 and 203); (viii) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800
4 and 2802); and (ix) Violation of Unfair Competition Law (Business & Professions Code § 17200, et seq.).
5 Settlement Agreement, ¶ 1.34.

6 “PAGA Released Claims” means all claims made or which could have been made for civil
7 penalties under the PAGA, Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff’s letter
8 to the LWDA and the PAGA Action Complaint, arising during the PAGA Period, including, but not
9 limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii)
10 Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal
11 Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely,
12 Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay
13 Wages During Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized
14 Wage Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor
15 Code §§ 201, 202 and 203); (viii) Failure to Keep Complete and Accurate Payroll Records (Labor Code
16 § 1174(d)); and (ix) Failure to Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802).
17 Settlement Agreement, ¶ 1.35.

18 “Released Parties” means Santa Cruz Bicycles, LLC, their present and former officers, directors,
19 members, managers, shareholders, employees, agents, parents, subsidiaries, affiliates, insurers, operators,
20 partners, joint ventures, consultants, attorneys, successors, or assignees. Settlement Agreement, ¶ 1.36.

21 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

22 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.
23 App. 4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable, whether notice
24 to the class was adequate, whether certification of the class was proper, and whether the attorney fee
25 award was proper are matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer,*
26 *Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

27 The review and approval of a proposed class action settlement involves a two-step process. *See*
28 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement, and the

1 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
2 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
3 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
4 settlement is fair, reasonable, and adequate. *Id.*

5 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
6 *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather,
7 the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed
8 settlement is within the range of possible approval and, as a result, “whether there is any reason to notify
9 the class members of the proposed settlement and to proceed with a fairness hearing.” *Looper v. FCA US*
10 *LLC*, No. LACV1400700VAPDTBX, 2017 WL 11650429, at *3 (C.D. Cal. Mar. 23, 2017). A
11 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
12 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
13 is experienced in similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V*
14 *Cases*, 135 Cal. App. 4th 706, 723 (2006).

15 Preliminary approval does not require a court to make a final determination that the settlement is
16 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
17 of the settlement has been given to the class members and they have had an opportunity to object or
18 exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a potential
19 class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which
20 underlie the merits of the dispute and need not engage in a trial on the merits. *See Officers for Justice v.*
21 *Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

22 **V. THE SETTLEMENT IS PRESUMED FAIR**

23 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

24 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
25 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
26 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties’ settlement negotiations were
27 at all times made at arm’s-length and were adversarial. Gold Decl., ¶ 25. The Settlement was reached
28 after completing a full day of mediation with a highly respected mediator with substantial experience

litigating and mediating wage and hour cases. *Id.* At all times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a fair resolution.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation, Defendant produced putative class members' time and pay data, as well as Defendant's employee handbook, relevant wage and hour policies, and information to determine the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. Gold Decl., ¶ 26.

This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide and PAGA damages. *Id.*, ¶ 27. Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the mediator who helped the Parties further assess the strengths and weakness of their respective positions. *Id.*, ¶ 28. Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Gold Decl., ¶¶ 25, 28. Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by Defendant's legal and factual arguments against Plaintiff's claims. Based upon Class Counsel's experience litigating similar complex

1 matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the
2 merits of the Action absent a settlement. Gold Decl., ¶¶ 30-45.

3 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

4 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
5 to be approximately \$6,771,576, assuming the litigation was successful at trial on all class claims at issue
6 and every employee had a violation for each claim on every shift worked, and then reduced this exposure
7 analysis based on adopting more realistic presumptions, the challenges facing the likelihood of obtaining
8 class certification, prevailing at trial, and other attendant risks. *Id.*, ¶ 29. This estimate is based off an
9 estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant
10 time period, less interest, and based on the analysis of the data which was extrapolated out for all Class
11 Members across the entire putative class period, which included: \$723,362 for meal period violations less
12 meal period premiums paid; \$3,113,265 for rest period violations; \$1,202,907 for unpaid off-the-clock
13 work; \$21,943 for unpaid overtime wages at the required regular rate of pay; \$278,190 for unreimbursed
14 business expenses; \$804,659 for waiting time penalties; and \$627,250 in wage statement penalties. *Id.*
15 Plaintiff further estimated that Defendant faced an additional exposure of \$1,535,100 in potential, non-
16 stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA
17 penalties. *Id.* Together with the PAGA penalties, Defendant's maximum potential exposure totaled
18 \$8,306,676 in damages. *Id.*

19 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

20 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
21 recovery existed. Defendant denied and continues to deny any liability and wrongdoing of any kind
22 associated with the claims alleged. Gold Decl., ¶ 32. Moreover, Defendant contended that Plaintiff's
23 claims are not suitable for class certification because individual issues and affirmative defenses would
24 predominate should this case go to trial. *Id.*; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
25 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*,
26 131 S.Ct. 2541, 2551 (2011). While Plaintiff and Class Counsel disagree with Defendant's arguments,
27 they also recognize that there is a significant risk that the Court may deny class certification. Gold Decl.,
28 ¶ 32; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at

1 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
2 actions were certified either as part of a settlement or as part of a contested certification motion)).

3 *i. Meal Periods*

4 Plaintiff asserts that Defendant failed to provide lawful meal periods. Plaintiff's theory of liability
5 for meal period violations was based on allegations that Defendant's practices failed to allow Class
6 Members to take meal breaks in the manner required under California law. Gold Decl., ¶ 33; *See Bradley*
7 *v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012). Plaintiff's analysis of the time data
8 revealed that in 23.4% of all shifts there was at least one unique meal period violation. *Id.*, at ¶ 33.

9 Defendant contended that its meal break policies and practices at all times during the Class Period
10 were lawful. *Id.*, ¶ 34. Defendant further argued that the rate of purported meal period violations reflected
11 in the data would require individualized inquiry and that such inquiry would prohibit a class from being
12 certified. *Id.* Additionally, the records showed that Defendant had paid meal premiums for 3% of the
13 recorded meal break violations. *Id.*

14 Based on these facts, Plaintiff used a 23.4% violation rate, and thus attributed \$723,362 in
15 potential damages resulting from alleged meal break violations.

16 *ii. Rest Periods*

17 Plaintiff alleged that Defendant failed to schedule, permit, or authorize compliant rest periods,
18 and that Plaintiff and other Class Members were unable to take their rest breaks because of their heavy
19 workloads. Gold Decl., ¶ 35. Plaintiff reported that if he was able to take a rest break, they were frequently
20 interrupted by supervisors, coworkers, and/or customers. *Id.* Plaintiff's damages analysis on this claim
21 was based on an alleged 25% violation rate. *Id.*

22 As with the meal period allegations, Defendant contended that it had a lawful written rest period
23 policy, provided compliant rest breaks, and relieved Class Members of all duties as required under
24 California law. *Id.*, ¶ 36. Defendant also claimed that given the lack of records demonstrating rest period
25 violations, there were legitimate concerns in certifying these claims. *Id.*

26 Based on these facts, Plaintiff used a 25% violation rate, and thus attributed \$3,113,265 in
27 potential damages resulting from alleged rest break violations.

28 *iii. Off-The-Clock Work*

1 Plaintiff minimum and overtime wages claims were largely based on alleged unrecorded, off-the-
2 clock work performed by the Class Members both before and after their shifts and during purported meal
3 and rest periods. Gold Decl., ¶ 37. For example, Class Members allege that they spent approximately
4 twelve (12) minutes working off the clock per shift. *Id.* This off-the-clock time included, *inter alia*,
5 interruptions during meal periods, responding to calls and messages while away from work, reviewing
6 Covid literature, and checking out with management after clocking out for the day. *Id.*

7 Defendant claimed that the individualized nature of why this work was performed and the
8 individualized nature of damages presented concerns regarding the manageability of the case and the risk
9 the Court could find these issues prevented certification. *Id.*

10 The estimated damages for this claim were based on an assumption that all Class Members worked
11 off the clock for one hour per week, resulting in a total of \$1,202,907 in exposure for Plaintiff's off-the-
12 clock work claim.

13 *iv. Unreimbursed Business Claims*

14 Plaintiff alleged that Defendant failed to reimburse necessary business expenses, including for
15 use of personal cell phones and work shoes. Gold Decl., ¶ 38. Defendant contended that these expenses
16 were not common to all Class Members and that the costs were not a reimbursable expense. *Id.* Defendant
17 further contended that it had policies and practices of reimbursing employees for necessary business
18 expenses. *Id.*

19 Accordingly, Plaintiff used a reasonable estimate of \$30 per month in unreimbursed business
20 expenses, resulting in \$278,190 in potential exposure for this claim.

21 *v. Derivative Claims*

22 As with all derivative claims, success depends on the success of the underlying claims. *Id.*, ¶ 39.
23 Here, Plaintiff's claims for inaccurate wage statements and failure to pay all wages due upon termination
24 would only succeed if the underlying claims for failure to pay wages for off-the-clock work, failure to
25 pay overtime, and failure to pay premiums for meal and rest periods not lawfully provided were
26 successful. *Id.* Therefore, these claims were subject to the same risks of failure as discussed above. *Id.*

27 Also, even if Plaintiff prevailed on his underlying claims, he would still be required to demonstrate
28 that Defendant's violations of California Labor Code section 203 were *willful* violations. *See e.g. Choate*

1 *v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith
2 belief that wages are not owed may negate a finding of willfulness”). Wage statement claims have also
3 seen varying treatment at the appellate level because such claims have an element of discretion attached
4 to them rather than a pure calculation of damages after liability is proven. *Jaimez v. DAIOHS USA, Inc.*,
5 181 Cal.App.4th 1286 (2010); *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly,
6 these derivative claims, which comprised a substantial portion of Defendant’s estimated liability, were
7 uncertain. *See id.*

8 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
9 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
10 proposition. Gold Decl., ¶ 40. In order to prove liability and damages, Class Counsel will need to request
11 and analyze thousands of pages of documents, obtain the Class Members’ contact information, contact
12 them, and obtain their declarations at great expense. *Id.* Obtaining the cooperation of current employees
13 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
14 employer. *Id.* On the other hand, Defendant would likely be able to obtain the cooperation of its
15 employees. *Id.* Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would
16 substantially delay any recovery by the Class. *Id.*

17 Class Counsel further recognized that Defendant secured releases from many of the Class
18 Members and would continue to do so if the case did not settle, which, if upheld, could serve to resolve
19 all liability in this matter for a fraction of the amount for which the case ultimately settled. *Id.*, ¶ 41.

20 Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability
21 to obtain class certification, thereafter prove the underlying violations, and the cost and delay in
22 recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability by
23 70% to \$2,492,002.80. *Id.*, ¶ 42. The merits-based risk factors further reduced Defendant’s estimated
24 liability by an additional 40%. *Id.* This resulted in an adjusted estimated liability of \$1,495,201.68. *Id.*
25 In light thereof, the settlement amount of \$949,285 is significant settlement. *Id.*

26 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
27 liability Defendant could face from this claim as part of the global resolution. Gold Decl., ¶ 43. Existing
28 case law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage

1 claims. *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) (“Plaintiff’s
2 claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff’s other claims
3 fail as a matter of law, so does her PAGA claim”). Class Counsel anticipated that even if successful on
4 the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour
5 violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would
6 argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in
7 penalties. Gold Decl., ¶ 43. Class Counsel also anticipated Defendant would argue that it made a good
8 faith attempt to comply with its legal obligations and that the violations per pay period were low,
9 warranting an additional reduction in civil penalties. *Id.* Finally, Class Counsel was also mindful of the
10 fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to
11 facilitate enforcement of California’s labor laws by financing state activities and educating and deterring
12 non-compliance. *Id.*, ¶ 43.

13 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
14 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
15 Settlement, and to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement
16 Amount towards the PAGA claim, which represents approximately 5.27% of the Gross Settlement
17 Amount. *Id.*, ¶ 44. This percentage of the settlement is well within the range of wage and hour settlements
18 regularly approved in both state and federal court for cases that include both a class and PAGA action.
19 *Id.* Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims,
20 and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved
21 as reasonable by courts. *Id.* Moreover, the overall relief obtained by the Settlement is significant, not only
22 from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
23 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
24 compliance by the employer. *Id.*

25 The Settlement is therefore in the best interest of the Class Members, the Aggrieved Employees,
26 and the State of California and is within the accepted range of recoveries for this type of litigation given
27 the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of
28 further litigation. *Id.*, ¶ 45.

1 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
3 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
4 community of interest in the question of law or fact affecting the parties to be represented; and (3)
5 certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class action
6 is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that the Action, which
7 is based upon Defendant's wage and hour policies and practices, satisfies the class certification
8 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiff's
9 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

10 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**
11 **Impracticable**

12 Whether an ascertainable class exists turns on three factors: (1) the class definition; (2) the size
13 of the class; and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d
14 862, 873 (1983). In this case, all three considerations favor class certification. The Class is defined as
15 "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State
16 of California at any time during the Class Period." Settlement Agreement, ¶ 6(b). This provides a clear
17 and definite scope for the proposed class.

18 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
19 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v. City*
20 *of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard*
21 *v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of 291 individuals meets
22 the numerosity requirement. Gold Decl., ¶ 15.

23 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
24 can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
25 (1967). The existence of an ascertainable class in this case can be established through Defendant's payroll
26 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the
27 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
28 605, 617 (1987).

1 **B. The Class Shares a Well-Defined Community of Interest**

2 The community of interest requirement embodies three factors: (1) predominant questions of law
3 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
4 who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Here, all three requirements are
5 satisfied.

6 The commonality criterion requires the existence of common question of law or fact and is
7 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What
8 is required is that a common question of fact or law exists which predominates over issues unique to
9 individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
10 from employment—is not a bar to class certification as long as they do not render class litigation
11 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*
12 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

13 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
14 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
15 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
16 actually worked. *Id.*, ¶¶ 33-39. These policies and practices meant that Defendant allegedly failed to pay
17 minimum and overtime wages, and other related claims. *See id.* Plaintiff alleges that Defendant’s policies
18 and practices were uniform as to all Class Members. *See id.* Thus, class treatment is appropriate.

19 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
20 identical to the other class members. Rather, the test of typicality for a class representative is whether
21 other members have the same or similar injury, whether the action is based on conduct which is not
22 unique to the named plaintiff, and whether other class members have been injured by the same course of
23 conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement
24 for a class representative refers to the nature of the claim or defense of the representative, and not to the
25 specific facts from which it arose or the relief sought. *See id.*

26 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
27 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
28 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business

practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. Gold Decl., ¶¶ 2-9; 49. Moreover, Plaintiff will vigorously, adequately, and fairly represent the interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the interests of the Class and understood that he must take steps to adequately represent the Class and their interests. Emery Decl., ¶ 10. Because Plaintiff’s claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation under the facts and circumstances present here.

VII. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948

(9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation, including his own research, reviewing documents, and extensive discussions with Class Counsel. Emery Decl., ¶¶ 3-5. Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests a Class Representative Incentive Payment of Seven Thousand Five Dollars and Zero Cents (\$7,500.00) to Plaintiff be preliminarily approved by the Court. Gold Decl., ¶ 46; Emery Decl., ¶ 12.

VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Here, the requested attorneys’ fees of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00) is disclosed to Class Members in the proposed Class Notice. Settlement Agreement, Ex. A. The requested fee is common in the legal marketplace and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel’s request for the reimbursement of litigation costs and expenses not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00). Gold Decl., ¶¶ 47-48.

IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. Settlement Agreement, Ex. A. The Class Notice will include information regarding the nature of the

1 Action, a summary of the terms of the Settlement, the Class definition, information on how to object to
2 and/or opt-out of the Class Settlement and to dispute Credited Workweeks, and the date of the Final
3 Approval Hearing. *Id.* The Class Notice will list each Class Member's total workweeks and their
4 estimated Class Member Payment and each Aggrieved Employee's total workweeks and their estimated
5 PAGA Settlement Payment. *Id.*

6 Within fifteen (15) calendar days after entry of the preliminary approval order, Defendant will
7 provide a Class List to the Settlement Administrator containing the following information for each Class
8 Member: (1) full name; (2) last known address; (3) Social Security Number or Individual Taxpayer
9 Identification Number; (4) dates worked for the Defendant during the Class Period; (5) last known
10 telephone number; (6) names and amounts paid to each Class Member in connection with any prior
11 settlement efforts obtained in connection to the Actions; and (7) the number of workweeks worked during
12 the Class Period and PAGA Period (or information allowing the Settlement Administrator to calculate
13 same). Settlement Agreement, ¶¶ 1.6, 5.3(a). Within five (5) business days after receiving the Class List,
14 the Settlement Administrator will perform a search based on the National Change of Address Database
15 and an Accurint (or substantially similar) skip trace service for information to update and correct for any
16 known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form
17 attached as Exhibit A to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using
18 the most current, known mailing addresses identified by the Settlement Administrator. *Id.*, ¶ 5.3(a). The
19 Parties have agreed to use ILYM Group, Inc. as the Settlement Administrator. Gold Decl., ¶ 51;
20 Settlement Agreement, ¶ 5.2.

21 In determining whether to approve a settlement of a class action, a trial court has virtually
22 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
23 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
24 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
25 would result in a higher likelihood of actual notice. Gold Decl., ¶ 52. The original source of the mailing
26 addresses is from Class Members, who provided the information to Defendant. *Id.*

27 Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice
28 by the Settlement Administrator to submit a Request for Exclusion, written objection, and/or Credited

1 Workweeks dispute (“Response Deadline”). Settlement Agreement, ¶ 1.37.

2 Any Class Notice returned as undeliverable to the Settlement Administrator will promptly be re-
3 mailed to any available forwarding address(es), if provided, or to an updated address obtained from a
4 skip-trace search if no forwarding address is provided. *Id.*, ¶ 5.5(a). The Settlement Administrator shall
5 also send with any re-mailed notice a brief letter stating that the recipient of the re-mailed Notice has
6 until the original deadline set forth on the Notice, or ten (10) calendar days after the re-mailing of the
7 Notice (whichever is later), to submit a Request for Exclusion or an objection to the Settlement, or to
8 dispute the number of Credited Workweeks credited to them. *Id.*, ¶ 5.5(a).

9 Class Members will have an opportunity to dispute the number of Credited Workweeks to which
10 the Class Member has been credited, as reflected in their respective Class Notices, by submitting a timely
11 and valid letter to the Settlement Administrator, by mail, on or before the Response Deadline. *Id.*, ¶
12 5.10(a). A Credited Workweeks dispute must: (i) contain the case name and number of one or both of the
13 Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the
14 full name, signature, address, telephone number, and last four digits of the Social Security number or
15 Employee Identification Number of the disputing Class Member; (iii) contain a statement indicating that
16 the Class Member seeks to dispute the number of Credited Workweeks credited to them, the time
17 period(s) they worked for Defendant in an hourly paid or non-exempt position in California during the
18 Class Period and/or PAGA Period, and the number of Credited Workweeks that they contend should be
19 credited to them; (iv) contain documentation and/or other facts supporting the Class Member’s position;
20 and (iv) be postmarked no later than the Response Deadline. Defendant will review its records and
21 provide information to the Settlement Administrator in response to any such disputes. *Id.*, ¶ 5.10(a).

22 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
23 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, on or before the Response
24 Deadline. *Id.*, ¶¶ 1.38 and 5.7. A Request for Exclusion must: (i) contain the case name and number of
25 one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839);
26 (ii) contain the Class Members’ full name, signature, address, telephone number, and last four (4) digits
27 of the Class Members’ Social Security number or Employee Identification Number; (iii) contain a
28 statement that the Class Member wishes to be excluded from the Class Settlement; and (iv) be postmarked

no later than the Exclusion Deadline. *Id.*, ¶ 5.7. Notwithstanding the above, all Aggrieved Employees will be bound by the PAGA Settlement and will be issued their PAGA Settlement Payment, irrespective of whether they submit a Request for Exclusion as to the Class Action. *Id.*, ¶ 5.7.

To object to the Class Settlement, a Participating Class Member must submit a timely and complete written objection to the Settlement Administrator, by mail, on or before the Response Deadline. *Id.*, ¶ 5.8. An objector must: (i) mail a written objection in accordance with the terms of this Paragraph; or (ii) appear (in person or through an attorney) and object at the Final Approval Hearing. The Participating Class Member's written objection must: (i) contain the case name and number of one or both of the Actions (*Emery v. Santa Cruz Bicycles, LLC*, Case Nos. 24CV00244 and 24CV00839); (ii) contain the Participating Class Members' full name, signature, address, telephone number, and last four (4) digits of the Participating Class Member's Social Security number or Employee Identification Number; (iii) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iv) be postmarked no later than the Response Deadline. *Id.*, ¶ 5.8. Participating Class Members, individually or through counsel, may also present any objection(s) orally at the Final Approval Hearing, regardless of whether they have submitted a notice of objection. *See* Class Notice, Ex. A to Settlement Agreement.

X. SCHEDULE FOR COMPLETION OF ITEMS PRIOR TO FINAL APPROVAL HEARING

If the Court enters the Order Granting Preliminary Approval of Class Action and PAGA Settlement on October 7, 2024, which is the date of the hearing on Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, then the following schedule would be in place for all items that must be completed before the final approval hearing:

Event	Estimated Completion Date Per Settlement Agreement
Defendant to Provide Class List to Settlement Administrator	October 22, 2024 -Within 15 calendar days of Preliminary Approval. Gold Decl., Ex. 2, ¶ 5.3(a).
Settlement Administrator to Mail Class Notice	October 29, 2024 - Within 5 business days of Settlement Administrator Receiving the Class List. Gold Decl., Ex. 2, ¶ 5.3(a).

Response Deadline	December 13, 2024- 45 calendar days of the Class Notice Mailing. Gold Decl., Ex. 2, ¶ 1.37.
Response Deadline, if Class Notice is Remailed	December 13, 2024 or 10 calendar days after the re-mailing of the Class Notice, whichever is later. Gold Decl., Ex. 2, ¶ 5.5.
Final Approval Hearing	On or after February 1, 2025.

XI. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: September 12, 2024

BLACKSTONE LAW, APC

By: 
 Jonathan M. Genish
 Karen I. Gold
 Ashley H. Cruz
 Marissa A. Mayhood

*Attorneys for Plaintiff TYLER EMERY, individually
 and on behalf of others similarly situated*

EXHIBIT 3

LAW AND MOTION TENTATIVE RULINGS
DATE: OCTOBER 7, 2024 TIME: 8:30 A.M.

TENTATIVE RULINGS ARE NOT POSTED IN UNLAWFUL DETAINER CASES

No. 24CV00244

EMERY v. SANTA CRUZ BICYLCES LLC

**(UNOPPOSED) MOTION FOR PRELIMINARY APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

The motion is granted.

The court finds that the settlement falls within a range of reasonableness and is presumptively valid; appears to be a product of serious, informed and non-collusive negotiations; and has no obvious deficiencies. The court grants preliminary approval of the settlement; conditionally certifies the class; approves the class notice as to form and content; and adopts the Proposed Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement submitted by class counsel.

Counsel should appear on Zoom to set a fairness hearing on the question of whether the proposed class action settlement, class counsel's fees and expenses, the class representative's enhancement award, and the administrator's fees and costs should be finally approved as fair, reasonable and adequate as to the members of the settlement class.

Notice to prevailing parties: Local Rule 2.10.01 requires you to submit a proposed formal order incorporating, verbatim, the language of any tentative ruling – or attaching and incorporating the tentative by reference - or an order consistent with the announced ruling of the Court, in accordance with California Rule of Court 3.1312. **Such proposed order is required even if the prevailing party submitted a proposed order prior to the hearing** (unless the tentative is simply to “grant”). Failure to comply with Local Rule 2.10.01 may result in the imposition of sanctions following an order to show cause hearing, if a proposed order is not timely filed.



Superior Court of California, County of Santa Cruz MINUTE ORDER

TYLER EMERY

24CV00244

vs

SANTA CRUZ BICYCLES, LLC

Heard By: Cogliati, Syda Kosofsky
Courtroom Clerk: Dajah de los Santos
Courtroom Reporter: No Reporter
Court Interpreter:

Santa Cruz Department 5
Predisposition Hearing
10/07/2024
8:30 AM - 9:30 AM

Parties Present:

Cruz, Ashley	Attorney
Luftman, Amanda	Attorney

This is the time regularly set for Motion for Preliminary Approval of Class and PAGA Action Settlement.

The Court has reviewed the motion and opposition.
The Court advises of the tentative ruling posted on the Court's website.

The Court makes the following ruling:
The Court adopts its tentative ruling.
The motion is granted.

The Court sets a final Approval of Class Action and Vacates the Further Case Management.

- Remote Appearance by Parties; Counsel for the Plaintiff and Defendant

Future Hearings:

February 03, 2025 8:30 AM Predisposition Hearing
Cogliati, Syda Kosofsky
Santa Cruz Department 5

To appear remotely at your hearing visit our court website

<https://www.santacruz.courts.ca.gov/online-services/participating-remotely-zoom>

EXHIBIT 4

Date	Type of Expense	Description of Expense	Amount
1/10/2024	Mailing	Records Request	8.53
1/10/2024	Mailing	Records Request	8.53
1/10/2024	Mailing	Records Request	8.53
1/16/2024	Mailing	PAGA Letter to Agent (Glendale)	\$8.53
1/16/2024	Mailing	PAGA Letter to Agent (Houston)	\$8.53
1/16/2024	Mailing	PAGA Letter to Agent	\$8.53
1/29/2024	Filing	Steno: Complaint Packet	\$1,997.20
2/12/2024	Filing	Steno: Personal Service	\$194.45
3/25/2024	Filing	Steno: Complaint Packet	\$647.20
4/4/2024	Service	Steno - Personal Service	\$195.45
5/14/2024	Filing	Steno: Joint CMC Statement	\$59.95
6/18/2024	Filing	Steno: Notice of Related Case	\$59.95
6/19/2024	Filing	Steno - Notice of Related Case	\$59.95
6/19/2024	Mailing	Mailing Cost- Haines Law Group	\$5.04
6/19/2024	Mediation	Check to Haines Law Group	\$7,500.00
7/9/2024	Filing	Steno: Joint CMC Statement	\$99.95
7/17/2024	Filing	Steno - Research; Order after Hearing	\$99.05
7/27/2024	Filing	Steno: Notice of Settlement and Order	\$86.95
7/29/2024	Other	Payment to Berger Consulting Group	\$10,480.00
9/18/2024	Filing	Steno: Motion; Declaration; Proposed Order	\$180.95
9/25/2024	Filing	Steno: Joint CMC	\$59.95
10/7/2024	Filing	Steno: Notice of Remote Appearance	\$59.95
12/31/2024	Filing	Steno: Joint Stip to Continue Hearing on MFA	\$86.95
	Filing	Future Cost: Filing of Motion for Final Approval	\$140.95
Total:			\$22,039.48