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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

WILLIAM R. R. LITTLE, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. STARVISTA, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24-CIV-00279 CLASS ACTION Assigned for All Purposes To: Hon. Nicole S. Healy Dept.: 28 **DECLARATION OF ENOCH J. KIM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: March 26, 2025 Time: 2:00 p.m. Dept.: 28 Original Complaint Filed: January 16, 2024 First Amended Complaint Filed: March 21, 2024 Trial Date: None Set.

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.LAW, INC. and counsel for Plaintiff William R. R. Little ("Plaintiff"), on behalf of himself and all other similarly situated employees of Defendant StarVista ("Defendant") (Plaintiff and Defendant collectively referred to herein as "the Parties").

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") is attached hereto as Exhibit 1.

Procedural History

3. On January 16, 2024, Plaintiff William R. R. Little commenced a Class Action by filing a Complaint alleging fourteen causes of action against Defendant for (1) Failure to Pay Minimum Wages and for All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Pay Reporting Time Pay under 8 CCR § 11050(5); (6) Failure to Provide One Day's Rest from Seven under Labor Code §§ 551 and 552; (7) Violation of Labor Code § 226(a); (8) Violation of Labor Code § 221; (9) Violation of Labor Code § 204; (10) Violation of Labor Code § 203; (11) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (12) Failure to Produce Requested Records, Labor Code §§ 226 and 1198; (13) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; (14) Violation of Business & Professions Code § 17200 *et seq*. (the "Action"). Plaintiff gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on January 16, 2024 (LWDA-CM-1005126-24). On March 21, 2024, after the 65-day statutory period had passed, Plaintiff filed his First Amended Complaint ("Operative Complaint"), which added claims for penalties under PAGA, Labor Code §2698.

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4. Shortly after initiating the Action, the Parties agreed to explore early resolution via mediation and engage in informal discovery prior to mediation.

<u>Plaintiff's Claims And Defendant's Denials</u>

5. Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to provide sick pay, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA.

6. Specifically, Plaintiff alleges Defendant required Plaintiff and Class Members to record their scheduled hours rather than their actual hours worked in an online employee portal and paid Plaintiff and Class Members only for their scheduled hours. As a result, Plaintiff alleges that Plaintiff and Class Members had to work off the clock, including responding to communications from management, conducting client intakes, and performing other pre and post-shift job duties. Plaintiff further alleges that Defendant maintained an unlawful policy of rounding employee time punches to the nearest quarter hour, which was not neutral as applied and had a clear net-negative impact in reducing employee work hours and compensation. Plaintiff also alleges that Defendant failed to compensate Plaintiff and Class Members for travel time between Defendant's facilities.

7. Plaintiff alleges that Defendant instructed Plaintiff and Class Members to record any hours exceeding twelve in a day on the time record for the following day in order to avoid paying double-time rates to Plaintiff and Class Members.

8. Plaintiff also alleges that Defendant failed to provide proper and lawful meal periods to Plaintiff and Class Members and required them to be "on duty" and remain on Defendant's premises during meal periods by erroneously relying on a meal period exemption under the Labor Code and relevant wage orders which exempts employees who work with children under 18 years old or those working in 24-hour residential care facilities for the elderly, blind, or developmentally disabled from receiving proper meal periods. Plaintiff alleges that the meal period exemption does not apply to Plaintiff and Class Members and that Plaintiff and Class Members were entitled to, but did not receive, duty-free meal periods of at least 30 minutes.

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9. Plaintiff also alleges Defendant's uniformly applied policies and practices resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and Class Members worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. Even on the occasions when Defendant authorized and permitted Plaintiff and Class Members to take a first rest break, Plaintiff alleges that they were not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirements that they could not leave the facilities.

10. Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use their cellular phones for work, for which they were not reimbursed. Finally, Plaintiff alleges that Defendant failed to provide all required paid sick days and COVID-19 supplemental sick leave to Plaintiff and Class Members.

11. Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein.

Investigation

12. Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers

provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

13. Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement.

Settlement Efforts

14. On August 21, 2024, the Parties participated in an all-day mediation with Louis Marlin, a respected and highly experienced mediator in wage and hour class actions and were able to reach an agreement on general settlement terms. During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both parties, as well as the law and how it applied to the facts of this case. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together on a long form settlement agreement following mediation, which resulted in the Settlement Agreement before the Court for approval.

15. Based on their independent investigations and evaluations, Class Counsel believes that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. Class Counsel is also of the opinion that the total consideration and payment outlined in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims, and Defendant's financial condition which would restrict its ability to pay any settlement or judgment.

Summary of the Settlement

16. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay

$425,000.00 (Four Hundred Twenty-Five Thousand Dollars with Zero Cents) ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Exhibit 1, Settlement Agreement, ¶ 3.1). The Settlement Agreement defines the "Class" as all persons employed by Defendant in California as non-exempt hourly employees who worked for Defendant during the Class Period." (Exhibit 1, Settlement Agreement, ¶ 1.5) The Class Period is January 16, 2020 through October 20, 2024. (Exhibit 1, Settlement Agreement, ¶ 1.13). The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount less the following payments in the amounts approved by the Court: PAGA Penalties, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. (Exhibit 1, Settlement Agreement, ¶ 1.28). The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id*). These amounts are detailed as follows:

- Up to thirty-five (35%) of the GSA, that is up to $148,750.00, as a Class Counsel Fees Payment and a Class Counsel Litigation Expenses Payment for actual costs, not to exceed $20,000.00 (Exhibit 1, Settlement Agreement, ¶ 3.4.2);
- Up to $10,000.00 to Plaintiff as a Class Representative Service Payment for service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.4.1);
- Up to $16,000.00 to the Settlement Administrator for its fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.4.3);
- $30,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees ($22,500.00) and 75% allocated to the LWDA ($7,500.00) will be paid to the LWDA ("LWDA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.4.5).

17. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $200,250.00. Each Class Member's share of the Net Settlement Amount will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Exhibit 1, Settlement Agreement, ¶ 1.24). For the 402 Class Members (if no exclusions), the average gross individual class payment share, using a straight average, is $498.13. If the Court approves a lesser amount for any of the above requested allocations from the

Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Exhibit 1, Settlement Agreement, ¶¶ 3.4.1, 3.4.2, 3.4.3, 3.4.5.2).

18. Not later than twenty (20) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members in no event later than 14 (fourteen) days after receiving the Class Data via first-class United States Postal Service ("USPS") mail. (Exhibit 1, Settlement Agreement, ¶ 7.4.2). The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. (Exhibit A, Class Notice). Class Members will have forty-five (45) days from the mailing of the Class Notice (plus an additional 14 days if they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶¶ 7.6, 7.7.2).

19. Under the terms of the Settlement, the Gross Settlement Amount will be funded by Defendant to the Administrator in two (2) equal installments of $212,500 each. (Id., Exhibit 1, Settlement Agreement, ¶ 3.2). The first payment is within fourteen (14) days after Final Approval and Judgment, or the date any appeal period runs if there is an objector, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur ("First Payment"). (Id.) The second payment must be made one year from the first payment ("Second Payment"). The installment plan outlined in the Settlement Agreement was crucial for the Parties to reach a settlement, particularly since Defendant is a non-profit organization and its financial circumstances made such an arrangement essential to move forward with the settlement and help avoid unnecessary costs and expenses associated with prolonged litigation and trial.

Certification for Settlement Purposes Only is Appropriate

20. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to the conditional certification of the class for settlement purposes only.

Defendant does not concede that certification is appropriate outside of this Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not become effective. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

21. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all current and former non-exempt, hourly employees of Defendant employed in California during the Class Period (January 16, 2020 through October 20, 2024). Defendant has identified 402 Class Members based on a review of its payroll and personnel records. Thus, there is numerosity and ascertainability.

22. Well-Defined Community of Interest. Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to provide sick pay, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. Plaintiff contends Defendant's practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members.

23. Typicality. The class representatives' claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative Class Members and if their claims rest on the same legal theories. Here, Plaintiff alleges that his claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff and Class Members were employed by Defendant during the

Class Period and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. Thus, the typicality requirement is satisfied.

24. Adequacy. Plaintiff's interests are aligned with those of the Class Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and effectuating a settlement. Furthermore, as set forth below, Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously represented the interests of the class in litigating this case and have no conflicts of interest. Accordingly, the adequacy requirement is satisfied.

25. Predominance and Superiority. Plaintiff contends that individualized issues do not predominate over the issues of law and fact that are common to the Class as a whole. As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members.

26. Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. Although the alleged injury resulting from Defendant's policies and practices are allegedly real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually this would result in over 402 individual actions against Defendant. Here, the alternative methods of resolution are individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery.

<u>The Settlement is Fair, Adequate, and Reasonable</u>

27. In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "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." *Id.* The Settlement satisfies all of these requirements.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.

28. The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

29. As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses.

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C. Strength of Plaintiff's Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

30. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years, which would have further weakened Defendant's financial condition and significantly restricted its ability to pay any judgment. Even if Plaintiff were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

D. The Risk of Maintaining Class Action Status Through Trial.

31. Plaintiff had not yet filed his motion for class certification, and as such, the extent to which Plaintiff proposed classes were certifiable is somewhat speculative. Absent a settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class, resulting in less overall recovery.

32. Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and that uncertainty.

E. The Presence of a Governmental Participant.

33. Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2).

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.

34. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

35. The strength of the Plaintiff's case in light of the settlement amount is deemed by courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage statements, failed to pay all wages upon termination, failed to pay all sick pay owed, and failed to reimburse for business expenses, all in violation of California law. Plaintiff seeks related violations of California's Business & Professions Code, penalties pursuant to Labor Code § 2699 *et seq*. Summary calculations for estimated liability for each of these claims follow.

<u>Failure to Pay Regular Wages:</u>

36. Plaintiff alleged that Defendant failed to pay all wages owed, including by requiring off-the-clock work and by California Labor Code § 1197, which prohibits "Pay of Less Than Minimum Wage" and states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Plaintiff alleges Defendant required Plaintiff and Class Members to record their scheduled hours rather than their actual hours worked in an online employee portal and paid Plaintiff and Class Members only for their scheduled hours. As a result, Plaintiff alleges that Plaintiff and Class Members had to work off the clock, including responding to communications from management, conducting client intakes, and performing other pre and post-shift job duties. Plaintiff further alleges that Defendant maintained an unlawful policy of rounding employee time punches

to the nearest quarter hour, which was not neutral as applied and had a clear net-negative impact in reducing employee work hours and compensation. Plaintiff also alleges that Defendant failed to compensate Plaintiff and Class Members for travel time between Defendant's facilities. Defendant disagreed with Plaintiff's arguments and argued it did not require off-the-clock work, lawfully rounded time, and correctly calculated and paid overtime wages under California law. Defendant further argued that these claims were not suitable for class treatment given the individualized issues they raise. Given the difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages based on this theory.

37. Based on the above, Plaintiff estimated Defendant's exposure on unpaid wages claims to be approximately $66,078.88 (2,296 off the clock hours (assuming 2 minutes per shift) x the average regular rate of pay for the Class).

Meal Periods and Rest Breaks:

38. Plaintiff argued that Defendant had a common practice and policy of denying compliant meal periods. Specifically, Plaintiff and Class Members were regularly required to work through their meal periods and were not provided the opportunity to take full, uninterrupted thirty (30) minute meal periods in accordance with California law. For each meal period missed, of less than 30 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a complete and timely meal period, an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay." To comply with these laws, every employer must keep, for each employee, accurate time records showing when the employee begins and ends each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3).

39. For each meal period allegedly missed, of less than 30 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a complete and timely meal period, an employer must pay the employee an additional one hour of compensation. Labor Code §226.7. This additional hour of compensation is referred to as "premium pay." To comply with these laws, every employer must keep, for each employee, accurate time records showing when the employee begins and ends each work period and takes his or her meal periods.

40. Defendant disagreed with Plaintiff's contentions regarding meal breaks. Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time.

41. Given Defendant's contentions, Plaintiff conservatively estimated Defendant's maximum total exposure on the meal break claim at approximately **$750,639.96** (26,082 total unique meal break violations x average hourly pay per year).

42. Rest Breaks: Plaintiff contended that Defendant did not provide Class Members with timely paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contends that Defendant had a per se unlawful meal break and rest break policy that required that employees remain on the premises for any breaks.

43. Defendant maintained that it provided a reasonable opportunity for Class Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded. As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest break claim. Class Counsel conservatively estimated Defendant's maximum total exposure on the rest break claim at approximately $**750,639.96** (26,082 total rest break violations x average hourly pay per year +). Owing to the arguments above and the fact that the recording of rest periods is not required, this claim was substantially discounted and was not a major driver of exposure in this case.

Inaccurate Wage Statement Violations:

44. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover $50 for initial violations for inaccurate wage statements and $100 for subsequent violations, up to a maximum of $4,000 per employee. Plaintiff alleged Defendant issued wage statements to Plaintiffs and the Class Members that did not accurately list all hours worked by omitting off-the-clock work and by unlawful rounding and inaccurately listing applicable hourly rates.

45. Defendant challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative claims. Defendant also argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.,* Labor

Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer").

46. Plaintiff's expert estimated Defendant's maximum total exposure on the section 226 claim at approximately **$589,150.00** (($50 for initial violations x 205 employees from relevant period) + ($100 for subsequent violations x 5,994 estimated number of pay periods after subtracting the initial violations during the relevant period)). The Parties discussed these issues, and in light of these and other considerations, Class Counsel factored in a reduction of liability and damages for this cause of action.

<u>Failure to Pay Final Wages at Termination or Separation:</u>

47. In allegedly failing to pay Class Members their minimum wages, overtime wages, and premium pay for deficiently provided meal periods and rest breaks, all discussed above, Plaintiff alleged that Defendant willfully failed to pay Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

48. Section 203 further provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages will continue as a penalty until paid for a period of up to 30 days from the date they were due. Because Class Members stopped working for Defendant but were allegedly not paid their full compensation for the reasons discussed above, Class Members did not receive all wages due upon termination of employment.

49. Defendant challenged this claim under Labor Code § 203 with several arguments, including that under Labor Code § 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states: "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Defendant argued that their good faith disputes and lack of willfulness would excuse its violations. Defendant maintained that because they had viable defenses in both law and fact, such penalties were subject to a three-year limitations

period under Labor Code § 203(b). Defendant also argued that there is no liability under Labor Code § 203 for violations of meal and rest break requirements alone.

50. Plaintiff's expert estimated Defendant's maximum total exposure on the section 203 claim at approximately **$1,143,832.32** (192 terminated employees during the relevant period x 30 days x average hourly rate per year x 6.9 hours per work day). Given the foregoing arguments, this claim had to be steeply discounted.

PAGA Penalties:

51. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq*., allows Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five percent (75%) of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five percent (25%) allocated to the affected employees. The limitations period for all penalties is one year prior to the filing of the complaint.

52. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant contested Plaintiffs' claim for PAGA penalties.

53. PAGA penalties are also derivative of each and every other claim, and Defendant argued the PAGA claims would be subject to the same defenses as the underlying claims, and as well as

additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendant asserted that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209.

54. Plaintiff's expert estimated Defendant's maximum total exposure on PAGA claims at approximately **$599,400.00** (5,994 PAGA Pay Periods x $100). However, Class Counsel also estimated any PAGA recovery would be substantially reduced and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court's power to award "a lesser amount than the maximum civil liability." The PAGA allocation agreed upon by the Parties therefore was **<u>$30,000.00</u>**, subject to the Court's final approval. 75% of that amount ($22,500.00) will be paid to the LWDA out of the Gross Settlement Amount, and the remaining 25% ($7,500.00) will remain in the Net Settlement Fund for distribution to the Aggrieved Employees.

<u>Unfair Business Practices</u>

55. Plaintiff pled this cause of action to augment their other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

<u>Summary</u>

56. The foregoing discussion establishes the adequacy of the Settlement amount in light of the merits of Plaintiff's case and establishes the fairness of the class-action settlement in the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendant's legal and factual arguments that worked to detract from the strength of Plaintiff's case.

57. Class Counsel applied reasonable and justified discounts, considering the facts and legal contexts outlined above. These substantial discounts were necessary, especially considering that Defendant is a non-profit organization, and their financial condition was a critical factor in the decision-making process for the Settlement and payment plan. In addition, Defendant argued that

said employees were dissimilarly situated co-workers, making the certification of all Class Members less than a certainty. This Settlement, like most others, was the product of compromise. As addressed above and by adding up numbers, Plaintiff estimated that Defendant faced approximately $3,899,741.12 in total liability exposure on Plaintiffs' main claims. The Gross Settlement Amount of $425,000.00 therefore represents a recovery for the Class Members of approximately 10.89% of the total maximum liability exposure Plaintiff estimated Defendant could face on these class-wide claims. Class Counsel submits that this is an optimal result for the Class in light of all of the factors described above.

Class Representative Service Payment is Fair and Reasonable

58. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. In light of the foregoing, Class Counsel believes that the $10,000.00 incentive award to the Class Representative is fair and reasonable.

Proposed Class Notice Provides Adequate Notice

59. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement as Exhibit A. Under the Settlement, Defendant will deliver the Class Data to the Settlement Administrator in the form of a Microsoft Excel spreadsheet not later than twenty (20) days after the Court grants Preliminary Approval of the Settlement. The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members no event later than 14 (fourteen) days after receiving the Class Data via first-class USPS mail. (Exhibit 1, Settlement Agreement, ¶ 7.4.2). Not later than five (5) calendar days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator will re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. (Exhibit 1, Settlement Agreement, ¶ 7.4.3). This is the best and most practicable way to ensure the greatest possible number of Class

Members will receive the Notice.

60. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. (Exhibit 1, Settlement Agreement, ¶ 7.4.4). It provides for a specific procedure to seek exclusion from the Class, disputing payments and Class data, challenging workweek and pay period data, and lodging objections to the settlement. (Exhibit 1, Settlement Agreement, ¶ 7.4.2). In the Class Notice, Class Members will also receive Class Counsel's contact information so they can speak to attorneys conversant with the legal and factual issues involved in this case, as well as the contact information for the Settlement Administrator. The efforts taken to ensure that Class Members receive the Class Notice and are well informed about the settlement are reasonable and provide the best notice practicable under the facts.

Qualifications and Adequacy of Class Counsel

61. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases, including class actions and PAGA actions on behalf of employees and others who have had their rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs' counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

62. D.Law is well-qualified and has ample experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative Class and aggrieved employees in this action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

63. D.Law has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-

L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara, 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California, Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of

California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743), Virdi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

64. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement department. I was admitted to the California Bar in December 2008. I received my J.D. from Pepperdine University School of Law and B.S. from the University of Southern California. Since graduating from law school, I have dedicated virtually my entire career on the practice of employment law. I have practiced employment law from the plaintiff's side, from the defense side, and from an in-house position. I have significant experience specifically working on wage and hour class actions from the plaintiff's side as well as the defense side, with the majority of my experience coming from the plaintiff's side.

65. The collective experience of the D.Law attorneys in litigating employment wage and hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair and reasonable class and representative action settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the constantly evolving substantive law (state and federal), as well as the procedural law of class and representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the skills and knowledge developed over decades of prosecuting and defending wage and hour class

actions to fairly and adequately represent the interests of the Class Members and aggrieved employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law are well-qualified to act as class counsel and represent the Plaintiff and the putative Class Members and aggrieved employees in this action.

66. We understand the responsibilities owed as counsel to the Settlement Class Members and aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims asserted in this action and have remained committed to dedicating the resources necessary to represent the Settlement Class and vigorously pursue their claims. Based upon my experience and understanding of the claims and defenses in this action, I believe the settlement is fair, adequate, and reasonable for the Class Members and aggrieved employees and all involved, and that the Settlement is well within the range of reasonableness that would permit it to be finally approved. I am not aware of any conflict of interest with Plaintiff or any other Class Member that would interfere with the duties as Class Counsel.

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

Executed this 19th day of February 2024 in Glendale, California

Enoch J. Kim

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

WILLIAM R. R. LITTLE, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. STARVISTA., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 24-CIV-00279 CLASS ACTION *Assigned for all purposes to:* Hon. Nicole S. Healy Dept.: 28 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT** Original Complaint filed: January 16, 2024 First Amended Complaint: March 21, 2024 Trial: None set

This "Class Action and PAGA Settlement Agreement" ("Agreement") is made by and between plaintiff William Little ("Plaintiff") and StarVista ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1. **DEFINITIONS.**

1.1 "Action" means Plaintiff's lawsuits alleging wage and hour violations against Defendant captioned *William R. R. Little v. StarVista*, No. 24-CIV-00279, filed on January 16, 2024, in San Mateo County Superior Court.

1.2 "Administrator" means Apex Class Action administrators ("Apex"), and Apex is the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 "Administration Costs" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid the parties have received from Apex for $16,000.00.

1.4 "Aggrieved Employee" means and includes all individuals who were or have been employed by Defendant in California as non-exempt employees at any time during the PAGA Period (i.e. the period from January 16, 2023, through October 20, 2024).

1.5 "Class" means all persons employed by Defendant in California as non-exempt hourly employees who worked for Defendant during the Class Period (i.e. the period from January 16, 2020, through October 20, 2024).

1.6 "Class Counsel" means Emil Davtyan, David Yeremian, Alvin B. Lindsay, Enoch J. Kim, and Rose Sorial of D.Law, Inc.

1.7 "Class Counsel Fees Payment" means an award of attorneys' fees granted to Class Counsel and paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will request approval from the Court of up to 35% of the GSA, i.e. up to $148,750.00.

1.8 "Class Counsel Litigation Expenses Payment" means the amount allocated from the GSA to Class Counsel for reimbursement of reasonable expenses and costs incurred in the Action, not to exceed $20,000.00. If Class Counsel Litigation Expenses Payment is less than $20,000, the difference will remain in the Net Settlement Fund to be distributed to the Class Members.

1.9 "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, email address, telephone number, Social Security number, hire dates, and termination dates.

1.10 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11 "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the "National Change of Address Database", skip traces, and direct contact by the Administrator with Class Members.

1.12 "Class Notice" means the Court approved notice of settlement and hearing date for Final Approval, with a Spanish translation, to be mailed to Class Members and as attached at Exhibit A and incorporated by reference into this Agreement.

1.13 "Class Period" or "Class Settlement Period" means the period from January 16, 2020, through October 20, 2024.

1.14 "Class Representative" means the named Plaintiff William R.R. Little, in the Action seeking Court approval to serve as a Class Representative.

1.15 "Class Representative Service Payment" or "Enhancement Award" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16 "Court" means the Superior Court of California, County of San Mateo.

1.17 "Defendant" means named Defendant Starvista.

1.18 "Defense Counsel" means Kathleen Carter and Jeffrey R. Gillette of Messner Reeves LLP.

1.19 "Effective Date" means the date by which all of the following have occurred: (a) the Court enters Judgment upon Final Approval; (b) the Judgment is final; and (c) the Gross Settlement Amount has been fully funded in the Qualified Settlement Fund following the final installment payment. The Judgment is final as of the latest of the following occurrences: (a) if no

Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.20 "Final Approval" means the Court's order granting final approval of the Settlement.

1.21 "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.22 "Gross Settlement Amount" or "GSA" means $425,000.00 (Four Hundred Twenty-Five Thousand Dollars with Zero Cents), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 below.

1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28 "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30 “Operative Complaint” means the operative “First Amended Complaint” filed in the Action on March 21, 2024.

1.31 “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendant for at least a portion of one day during the PAGA Period.

1.32 “PAGA Period” means the period from January 16, 2023 through October 20, 2024.

1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.34 “PAGA Notice” means Plaintiff’s January 16, 2024 letter to LWDA and the Defendant providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount ($30,000.00), allocated 25% to the Aggrieved Employees ($7,500.00) and 75% to LWDA ($22,500.00) in settlement of PAGA claims.

1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.

1.37 “Plaintiff” means William R. R. Little, the named plaintiff in the Action.

1.38 “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

1.39 “Release Effective Date” means the date Plaintiff, Class Members, Aggrieved Employees, and Class Counsel effectively release all claims against the Released Parties. For the Participating Class Members and Aggrieved Employees, the Release Effective Date occurs before the Effective Date and is the date the Court enters Judgment, or if there is an objector, the date after any appeal period has passed, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur, and when, alternatively, Defendant has made the First Payment if the Administrator makes a determination that the entirety of the Individual Class Payments and the Individual PAGA Payments can be funded by the First Payment and funding of the same is issued after the First Payment, or, otherwise, after Defendant has made the Second Payment and the Gross Settlement Agreement is fully funded with the Administrator disbursing the GSA in its entirety after the Second Payment.

1.40 "Released Class Claims" means the class claims being released on the Release Effective Date and as described in Paragraph 5.2 below.

1.41 "Released PAGA Claims" means the PAGA claims being released on the Release Effective Date as described in Paragraph 5.3 below.

1.42 "Released Parties" means: Defendant and all of Defendant's former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

1.43 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class portion of the Settlement signed by the Class Member.

1.44 "Response Deadline" means forty-five (45) days after the Administrator mails Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) fax, email, or mail his or her objection to the Settlement. Class Members to whom Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond when the Response Deadline has expired to provide an appropriate response.

1.45 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.46 "Workweek" means any week during which a Class Member worked for Defendant for at least a portion of one day, during the Class Period.

2. **RECITALS.**

2.1 On January 16, 2024, Plaintiff commenced the Action by filing a complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages and for All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Pay Reporting Time Pay under 8 CCR § 11050(5); (6) Failure to Provide One Day's Rest from Seven under Labor Code §§ 551 and 552; (7) Violation of Labor Code § 226(a); (8) Violation of Labor Code § 221; (9) Violation of Labor Code § 204; (10) Violation of Labor Code

§ 203; (11) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (12) Failure to Produce Requested Records, Labor Code §§ 226 and 1198; (13) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; (14) Violation of Business & Professions Code § 17200 *et seq*. Simultaneously, on January 16, 2024, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-1005126-24). On March 21, 2024, after the 65-day statutory period passed, Plaintiff filed his First Amended Complaint (Operative Complaint), which added claims for penalties under PAGA, Labor Code §2698.

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

2.3 On August 21, 2024, the Parties participated in a mediation presided over by mediator Louis Marlin and were able to reach an agreement on general settlement terms. The Parties' agreement was memorialized in an email on August 21, 2024.

2.4 In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including speaking to current and former employees of Defendant regarding Defendant's employment policies and practices. Prior to mediation, Plaintiff also obtained and analyzed a representative sampling of time and payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weakness of the claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk*/*Kullar*").

2.5 The Court has not granted class certification.

2.6 The Parties, Class Counsel and Defense 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.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant will pay $425,000.00 (Four Hundred Twenty-Five Thousand Dollars with Zero Cents) to fully settle, resolve, and extinguish all claims asserted in the Action, including without limitation all claims asserted in the PAGA Notice. The GSA is non-reversionary and does not include employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which Defendant will pay separately.

3.2 Schedule for Payment of the GSA: The GSA shall be funded by Defendant to the Administrator in two (2) equal installments of $212,500 each. The first payment shall be due within fourteen (14) days after Final Approval and Judgment, or the date any appeal period runs if there is an objector, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur ("First Payment"). The second payment shall be made one year from the first payment ("Second Payment"). Distribution of funds to the Participating Class Members and Aggrieved Employees will occur following the First Payment, as the Parties estimate the First Payment will fund the Net Settlement Amount so it can be paid in full to the Participating Class Members through their Individual Class Payments and to the Aggrieved Employees through their Individual PAGA Payments. In the event the Administrator determines that the First Payment will not fund the entirety of the Individual Class Payments and the Individual PAGA Payments, no funding will be issued/paid by the Administrator until the Second Payment. If the Administrator determines the First Payment is sufficient to fund the entirety of the Individual Class Payments and the Individual PAGA Payments, the Administrator will disburse First Payment funds to cover the Individual Class Payments and the Individual PAGA Payments. In that event, any remaining funds from the First Payment and the funds from the Second Payment one year thereafter will be used to pay the remaining GSA allocations, including Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Costs, and the LWDA PAGA Payment. The Administrator will disburse the entire GSA, including after the First Payment and Second

Payment, without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. No part of the GSA will revert to Defendant.

3.3 Cure Period, Interest Clause: If Defendant fails to make any payment of the GSA by the deadlines set forth in Paragraph 3.2 and pursuant to the Administrator's payment timeline, and such failure continues for more than thirty (30) days after written notice from the Administrator of such failure, then the unpaid portion of the GSA due will incur interest at the statutory rate for a judgment for wage under California law. Any such interest accrued will be distributed pro rata to the Participating Class Members or otherwise as the Court directs. Defendants shall have no power over transferred funds, or to alter the schedule set forth in Paragraph 3.2 of this Agreement, absent court order. Any dispute between the Parties as to the meaning and/or application of Paragraph 3.2 will be submitted to the Court. No interest will accrue during the time that any Paragraph 3.2 issue is submitted to and is before the Court.

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

3.4.1 To Plaintiff: A payment for the Class Representative Service Payment to the Class Representative, William R. R. Little, of not more than $10,000 (Ten Thousand Dollars) in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.4.2 To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the GSA, that is up to $148,750.00, and a Class Counsel Litigation Expenses Payment for actual costs, not to exceed $20,000.00 (Twenty Thousand Dollars and Zero Cents). Defendant will not oppose requests for these payments. Plaintiff and/or Class Counsel will file a motion requesting Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 (sixteen) court days prior to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount for distriubution to Participating Class Members. Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion of Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

3.4.3 To the Administrator: An Administration Costs payment not to exceed $16,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Costs are less or the Court approves payment of less than $16,000.00, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to Participating Class Members.

3.4.4 To Each Participating Class Member: An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each individual Participating Class Member's Workweeks.

3.4.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 80%

of each Participating Class Member's Individual Class Payment will be allocated to interest and penalties (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.4.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.

3.4.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $30,000 (Thirty Thousand Dollars) will be paid from the Gross Settlement Amount, with 75% ($22,500.00) allocated to the LWDA PAGA Payment and 25% ($7,500.00) allocated to the Individual PAGA Payments. Aggrieved Employees cannot request exclusion.

3.4.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of $7,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.4.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on data gathered through the August 21, 2024 mediation, it is estimated there were **402** Class Members who collectively worked a total of **37,052** Workweeks from January 16, 2020, through August 21, 2024, and **227** Aggrieved Employees who worked a total of **6,075** PAGA Pay Periods from January 16, 2023 through August 21, 2024.

4.2 Class Data. Not later than twenty (20) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Payments from the Gross Settlement Amount. The monies to be distributed to Participating Class Members (i.e. the Net Settlement Amount) and Aggrieved Employees shall be paid to them by the Administrator within 14 (fourteen) days of the First Payment subject to Paragraph 3.2 and a determination by the Administrator that the entirety of the Individual Class Payments and the Individual PAGA Payments can be fully funded by the First Payment. Otherwise, all funds, including the Individual Class Payments and the Individual PAGA Payments, along with the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, LWDA PAGA Payment, Administration Costs, and Class Representative Service Payment shall be paid out within 14 (fourteen) days of the Second Payment.

4.3.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the Void Date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom the Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all

Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.3.2 The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the Void Date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.3.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **<u>RELEASES OF CLAIMS</u>**. On the Release Effective Date, Plaintiff, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

5.1 <u>Plaintiff's Release</u>. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released Parties from all claims, transactions, or occurrences, that occurred during the Class Period, including all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims under the Fair Employment and Housing Act, California Family Rights Act, and wrongful termination in violation of public policy or any of the claims raised in Plaintiff's individual action entitled *William R. R. Little v. Starvista* (Case No: 24-CIV-02775) ("Individual Action"). Plaintiff's Release also does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 <u>Plaintiff's Waiver of Rights Under California Civil Code Section 1542</u>. For purposes of Plaintiff's Release and excluding Plaintiff's Individual Action, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 <u>Release by Participating Class Members</u>: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from those claims arising out of or related to the allegations set forth in the Operative Complaint that arose during the Class Period, including all statutes on which those claims are based in the Operative Complaint, including claims for: pay for all hours worked/compensation due for services; failure to pay wages; failure to pay minimum wages; failure to pay overtime; premium payments, meal periods; rest periods; failure to pay reporting time pay, failure to provide one day's rest from seven, wage statements; payment of wages during employment; payment of wages at termination; maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; sick pay; COVID-19 sick pay; California sick pay; bonus pay, unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq*., 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq*.; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 (collectively, the "Released Class Claims"). The Released Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties claims premised on: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq*., 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199, 2802 and 2699; pay for all hours worked/compensation due for services; failure to pay wages; failure to pay minimum wages; failure to pay overtime wages; off the clock work; calculation of the regular rate of pay for meal and rest period premium payments; meal periods; rest periods; failure to pay reporting time pay, failure to provide one day's rest from seven; wage statements; payment of wages during employment; payment of wages at termination; maintaining and providing accurate and complete records; failure to reimburse for necessary business expenses; sick pay; COVID-19 sick pay; California sick pay; bonus pay; unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action ("Released PAGA Claims"). The Released PAGA Claims apply to claims arising during the PAGA Period.

5.4 Release Effective Date: As of the Release Effective Date, as defined above, all Participating Class Members shall be enjoined from filing, joining or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or from initiating any other proceedings regarding any of the Released Class Claims identified herein. In addition, upon the Release Effective Date, all eligible Aggrieved Employees shall be enjoined from filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or from initiating any other proceedings to the extent such actions, claims, complaints, or proceedings are based on the Released PAGA Claims released through this Settlement.

6. **MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

6.1 Defendant's Statement of Non-Opposition in Support of Preliminary Approval. Defendant may file a statement of non-opposition in support of preliminary approval to be filed with or after the Motion for Preliminary Approval documents.

6.2 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk*/*Kullar* and a request for approval of the PAGA portion of the Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Preliminary Approval order; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will obtain a prompt hearing date for the Motion for Preliminary Approval, file the Motion for Preliminary Approval no later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the Court, and deliver the Court's Preliminary Approval to the Administrator.

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

7. **SETTLEMENT ADMINISTRATION.**

7.1 Selection of Administrator. The Parties have jointly selected Apex to serve as the Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a "Qualified Settlement Fund" ("QSF") under US Treasury Regulation section 468B-1 for the funding of the GSA. Any interest that accrues on the GSA sums paid into the QSF prior to distribution by the Administrator will become part of the NSA for distribution to Participating Class Members. The QSF will be funded in two separate installments as addressed above.

7.4 Notice to Class Members.

7.4.1 No later than five (5) calendar days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 (fourteen) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notice, the Administrator shall update Class Member addresses using the National Change of Address Database.

7.4.3 Not later than five (5) calendar days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen days (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class portion of the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 (forty-five) days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Class portion of the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 (forty-five) days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and

PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 (forty-five) days after the Administrator's mailing of the Class Notice (plus an additional 14 (fourteen) days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

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

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator's Declaration. Not later than 14 (fourteen) days before the date by which Plaintiff is required to file the Motion for Final Approval, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 (ten) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 (fifteen) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on data gathered through the August 21, 2024 mediation, it is estimated that there are **402** Class Members who collectively worked a total of **37,052** Workweeks from January 16, 2020, through August 21, 2024, and **227** Aggrieved Employees who worked a total of **6,075** PAGA Pay Periods from January 16, 2023 through August 21, 2024. If it is determined that the total number of Workweeks is greater than **40,757** as of Preliminary Approval (i.e. a 10% increase), the GSA will be increased by the same number of percentage points above 10% by which the actual number of Workweeks exceeds **40,757**. . Alternatively, Defendant may elect to shorten the Class Period to stay within the ten percent cushion, i.e., 40,757 Workweeks. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains 35% of the GSA after the upward adjustment required by this provision is implemented.

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Costs incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than twenty (20) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 (sixteen) court days before the calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA portion of the settlement under Labor Code section 2699, subd. (l); a proposed Final Approval; and a proposed Judgment (collectively "Motion for Final Approval").

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of

(i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and Judgment, sharing, on a 50-50 basis, any additional Administration Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment, Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

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

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of mediator Louis Marlin for resolution.

12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.16 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

D.LAW, INC.
David Yeremian
d.yeremian@d.law
Alvin B. Lindsay
a.lindsay@d.law
Enoch J. Kim
e.kim@d.law
Rose Sorial
r.sorial@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

To Defendant:

MESSNER REEVES LLP
Kathleen Carter (SBN 157790)
Jeffrey R. Gillette (SBN 123346)
611 Anton Boulevard, Suite 450
Costa Mesa, California 92626
Telephone: (949) 612-9128
Facsimile: (949) 438-2304
Email: kcarter@messner.com
jgillette@messner.cm

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

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.19 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

12.21 Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties, the Class Members, and the Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED.

By the Parties:

DocuSigned by:

DATED: 2/12/2025 William Little

406D5C19D3A4463...

Plaintiff William R. R. Little

DATED: ____________ ____________________________________

Defendant StarVista

By: ________________________________

Position: ____________________________

Approved by counsel:

DATED: February 12, 2025 D.LAW, INC.

BY: ____________________________________

David Yeremian
Alvin Lindsay
Enoch J. Kim
Rose Sorial
Counsel for Plaintiff William R. R. Little

DATED: February __, 2025 MESSNER REEVES LLP

BY: ____________________________________

Kathleen Carter
Jeffrey R. Gillette
Attorneys for Defendant StarVista

DATED: 2/18/2025

Defendant StarVista

By: Sara Larios Mitchell

Position: Chief Executive Officer

Approved by counsel:

DATED: February __, 2025

D.LAW, INC.

BY: ______________________________

David Yeremian
Alvin Lindsay
Enoch J. Kim
Rose Sorial
Counsel for Plaintiff William R. R. Little

DATED: February 18, 2025

MESSNER REEVES LLP

BY: Jeffrey R. Gillette

Kathleen Carter
Jeffrey R. Gillette
Attorneys for Defendant StarVista

EXHIBIT A

William R. R. Little v. StarVista
San Mateo County Superior Court Case No. 24-CIV-00279 ("Court")

A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT ("Notice")

To: All persons employed by StarVista ("Defendant" or "StarVista") in California as non-exempt hourly employees who worked for Defendant during the Class Period, which is January 16, 2023 through October 20, 2024 (the "Class").

YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS ACTION AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a Settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, after the Court grants final approval of the Settlement. *You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.*
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Settlement Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to participate in the Class portion of the Settlement, you may exclude yourself (opt out) from the Class portion of the Settlement. If you exclude yourself from the Class portion of the Settlement, you will not receive an Individual Class Payment (defined below). This is the only option that allows you to pursue your own Class claims (in your own lawsuit) against Defendant about the legal claims in the Lawsuit. However, even if you exclude yourself from the Class portion of the Settlement, you will still receive your Individual PAGA Payment from the PAGA portion of the Settlement if eligible and be bound by it as further explained below.
OBJECT	Write to the Court if you think the Settlement is not fair or you can appear at a hearing to explain to the Court why you think the Settlement is not fair.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**

- **STARVISTA WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

BACKGROUND ON THE LAWSUIT

1. Why did I get this notice?

You received this notice because StarVista's records identify you as someone who worked for StarVista in California as a non-exempt hourly employee at any time from January 16, 2020 to October 20, 2024, making you a "Class Member" during the "Class Period." The Settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys General Act ("PAGA"). If you are a Class Member, you are also an "Aggrieved Employee" if you worked for Defendant in California as a non-exempt hourly employee at any time from January 16, 2023 to October 20, 2024 ("PAGA Period").

The purpose of this notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court has already preliminarily approved the proposed Settlement and directed that you receive this notice. The Court will hold a final approval hearing (details provided below) to determine whether to finally approve the Settlement.

2. What is this Class and PAGA Lawsuit about?

Plaintiff, William R. R. Little ("Plaintiff" or "Class Representative") initiated this wage and hour class and representative action against Defendant on January 16. 2024. Also, on January 16, 2024, Plaintiff sent a letter to the LWDA and Defendant advising of his PAGA claims ("PAGA Notice"). The First Amended Complaint filed on March 21, 2024 ("Operative Complaint") alleges claims against Defendant for: (1) Failure to Pay Minimum Wages and for All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Pay Reporting Time Pay under 8 CCR § 11050(5); (6) Failure to Provide One Day's Rest from Seven under Labor Code §§ 551 and 552; (7) Violation of Labor Code § 226(a); (8) Violation of Labor Code § 221; (9) Violation of Labor Code § 204; (10) Violation of Labor Code § 203; (11) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (12) Failure to Produce Requested Records, Labor Code §§ 226 and 1198; (13) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; (14) Violation of Business & Professions Code § 17200 *et seq*.; and (15) Penalties under PAGA, Labor Code § 2698 (the "Lawsuit"). Plaintiff's class action and representative claims are on behalf of all current and former non-exempt hourly employees who worked for Defendant in California during the Class Period. Collectively, Plaintiff and Defendant are referred to as the "Parties."

Defendant denies all allegations in the Lawsuit and contends that it has fully complied with the California Labor Code. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated or that this case was suitable for class or representative treatment.

On August 21, 2024, through arms-length negotiations with an experienced wage and hour mediator, Louis Marlin, the Parties settled the Lawsuit ("Settlement") subject to Court approval. The Settlement is memorialized in a "Class Action and PAGA Settlement Agreement" ("Agreement").

3. Why is there a Settlement?

The Court has not decided in favor of Plaintiff or Defendant or made any decision as to whether this case could proceed on a class or representative basis. Instead, with the assistance of an experienced and neutral mediator, the parties successfully negotiated the Settlement to resolve the Lawsuit rather than continue the expensive and time-consuming process of litigation.

Plaintiff and his attorneys strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and Aggrieved Employees.

4. Who are the Attorneys for the Parties?

Counsel for Plaintiff and the Class ("Class Counsel")

Emil Davtyan, Esq.
David Yeremian, Esq.
Alvin Lindsay, Esq.
Enoch J. Kim, Esq.
Rose Sorial, Esq.
D.LAW, INC.
450 North Brand, Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Counsel for Defendant

Kathleen Carter
Jeffrey R. Gillette
MESSNER REEVES LLP
611 Anton Boulevard, Suite 450
Costa Mesa, California 92626
Telephone: (949) 612-9128
Facsimile: (949) 438-2304

THE TERMS OF THE SETTLEMENT

5. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of $425,000.00 (the "Gross Settlement Amount"). From the Gross Settlement Amount, Class Counsel will apply to the Court for attorneys' fees of $148,750.00 and up to $20,000.00 in costs; a payment of $10,000.00 to Plaintiff for his time and efforts to initiate and prosecute the Lawsuit ("Class Representative Service Payment"); $22,500.00 to the California Labor Workforce Development Agency ("LWDA") out of $30,000.00 allocated to PAGA penalties ("PAGA Penalties"); $7,500.00 in Individual PAGA Payments to the Aggrieved Employees based on the number of pay periods worked during the PAGA Period ("PAGA Pay Periods"; and payment not to exceed $16,000.00 to Apex Class Action ("Settlement Administrator") for settlement administration expenses ("Administration Costs"). The exact amount of the attorneys' fees, litigation costs, Class Representative Service Payment, and Administration Costs will be determined by the Court at the Final Approval Hearing. The remaining portion of the Gross Settlement Amount ("Net Settlement Amount") is currently estimated to be approximately **$200,250.00**. The Net Settlement Amount will be apportioned and paid out to Class Members who do not opt out from the Settlement ("Settlement Class Members") as individual payments based on the number of Workweeks worked during the Class Period ("Individual Class Payments").

Defendant will fund the Gross Settlement Amount in two installment payments of $212,500.00. The first payment will be due within fourteen (14) days after the Court grants final approval of the Settlement and enters judgment, or the date any appeal period runs if there is an objector, or if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur ("First Payment"). The second payment will be made one year after the First Payment ("Second Payment"). Distribution of the Individual Class Payments to the Settlement Class Members and Individual PAGA Payments to the Aggrieved Employees will occur following the First Payment if the Settlement Administrator determines that the First Payment will fund the entirety of the Individual Class Payments and Individual PAGA Payments; otherwise, the Individual Class Payments and the Individual PAGA Payments, along with all the other payments from the Gross Settlement Amount, will be made following the Second Payment.

6. How will the Individual Settlement Payments to Settlement Class Members be calculated?

Settlement Class Members will receive Individual Class Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required**. Class Members who opt out of the class portion of the Settlement will not receive an Individual Class Payment and will not be bound by the class portion of the Settlement.

Each Settlement Class Member's Individual Class Payment will be a pro-rata share of the Net Settlement Amount based on the number of workweeks worked during the Class Period ("Workweeks"). The Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the pro-rata share of the Net Settlement Amount that each Settlement Class Member would be entitled to.

All Individual Class Payments to Settlement Class Members shall be allocated as follows for tax purposes: 20% of each Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion") and 80% of each Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. The Non-Wage Portion is not subject to wage withholdings and will be reported on an IRS 1099 Form. The Settlement Administrator will be responsible for issuing to Settlement Class Members an IRS Form W-2 for amounts deemed wages and an IRS Form 1099 for the amounts deemed penalties and interest. Settlement Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Your total estimated Workweeks is ______________. Based on that, your anticipated approximate Individual Class Payment is ______________.

7. How will the PAGA Penalties be allocated to the LWDA and Aggrieved Employees?

The Parties will ask the Court to approve $30,000.00 in PAGA Penalties for claims of civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties, or $22,500.00, will be paid to the LWDA ("LWDA PAGA Payment"). The remaining 25% of the PAGA Penalties, or $7,500.00, will be paid to Aggrieved Employees ("Individual PAGA Payment").

No claim form is required to receive an Individual PAGA Payment. Because Aggrieved Employees cannot opt out of the PAGA portion of the Settlement, Aggrieved Employees will receive an Individual PAGA Payment and be bound by the PAGA portion of the Settlement even if they opt out of the Class portion of the Settlement.

Each Aggrieved Employee's Individual PAGA Payment will be a pro-rata share of the 25% ($7,500.00) of the PAGA Penalties to be distributed to Aggrieved Employees. Individual PAGA Payments will be based on the number of PAGA Pay Periods that each Aggrieved Employee worked for Defendant during the PAGA Period as a proportion of all PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099 will be issued, if required by law.

Your total estimated Pay Periods is ______________. Based on that, your anticipated Individual PAGA Payment is ______________.

HOW TO GET A PAYMENT

8. How can I get a settlement payment?

If you do nothing, you will automatically receive your Individual Class Payment and Individual PAGA Payment (if any) after the Court's approval of the Settlement becomes final. You must notify the Settlement Administrator of any change in your name, mailing address, and/or telephone number if the information shown on this is not correct.

It is your responsibility to keep the Settlement Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for you. You can contact the Settlement Administrator by U.S. Mail, email, or phone at ___________ if you need to update contact information.

9. What do I do if I believe my Workweeks and/or PAGA Pay Periods are incorrect?

If you believe the Workweeks and/or PAGA Pay Periods above are not correct, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before _____________, 2025. [*45 days within mailing of Notice*] You should include any documents or other information which supports what you believe to be the number of Workweeks and/or PAGA Pay Periods you worked. The Settlement Administrator will resolve any dispute regarding these issues based on Defendant's records and any information you provide.

10. When can I expect to receive a settlement check?

Individual Class Payments and Individual PAGA Payments will be mailed to Settlement Class Members and Aggrieved Employees approximately 28 days after the Court's approval of the Settlement becomes final if the Settlement Administrator determines that the First Payment will fund the entirety of the Individual Class Payments and Individual PAGA Payments; otherwise, the Individual Class Payments and the Individual PAGA Payments, along with all the other payments from the Gross Settlement Amount, will be made following the Second Payment, which would occur approximately one year after the Court's final approval of the Settlement.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks that remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or Aggrieved Employee who did not cash his or her settlement check. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

11. What am I giving up to get an Individual Settlement Payment?

If the Court approves this Settlement and unless you exclude yourself from the Class portion of the Settlement, you will become a Settlement Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the Class claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the claims described below:

Release by Settlement Class Members: All Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from those claims arising out of or related to the allegations set forth in the Operative Complaint that arose during the Class Period, including all statutes on which those claims are based in the Operative Complaint, including claims for: pay for all hours worked/compensation due for services; failure to pay wages; failure to pay minimum wages; failure to pay overtime; premium payments, meal periods; rest periods; failure to pay reporting time pay, failure to provide one day's rest from seven, wage statements; payment of wages during employment; payment of wages at termination; maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; sick pay; COVID-19 sick pay; California sick pay; bonus pay, unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Lawsuit; restitution related to any or all of the foregoing, which are based on the facts alleged in the Lawsuit; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq*., 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq*.; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 (collectively, the "Released Class Claims"). The Released Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 5.3 of the Agreement relating to Released PAGA Claims, Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

12. What PAGA Claims are released by this Settlement?

Release by Aggrieved Employees: All Aggrieved Employees regardless of whether they are Settlement Class Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Lawsuit, including PAGA Penalties claims premised on: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq*., 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199, 2802 and 2699; pay for all hours worked/compensation due for services; failure to pay wages; failure to pay minimum wages; failure to pay overtime wages; off the clock work; calculation of the regular rate of pay for meal and rest period premium payments; meal periods; rest periods; failure to pay reporting time pay, failure to provide one day's rest from seven; wage statements; payment of wages during employment; payment of wages at termination; maintaining and providing accurate and complete records; failure to reimburse for necessary business expenses; sick pay; COVID-19 sick pay; California sick pay; bonus pay; unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Lawsuit ("Released PAGA Claims"). The Released PAGA Claims apply to claims arising during the PAGA Period.

"Released Parties" means Defendant and all of Defendant's former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. <u>How do I opt out of the Class portion of the Settlement?</u>

If you wish to pursue your own separate lawsuit against Defendant for the Class claims asserted in the Lawsuit, or if you otherwise wish not to participate in the Class portion of the Settlement for whatever reason, you should exclude yourself from this case (that is, opt out of the Class portion of the Settlement). However, you cannot opt out of the PAGA portion of the Settlement. Class Members who opt out of the Class portion of the Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment.

To opt out of the Class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter must include the case name, case number, your full name, current address, and email address, and must be signed by you and faxed, emailed, or postmarked on or before ____________, 2025. [*45 days within mailing of Notice*] Opt-out requests faxed, emailed, or postmarked after the deadline will be invalid.

Settlement Administrator: Apex Class Action
Email Address:
Mailing Address:
Telephone:
Fax Number:

14. <u>If I don't exclude myself from the Class portion of the Settlement, can I sue Defendant for the same thing later?</u>

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims being released by the Class portion of the Settlement, the Released Class Claims. If you have a claim or lawsuit already filed against Defendant or any of the Released Parties, you should speak to your lawyer in that case immediately. You may need to exclude yourself from the Class portion of the Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

OBJECTING TO THE SETTLEMENT

15. <u>How do I tell the Court that I don't like the Settlement?</u>

If you are a Settlement Class Member and don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections must be faxed, emailed, or mailed to the Settlement Administrator by ____________, 2025.

The written objection should state your name and address and describe all legal and factual reasons for objecting to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval Hearing, the Settlement and Agreement will be approved and you will receive your Individual Class Payment. If you do not submit a written objection, you may still appear at the Final Approval Hearing to voice your objection or to otherwise observe the proceedings.

Class Members who opt out from the Class portion of the Settlement have no right to object to the Settlement.

THE COURT'S FINAL APPROVAL HEARING

16. When and where will the Court decide whether to grant final approval of the Settlement?

The Court will hold a "Final Approval Hearing" in Department 28 of the San Mateo County Superior Court located at 800 North Humboldt Street., San Mateo, CA 94401 on ________________ 2025, at ___ p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment, and the Administration Costs.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. You can also check the Santa Mateo County Superior Court website at https://sanmateo.courts.ca.gov/divisions/civil-division/civil-department-judges/nicole-s-healy-civil-judge for changes to the hearing schedule.

17. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it but you may. You may also hire and pay your own lawyer to attend if you so desire.

GETTING MORE INFORMATION

18. Whom may I contact if I have questions about the Settlement?

You may contact Class Counsel at the contact information listed above in Paragraph 4 if you have any questions about the Settlement. You may also contact the court-appointed Settlement Administrator, Apex Class Action, using its contact information provided above.

PLEASE DO NOT TELEPHONE THE SUPERIOR COURT CLERK TO OBTAIN INFORMATION ABOUT THE SETTLEMETNT.