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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

CEDRICK MILLER, on behalf of himself and all others similarly situated, Plaintiff, v. HOME OXYGEN COMPANY, LLC., a California Limited Liability Company; and DOES 1-50, inclusive. Defendant.	ASE NO.: CV-24-008466 *Assigned to the Hon. Sonny Sandhu* **DECLARATION OF MEHRDAD BOKHOUR IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** **HEARING INFORMATION** Date: June 5, 2026 Time: 8:30 a.m. Dept.: 24 Complaint Filed: October 21, 2024 FAC Filed: December 27, 2024

DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, and I am the principal of Bokhour Law Group, P.C., and I serve as attorney of record for Plaintiff Cedrick Miller ("Plaintiff") and the Putative Class.

2. I am familiar with the file in this matter, and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

3. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

4. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice before all California state courts and the United States District Court for the Central District, Eastern District, Southern District, and Northern District and have litigated class action and Private Attorney General Act ("PAGA') representative action cases in various courts in California. I graduated from the University of California, Berkeley in 2007. I received my Juris Doctorate from Loyola Law School, Los Angeles, in 2012. I began my legal career focusing on Plaintiff-side employment litigation, emphasizing disability discrimination and harassment matters under the Fair Employment and Housing Act. I opened my law firm in 2014 with an exclusive focus on representing employees against employers to recover unpaid wages and vindicate harassment, discrimination, and retaliation claims in various contexts. Most of my cases have been litigated as class actions, representative PAGA actions, or both.

5. I am also an active member of the California Employment Lawyers Association ("CELA") and have attended various Continuing Legal Education courses pertaining to advocacy on behalf of employees. My firm has the experience, resources, and means to provide adequate representation as Class Counsel to all aggrieved employees in this litigation. Currently, my firm is acting as lead counsel in at least 25 wage-and-hour class actions and as co-counsel in at least 20 others.

6. I was selected as a "Super Lawyer Rising Star" in Employment Litigation from 2017 through 2022 and as a "Super Lawyer" from 2023-2026, a distinction reserved for the top 2.5 % of

attorneys in the practice area.

7. Through a contested but productive mediation, Plaintiff and Defendant Home Oxygen Company, LLC ("Defendant") (collectively, the "Parties") entered into a Class Action and PAGA Settlement Agreement resolving the wage and hour claims of the Settlement Class ("Settlement Agreement" and/or "Settlement"), and Class Notice which is attached hereto as **Exhibit "A"**. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in this matter in exchange for Defendant's agreement to pay $135,000 on a non-reversionary, non-claim made basis (each Settlement Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out).

8. Plaintiff seeks to represent a Class of all persons who are or were previously employed by Defendant in California and classified as non-exempt employees at any time from October 21, 2020, through August 1, 2025, or such earlier date as the number of workweeks worked by the Class Members starting October 21, 2020 reaches 6,057 (the "Class" or "Class Members"). Likewise, the PAGA Employees include all persons who are, or were, employed by Defendant in California and were classified as non-exempt or hourly employees at any time from October 21, 2023, through August 1, 2025, or such earlier date as the number of workweeks worked by the Class Members starting October 21, 2020 reaches 6,057 ("PAGA Employees").

9. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third (1/3) of the Settlement Amount, Class Counsel's litigation costs not to exceed $15,000, Settlement Administration Costs not to exceed $5,000, PAGA penalties of $5,000 (of which $3,750 or 75% will be paid to the LWDA and the remaining $1,250 or 25% will be paid to the PAGA Employees), and a Service Payment not to exceed $10,000 to the named Plaintiff (S.A. ¶ 53(a)-(h)), as follows:

	Total Amount
Gross Settlement Amount	$135,000
Attorneys' Fees (not to exceed 1/3 of GSA)	$45,000
Litigation Costs (not to exceed)	$15,000.00
Administrator Costs (not to exceed)	$5,000.00
PAGA payment to LWDA (75% of $5k award)	$3,750.00
PAGA payment to PAGA Employees	$1,250.00

Plaintiff's Service Payment	$10,000.00
Net Settlement Amount	**$55,000.00**

Plaintiff has concurrently submitted the Settlement to the LWDA in accordance with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit "B."**

10. As of the Parties' mediation, the Class includes approximately 96 non-exempt employees who all worked for Defendant in California during the Class Period. Plaintiff contends that, regardless of their roles, all non-exempt employees were subject to the same workplace policies and scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. Assuming a total class size of approximately 96 Settlement Class Members, the average payment to each Settlement Class Member will be approximately $572, with the highest payment estimated to be in the range of $2,000 to $2,500. Of course, those with more Compensable Workweeks stand to recover a proportionally greater amount.

11. The Settlement is non-reversionary, and Class Members will not be required to submit claim forms to receive payment, but each Class Member will be mailed the Notice Packet containing detailed information about his/her share, the opportunity to dispute the number of Compensable Workweeks worked by the Class Member, and the opportunity to opt out or object to the Settlement. All Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval of the Settlement.

12. Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following an appropriate and comprehensive exchange of information and documents in advance of mediation, it should be preliminarily approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the Settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Notice Packet, appointing Plaintiff's counsel as Class Counsel, appointing ILYM Group, Inc. as the Settlement Administrator, and scheduling a hearing for the final approval of the Settlement.

13. Defendant provides home medical equipment. Defendant offers oxygen, sleep, and

aerosol therapy to patients in the State of California.

14. On or about October 21, 2024, Plaintiff filed a class action complaint in this Court against Defendant, including allegations of: (a) failure to pay overtime wages, (b) meal period violations, (c) rest period violations, (d) failure to pay all sick time wages, (e) wage statement violations, (f) waiting time penalties, and (g) unfair competition, and (k) PAGA penalties. Before filing his lawsuit, Plaintiff submitted a notice letter to the LWDA on October 21, 2025.

15. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting interviews with putative class members, investigation of Defendant and their operations, and their pay policies/procedures, exchange of informal discovery, including Defendant's written policies and practices, and the production of a reasonable sampling of payroll and timekeeping records for Settlement Class Members and PAGA Employees. Class Counsel are both knowledgeable about and have done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and PAGA Employees. Class Counsel has diligently investigated the Class Members' claims against Defendant.

16. On May 29, 2025, the Parties participated in mediation before Doug Leach, Esq., a highly experienced class action mediator. The Parties reached a settlement after a full-day mediation, subsequent negotiations, and issuance of a mediator's proposal.

17. Plaintiff alleges numerous wage and hour violations on behalf of the non-exempt employees who worked for Defendant during the Class Period (i.e., Class Members).

18. First, Plaintiff alleged that Defendant failed to pay all overtime and sick wages due to Defendant's failure to properly calculate the "regular rate of pay."

19. Further, Plaintiff alleged that Defendant's deficient meal and rest period policies and practices failed to allow and permit Class Members to take timely and compliant meal periods or pay premium pay in lieu thereof. Likewise, Plaintiff contended that the Class Members were not provided with duty-free rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to Defendant's unlawful rest period policies and practices that required employees to remain on duty and/or on premises during rest periods.

20. Finally, Plaintiff alleged that Defendant failed to pay all final wages at separation of

employment and provide accurate itemized wage statements that comply with all requirements of Labor Code Section 226. Plaintiff also alleged various PAGA claims arising from the alleged Labor Code violations set forth above..

21. Defendant contested and denied each of Plaintiff's material allegations on the merits and as to the propriety of the class and PAGA representative action.

22. First, Defendant argued that they properly paid for all hours worked at the correct "regular rate of pay."

23. Further, Defendant argued that, at all relevant times, its written meal and rest period policies complied with California law. Defendant also contended that, in practice, Class Members regularly were permitted to be free of any duties during meal and rest periods.

24. Moreover, Defendant argued that claims for wage statement violations, waiting time penalties, and PAGA penalties were derivative of other claims that they argued lacked merit. Defendant further contended that Plaintiff's waiting time penalty and wage statement claims based on the underlying meal and rest period violations were unfounded and did not entitle Class Members to pursue the derivative penalties under Labor Code sections 203 and 226.

25. Finally, Defendant argued that a myriad of individualized inquiries would be required to establish liability, including amongst other things, which employees, if any, took meal periods of less than 30 minutes, why a particular employee took a meal period of less than 30 minutes on a particular shift, and whether a particular employee was allowed to leave the premises during rest periods.

26. Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following big-picture data points through the date of mediation: (1) 96 Class Members who worked approximately 5,507 pay periods and 25,000 shifts.

27. First, Plaintiff also alleged that Defendant failed to include certain non-discretionary bonuses and incentive compensation in calculating the "regular rate of pay" for purposes of overtime and sick pay. Defendant disputed this allegation, arguing that the compensation at issue was discretionary and properly excluded from the regular rate calculation.

28. Defendant further contended that any potential underpayments were made in good

faith and were de minimis. Defendant's own analysis of payroll records suggested that any underpayment attributable to regular rate calculations was minimal.

29. Due to this and in light of Defendant's other defenses, Plaintiff completely discounted this claim, keeping in mind that the true significant value of these unpaid wages claims lies in the derivative claims for waiting time penalties under Labor Code § 203 and wage statement violations under Labor Code § 226 as discussed below.

30. With respect to Plaintiff's waiting time penalty claim, there were approximately 59 Class Members who separated from their employment with Defendant during the relevant statutory period. As such, the maximum potential penalty under Labor Code §§ 201–203 is $290,563 (59 employees x 8 hours per day x average rate of $20.52 x 30 days).

31. However, Defendant argued that it would defeat the waiting time penalty claim as to Plaintiff's unpaid wage claim because Defendant would prevail on the merits of these claims and because any failure to pay wages was not willful and occurred prior to the waiting time penalty liability period. Further, Defendant contended that it complied with the law because it had an alleged facially neutral pay policy/practice.

32. Therefore, Plaintiff applied a 50% discount to account for the risk of defeat at the class certification stage and an additional discount to account 60% for the risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $58,112 for Plaintiff's waiting time penalty claim.

33. With respect to Plaintiff's meal and rest period violation claims, the Class Members worked 25,000 shifts during the Class Period. Based on an alleged 60% violation rate for the meal period claims and an alleged 33% violation rate for the rest period claims, as extrapolated from the pre-mediation sampling of Defendant's timekeeping and payroll records, the maximum potential damages totaled $307,800 for the meal period claim and $169,290 for the rest period claim, respectively.

34. However, Defendant vehemently opposed these claims based on the argument that Plaintiff's meal and rest period were exempted by the applicable wage orders and that, nevertheless, the claims fall directly into the category of "individualized issues," that its written policies and

practices were compliant with California law, and the employees had ample latitude regarding whether, when, and how they took their meal and rest breaks. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was non-compliant/non-existent, because if it was by the employee's choice, no liability attaches to Defendant. Based on these arguments, Plaintiff believes there is a risk that the Court would deny class certification on these meal period and rest break claims.

35. Defendant further argued that, even if certification were granted, they would defeat these claims on the merits because Plaintiff's claims were pre-empted, Defendant utilized compliant policies and practices, and would present sufficient evidence that employees were properly provided with all breaks or paid compensation in lieu thereof. Moreover, Defendant argued that Plaintiff would be unable to present sufficient evidence establishing the number of meal and rest period violations to allow a factfinder to determine damages appropriately.

36. In light of these defenses and arguments, Plaintiff discounted Defendant's maximum exposure by 50% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits, to arrive at the risk-adjusted value of the meal period claims to be $92,340 and the rest period claims to be $50,787.

37. Finally, Plaintiff estimates that the maximum potential penalties for the derivative wage statement claim are $57,700 (based on approximately 1,154 allegedly violative wage statements issued during the Class Period). In calculating Defendant's exposure, Plaintiff gave Defendant the benefit of assuming Plaintiff could only obtain the "initial" wage statement penalty of $50 per violation.

38. In response to Plaintiff's wage statement violation claim, Defendant contended that their wage statements fully complied with the law, that any alleged violations were not "knowing and intentional," and that Plaintiff could not establish that they or anyone else suffered "injury" because of any alleged wage statement violations. Further, Defendant relied on their defenses to Plaintiff's underlying claims on the merits and to class certification.

39. As such, Plaintiff discounted the calculated maximum exposure by 30% for risk of non-certification, and by an additional 20% for risk of being unsuccessful on the merits, to arrive at

an estimated total of $32,312.

40. Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." Assuming that a PAGA penalty is available in the default amount of $100 per pay period and is not reduced, the maximum potential PAGA penalty would be $115,400 for the pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2).

41. However, this maximum figure fails to account for numerous unresolved issues regarding PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties).

42. Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Therefore, Plaintiff discounted the maximum figure to account for the risk of losing on the merits and applied an additional discount to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of $10,000.

43. In sum, when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

- Failure to Pay All Wages: $0 (*discounted)*
- Labor Code §§ 201 – 203 Claims: $58,112
- Meal Period Claims: $92,340
- Rest Break Claims: $50,787
- Wage Statement Claims: $32,312
- PAGA Penalties $10,000
- **<u>Total Risk-Adjusted Penalties and Damages</u>: $243,551**

Given the realistic value of Plaintiff's claims, the $135,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 55% of Plaintiff's risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class.

44. The Settlement was the product of extensive arm's length negotiations between

counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and his counsel believe that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of their defenses, the employees may not have received any substantial monetary recovery.

45. The Settlement will result in a fair payment to each Settlement Class Member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Settlement Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of Attorneys' Fees and Costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Settlement Class, and is a fair and reasonable resolution of the claims alleged.

46. Plaintiff's counsel brought to bear a great deal of collective experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in necessary informal discovery, investigation, sampling, and expert evaluation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g., documents pertaining to Defendant's policies and procedures, personnel documents, wage statements, time records, among others) and conducted an extensive analysis and extrapolation of the sampling of class-wide data provided by Defendant.

47. Based on our experience in other cases, including wage and hour matters, I believe our office, along with Joshua Falakassa, is qualified to evaluate the class claims and viability of defenses in this class action. In this case, the recovery for each Settlement Class Member is reasonable, fair, and adequate, and a settlement at this time is in the best interest of the Settlement

Class. The Settlement provides each Settlement Class Member with compensation for the alleged violations when viewed in relation to the costs and risks inherent in obtaining class certification and proceeding to trial.

48. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and conditions of the Settlement as set forth in the above-mentioned Settlement Agreement.

49. Of course, the Settlement Amount represents a compromise figure, taking into account the various risks surrounding class certification and the merits of Defendant' asserted defenses. Nevertheless, the Settlement provides for fair and adequate payments to the Settlement Class Members, with no reversion to Defendant.

50. Plaintiff seeks a Service Award of $10,000, which we believe is fair and warranted. Plaintiff agreed to come forward in an effort to effectuate a policy and practice change that benefitted all other Settlement Class Members, and to recover unpaid wages and penalties. Mr. Miller assumed significant risk in bringing this litigation, namely, had he lost, he could have been ordered to pay the defendant's costs.

51. Plaintiff provided invaluable assistance to the investigation and prosecution of this case, including: providing factual background for the Class Complaint; reviewing the litigation documents; providing information and documentation about Defendant's policies and practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. Plaintiff's comprehensive declaration setting forth all of the reasons why he believes that the Service Award should be approved has been filed herewith.

52. When this case was taken on a contingency fee basis, with our firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, we paid all costs, including the filing fees, mediation costs, and expert costs. There was never a guarantee that our firms would recoup these expenditures. In fact, had Plaintiff lost, he could have been ordered to pay Defendant's costs

53. It is our experience that attorneys' fee awards of one-third of a common fund settlement are the standard in California. Plaintiff's counsel agreed to seek one-third of the Settlement

Amount for Attorneys' Fees in this case. Defendant does not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. Our firm's Costs will not exceed $15,000 and will be based on the actual amount incurred at the time of final approval.

54. Subject to the Court's approval, the parties stipulated that ILYM Group, Inc. serve as the Settlement Administrator. ILYM is experienced in administering class action settlements and will not exceed $5,000 to administer this class action Settlement.

55. In compliance with California Rules of Professional Conduct section 1.5.1, Plaintiff signed a fee split agreement that provides fees will be allocated between Class Counsel as follows: fifty percent (50%) to the Bokhour Law Group, P.C., and fifty percent (50%) to the Falakassa Law, P.C.

56. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class, as well as preliminarily approve the requested attorneys' fees and costs, and service award to the Class Representative.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct on this 17th day of April 2026, in Los Angeles, California.

By: ________________________
Mehrdad Bokhour, Esq.

EXHIBIT “A”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and Private Attorneys General Act ("PAGA") Settlement Agreement of the case entitled *Miller v. Home Oxygen Company, LLC*, Stanislaus Superior Court Case No. CV-24-008466 is entered into by and between Plaintiff Davin McCarty ("Plaintiff" or "Class Representative"), individually, on behalf of all others similarly situated, and as the PAGA representative of the State of California, and Defendant Home Oxygen Company, LLC, subject to the terms and conditions herein and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" refers to the case entitled *Miller v. Home Oxygen Company, LLC*, Case No. CV-24-008466, filed in Stanislaus Superior Court.

2. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

3. "Class Claims" or "Released Class Claims" will include all claims that were asserted or could have been asserted based on the facts alleged in Plaintiff's Complaint, or that arise from, are attributable to, or are related to the facts asserted therein, except the claim under the PAGA, including, but not limited to, claims arising out of any alleged failure to pay all overtime wages, failure to provide meal periods and premium payments in lieu thereof at the appropriate legal rate, failure to provide rest periods and premium payments in lieu thereof at the appropriate legal rate, failure to provide paid sick leave and pay all paid sick leave at the correct rate, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to timely pay all wages due during employment and upon separation, violation of Business & Professions Code § 17200 *et seq.*, and any and all related claims and penalties that arose during the Class Period.

4. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

5. "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one Confidential spreadsheet and shall include the Settlement Class Members' full names, last known addresses,

Social Security Numbers, and dates of employment during the Class Period and PAGA Period and/or number of Work Weeks Worked or Pay Periods Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period, respectively for each Settlement Class Member.

6. "Class Member" refers to individual members of the Class.

7. "Class" and "Class Members" refer to all persons who are or were previously employed by Defendant in California and classified as non-exempt employees during the Class Period.

8. "Class Period" shall mean October 21, 2020, through August 1, 2025, or such earlier date as the number of workweeks worked by the Class Members starting October 21, 2020 reaches 6,057.

9. "Class Representative" or "Plaintiff" refers to Cedrick Miller.

10. "Complaint" refers to Plaintiff's operative Complaint filed in the Stanislaus County Superior Court action entitled *McCarty v. Home Oxygen Company, LLC*, Case No. CV-24-008466.

11. "Court" means the California Superior Court, County of Stanislaus.

12. "Defendant" refers to Home Oxygen Company, LLC

13. "Defendant's Counsel" or "Defense Counsel" refers to Stacy L. Henderson of Henderson Hatfield, A Professional Corporation.

14. "Effective Date" or "Effective" means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement, and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

15. "Final Approval" or "Final Approval Order" refers to the court's order granting final approval of this Settlement Agreement and entering a judgment approving this Settlement.

16. "Final Settlement Class" means all Participating Class Members and PAGA Employees.

17. "Gross Settlement Amount" is the maximum amount that Defendant will pay as a result of this Settlement, which is One Hundred Thirty Five Thousand Dollars and Zero Cents ($135,000.00), which includes the Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Award to Plaintiff, all Settlement Administration Costs, employee-side payroll taxes and withholdings for the wage component of the Individual Settlement Amount payments to Participating Class Members, and the PAGA Penalty, including all payments to PAGA Employees and the Labor Workforce Development Agency (LWDA), and the employer-side payroll taxes and withholdings for the wage component of the Individual Settlement Amount payments to Participating Class Members. Defendant shall separately pay the employer's share of applicable payroll taxes.

18. "Individual Settlement Amount" or "Individual Settlement Payment" means the amount payable from the Net Settlement Amount (defined below) that the Settlement Administrator will pay to each Participating Class Member and/or PAGA Employee, as calculated pursuant to Paragraph 53(d) below.

19. "Net Settlement Amount" or "Net Distribution Fund" is the Gross Settlement Amount minus the amounts allotted to (1) Class Counsel's fees (up to $45,000.00), (2) Class Counsel's litigation costs (up to $15,000.00); (3) the Service Award for Plaintiff (up to $10,000.00), (4) the 65% of the PAGA Penalty to be paid to the LWDA ($3,250.00); (5) the 35% of the PAGA Penalty to be paid to PAGA Employees ($1,750.00); (6) Settlement Administration Costs (up to $5,000.00); and (7) employee-side payroll taxes and withholdings for the wage component of the Individual Settlement Amount payments to Participating Class Members.

20. "Notice" means the Notice of Class Action and PAGA Settlement that will be sent to the Class Members consistent with the terms of this Settlement and substantially the same as the Proposed Notice attached to this Settlement as Exhibit "A" (or as may be modified by subsequent agreement of the Parties or order of the Court).

21. "Notice Response Deadline" is sixty (60) calendar days from when the Notice is

mailed to the Class Members.

22. "Objecting Class Member" means a Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Class Claims pursuant to Paragraph 74(c) below.

23. "PAGA" shall refer to the Private Attorneys General Act, Labor Code § 2698 *et seq.*

24. "PAGA Penalty" is the $5,000.00 of the Gross Settlement Amount that is allocated to PAGA penalties in this Settlement, 65% of which ($3,250.00) will be remitted to the LWDA and 35% of which ($1,750.00) will go into a PAGA Distribution Fund and be distributed on a prorated basis to all PAGA Employees based on their number of pay periods worked during the PAGA Period as specified below

25. "PAGA Claims" or "Released PAGA Claims" shall include any and all claims for civil penalties pursuant to PAGA that were alleged or that could have been alleged based on the facts and underlying Labor Code violations alleged in Plaintiff's October 21, 2024 Labor and Workforce Development ("LWDA") notice letter, or that arise from, are attributable to, or are related to the facts asserted therein, including, but not limited to, for underlying claims based on alleged failure to pay all overtime wages and at the appropriate legal rate, failure to provide meal periods or premium payments in lieu thereof at the appropriate legal rate, failure to provide rest periods or premium payments in lieu thereof at the appropriate legal rate, failure to provide paid sick leave and pay all paid sick leave at the correct rate, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to timely pay all wages due during employment and at separation, and violation of Business & Professions Code §17200 *et seq.* and any and all related claims and penalties. Plaintiff and the State of California (acting through Plaintiff as its authorized PAGA representative) release the Released Parties from the PAGA claims.

26. "PAGA Distribution Fund" is 35% of the PAGA Penalty (i.e., $1,750) allocated for distribution on a prorated basis to all PAGA Employees based on the number of pay periods worked during the PAGA Period as specified below.

27. "PAGA Employees" include all persons who are or were previously employed by Defendant in California and classified as non-exempt or hourly employees at any time during the PAGA Period.

28. "PAGA Notice" or "LWDA notice letter" shall refer to the notice sent by Plaintiff, by and through counsel, on or about October 21, 2024, to the LWDA and Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s) as well as any subsequent notices sent to the LWDA and Defendant by Plaintiff, by and through counsel.

29. "PAGA Period" shall mean October 21, 2023, through August 1, 2025, or such earlier date as the number of workweeks worked by the Class Members starting October 21, 2020 reaches 6,057.

30. "Participating Class Member" means all Class Members who are deemed to participate and receive an Individual Settlement Amount for the Class Claims and who do not opt out of the settlement of the Class Claims by submitting timely and valid Requests for Exclusion.

31. "Parties" or "Settling Parties" mean Plaintiff, Participating Class Members, PAGA Employees, and Defendant.

32. "Pay Periods Worked" for each PAGA Employee means the number of pay periods during the PAGA Period in which the PAGA Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the pay period for Defendant. Pay Periods Worked will be calculated based on Defendant's business records.

33. "Work Weeks Worked" for each Class Member means the number of work weeks during the Class Period in which the Class Member was employed by Defendant as a non-exempt employee in California and worked at least one shift during the week for Defendant. Work Weeks Worked will be calculated based on Defendant's business records.

34. "Preliminary Approval Date" means the date the Court preliminarily approves the Settlement Agreement and the exhibits thereto and enters the Preliminary Approval Order.

35. "Preliminary Approval Order" means the judicial Order to be entered by the Court, upon the application or motion of Plaintiff, preliminarily approving this Settlement and providing

for the issuance of the Notice of Class Action and PAGA Settlement, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a final approval hearing to address the fairness of the terms of Settlement, including approval of Class Counsel's fees and costs.

36. "QSF" means the Qualified Settlement Fund set up by the Settlement Administrator to benefit the Final Settlement Class and from which the settlement payments shall be made.

37. "Release," "Released Class Claims," and "Released PAGA Claims" shall all mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff and all of the PAGA Employees.

38. "Released Parties" means Defendant and its current and former parents, subsidiaries, dbas, divisions, affiliated entities, joint venturers, and any entity that controls, is controlled by, or is under common control with Defendant to the extent such entity is alleged or could have been alleged in this Action to have acted as a joint employer of the Class Members and or Aggrieved Employees or to have been involved in the conduct at issue. "Released Parties" also includes the current and former officers, directors, shareholders, stockholders, owners, co-owners, joint employers, agents, members, principals, subsidiaries, affiliates, partners, attorneys, insurers, reinsurers, managers, employees, heirs, estates, executors, predecessors, successors, assigns and all other legal entities affiliated with, or who are agents of the foregoing entities, solely in their capacities as such and only with respect to acts or omissions arising out of or relating to the claims asserted in this Action.

39. "Response Deadline" shall refer to the date by which Settlement Class Members must opt out of or object to the settlement.

40. "Request for Exclusion" means a timely written request by a Class Member to exclude herself/himself from the Settlement, which must be completed and mailed in the manner set forth in this Settlement Agreement and the Notice of Settlement as further detailed in Paragraph 74(a) below.

41. "Service Payment" or "Service Award" means the amount approved by the Court to be paid to the Class Representative (*i.e.*, Plaintiff) in addition to his Individual Settlement Amount as a Participating Class Member in an amount up to $10,000. The Service Payment is subject to approval from the Court and will be paid from the Gross Settlement Amount. Any Service Award not awarded by the Court will be added to the Net Distribution Fund and distributed to Class Members who do not opt out of this Settlement.

42. "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

43. "Settlement Administrator" means and refers to ILYM Group, Inc., which will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

B. <u>General Terms</u>

44. On or about October 21, 2024, Plaintiff filed a class action complaint in this Court against Defendant, including allegations of: (a) failure to pay overtime wages, (b) meal period violations, (c) rest period violations, (d) failure to pay all sick time wages, (e) wage statement violations, (f) waiting time penalties, and (g) unfair competition, and (k) PAGA penalties. Before filing his lawsuit, Plaintiff submitted a notice letter to the LWDA on October 21, 2025.

45. Defendant adamantly denies all of Plaintiff's claims and allegations, denies any failure to comply with the laws identified in the Complaint and PAGA Notice, denies any and all liability for the causes of action alleged, and has raised various defenses to the claims. Defendant asserts that it fully complied with all applicable wage and hour laws and contends that civil penalties under PAGA are not warranted. Defendant also contends that the Action is not suitable for class certification and/or representative treatment outside of the context of this Settlement. Defendant has entered into the Settlement solely for purposes of resolving this dispute to avoid

costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability whatsoever.

46. The Class Representative believes he can proceed with his class, and the Class Representative claims that the Action is meritorious and that class certification is appropriate.

47. The Parties have thoroughly investigated the facts of the Action. This includes conducting an extensive exchange of informal discovery, including the relevant written policies at issue, the production of the entire payroll and timekeeping records for Class Members and PAGA Employees, a complete class list, and relevant data, including the average hourly pay rate and pay period information for Class Members and PAGA Employees. Defendant's productions included hundreds of pages of documents and data.

48. Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

49. Defendant agrees that the Settlement represents a good-faith compromise of the claims, which is fair, adequate, and reasonable.

50. On May 29, 2025, the Parties participated in mediation before Doug Leach, Esq., a highly experienced class action mediator. The Parties reached a settlement after a full-day mediation, subsequent negotiations, and issuance of a mediator's proposal.

51. No Admission of Liability. The Parties enter into this Agreement to resolve the dispute between them and avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees or any other person or entity. Neither this

Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, or proceedings, payouts or other events associated with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law by Defendant or any Released Parties. Except as necessary in a proceeding to approve, interpret, or enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of the Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local, or other applicable law.

52. Stipulation for Class Certification and Representative Treatment for Settlement Purposes. For settlement purposes only, Defendant will stipulate that the Class Members described herein who do not submit a Request for Exclusion from the Class may be conditionally certified as a settlement class and that the PAGA Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment for settlement purposes is in no way an admission that class action certification and/or representative treatment is proper in a non-settlement context and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Should, for whatever reason, the Court not grant Final Approval consistent with the terms of this Settlement or if the Settlement does not become Effective, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights to and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court not grant Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and representative treatment and a trial should the Court not grant Final Approval.

C. **Terms of Settlement**

53. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for the total maximum amount of One Hundred Thirty-Five Thousand Dollars and Zero Cents ($135,000.00) ("the Settlement Amount" or "Gross Settlement Amount"). The Gross Settlement Amount is the maximum amount that Defendant will pay for any reason in connection with this Settlement. The Gross Settlement Amount will be used to pay (1) Individual Settlement Payments to Participating Class Members; (2) the PAGA Penalty, with 65% of the PAGA Penalty going to the LWDA and 35% being distributed on a prorated basis based on pay periods worked to PAGA Employees as further described below; (3) Plaintiff's Counsel's attorneys' fees; (4) Plaintiff's Counsel's costs; (5) Settlement Administration Costs; (6) the Service Award to Plaintiff (as specified in the Service Award paragraphs below); and (7) employee-side payroll taxes and withholdings for the wage component of Individual Settlement Payments to Class Members. Defendant shall separately pay the employer's share of applicable payroll taxes.

(b) The Settlement is based on the Defendant's representation that there were approximately 96 individuals who worked approximately 5,507 pay periods through the date of Mediation. If the actual number of workweeks worked by all Class Members during the Class Period increases by 10% or more (i.e., 550 or more), then Defendant will have the option to either (1) increase the Gross Settlement Amount in the amount of $24.51 per workweek above 6,057, or (2) shorten the release period covered by the Class Period and PAGA Period so that there is no increase in the Gross Settlement Amount.

(c) Net Settlement Amount: The "Net Settlement Amount" or "Net Distribution Fund" is the Gross Settlement Amount minus the amounts allotted to (1) Class Counsel's fees (up to $45,000.00), (2) Class Counsel's litigation costs (up to $15,000.00); (3) the Service Award for Plaintiff (up to $10,000.00), (4) the 65% of the PAGA Penalty to be paid to the LWDA ($3,250.00); (5) the 35% of the PAGA Penalty to be paid to PAGA Employees ($1,750.00), (6) Settlement Administration Costs (up to $5,000.00); and (7) employee-side payroll taxes and withholdings for the wage component of Individual Settlement Payments to Class Members. If the Court reduces the attorneys' fees and litigation costs or Service Award or either increases or decreases the amount allocated to the PAGA Penalty or Settlement Administration Costs, the Net

Settlement Amount shall be increased or decreased accordingly. If the Court approves amounts for attorneys' fees and costs, the Service Award, the PAGA Penalty, or Settlement Administration Costs that are different than the amounts requested, the maximum Gross Settlement Amount that Defendant must pay in accordance with the terms of this Settlement will remain the same as this is a non-reversionary settlement.

(d) Individual Settlement Amounts for the Settlement Class and PAGA Employees: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and PAGA Employee's Individual Settlement Amounts. Individual Settlement Payments will be distributed to Participating Class Members and/or PAGA Employees based on the following formulas:

(1). Payments to Participating Class Members: The Settlement Administrator will calculate the total number of workweeks that all Class Members who do not opt-out (*i.e.*, "Participating Class Members") worked during the Class Period ("Total Class Pay Periods"). The Settlement Administrator shall determine the value of each Work Week Worked by dividing the Net Distribution Fund by the total number of Work Week Worked by Participating Class Members during the Class Period ("Class Work Week Value"). To determine each Participating Class Member's settlement payment, the Settlement Administrator will multiply the individual's Total Class Pay Periods Worked by the Class Pay Period Value (if the Class Member is a Participating Class Member). These payments will be subject to any legally required employee-side payroll taxes and withholdings or deductions calculated by the Settlement Administrator, which are part of the Gross Settlement Amount.

(2). PAGA Employee Calculations: For PAGA Employees, the Settlement Administrator will calculate the total number of pay periods that each PAGA Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The Settlement Administrator shall determine the value of each PAGA Pay Period by dividing the 35% of the PAGA Penalty allocated for PAGA Employees (*i.e.*, $1,750.00) by the Total PAGA Pay Periods for all PAGA Employees ("PAGA Pay Period Value"). To determine each PAGA Employee's payment for their prorated portion of the PAGA Distribution Fund (*i.e.*, $1,750.00), the Settlement Administrator will multiply the PAGA Employee's Total PAGA Pay Periods by the PAGA Pay Period Value. A Class Member who is also a PAGA Employee will receive a payment under this section for their prorated portion of the PAGA Penalty even if they opt out of the Class settlement and will be bound by the release of the PAGA Released Claims obtained through this Settlement.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts to Participating Class Members will be allocated for tax purposes based on the allegations in the Action as follows: fifteen percent (15%) will be allocated to allegedly unpaid wages subject to withholding of all applicable local, state, and federal taxes; and eighty five (85%) will be allocated to interest and alleged civil penalties (pursuant to, e.g., Labor Code §§ 203, 226) from which no taxes will be withheld. All required withholdings shall be paid entirely from the Gross Settlement Amount. The Settlement Administrator will issue each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms concerning the wage allocation and a Form 1099 concerning the civil penalties and interest allocations.

(f) Service Payment to Class Representative: The amount awarded to the Class Representative as a Service Payment will be set by the Court at its discretion and will not exceed $10,000.00. Defendant agrees not to oppose this request. The Service Payment to the Class Representative will be paid entirely from the Gross Settlement Amount. Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. In the event of any appeal of the amount of the service award (if any) approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement Amount (*i.e.,* up to $45,000.00), plus reasonable litigation costs not to exceed $15,000.00 ("Attorneys' Fees and Cost Award"). The Attorneys' Fees and Cost Award shall be paid entirely from the Gross Settlement Amount. Should the Court approve a lesser amount than is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid entirely from the Gross Settlement Amount, not to exceed $5,000.00, subject to Court approval, unless approved by all Parties and the Court. Any Settlement Administration Costs not incurred by the Settlement Administrator or awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members.

(i) PAGA Penalties: The Parties agree that $5,000.00 is allocated to alleged PAGA Penalties and will be paid entirely from the Gross Settlement Amount, subject to Court approval. Of this amount, $3,250.00 (65%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for civil penalties under the PAGA, and $1,750.00 (65%) will be included in the Individual Settlement Amounts, payable to the PAGA Employees as outlined in Paragraph 53(d)(2).

(j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Individual Settlement Amounts called for hereunder, and Plaintiff and the Class Members and PAGA Employees are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Participating Class Members will be solely responsible for paying any taxes and penalties assessed on their respective Individual Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations as determined by the Settlement Administrator. The Settlement Administrator shall use Defendant's Employer Identification Number for purposes of calculating payroll tax withholdings and providing the required payments and reports to the State and Federal tax authorities. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law are changed after the date of this Agreement, the processes outlined in this Section may be modified to bring Defendant into compliance with any such changes.

54. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. No portion of the Gross Settlement Amount will revert to Defendant once the Settlement is funded, provided that Final Approval is granted and the Settlement becomes final and effective in accordance with the terms of this Settlement. Participating Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of Plaintiff, Participating Class Members, or PAGA Employees not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

55. Class Counsel and Plaintiff believe that the Settlement is fair, reasonable, and adequate and will represent the same to the Court.

D. Release by Participating Class Members and PAGA Employees

56. Upon the Effective Date of this Settlement, the entry of Judgment, and full funding of the Settlement, Plaintiff and each Participating Class Member release and discharge the Released Parties from any and all claims, demands, causes of action, damages, penalties, interest,

attorneys' fees, consultant's fees, expert's fees, accountant's fees, costs and any other form of relief that were asserted or that could have been asserted based on the facts alleged in the operative complaint, arising under federal, state, or local law, to the extent such claims arise out of or relate to the Released Class Claims during the Class Period. This release is made by Plaintiff and each Participating Class Member individually, and is binding upon their respective spouses, domestic partners, marital community, children, heirs, estates, trusts, attorneys, successors, assigns and agents, but only to the extent those persons or entities are asserting claims derivative of, or through, the Participating Class Member.

57. Upon the Effective Date of this Settlement, Plaintiff, the LWDA and State of California (acting through Plaintiff as its deputized representative), for themselves and for their respective former, present and future spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, agents and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims during the PAGA Period.

58. The LWDA will be deemed to have made the foregoing Release as if by manually signing it.

59. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain any recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Class Members shall be notified in the Notice. This Paragraph is a statement of the Parties' intent in agreeing to this Settlement that it will be given *res judicata* effect with respect to the Released Class Claims.

60. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the PAGA Employees and the LWDA to obtain any recovery based on, arising out of, and/or related to any and all of the

Released PAGA Claims. The PAGA Employees and the LWDA shall be notified in the Notice and via submitting a copy of this Settlement, which Class Counsel will provide to the LWDA concurrently with the filing of Plaintiff's motion requesting preliminary approval of this Settlement, respectively. This Paragraph is a statement of the Parties' intent in agreeing to this Settlement that it will be given *res judicata* effect with respect to the Released PAGA Claims.

61. The Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that the claims for unpaid wages and all other amounts sought through this Action are disputed and that the payments set forth herein constitute payment of all sums allegedly due to them. The Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that Labor Code § 206.5 does not apply to the Parties hereto. Section 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned unless payment of those wages has been made."

E. General Release by Plaintiff

62. Plaintiff does hereby, for himself and for his former, present and future spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, agents and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, sums of money and expenses (including, but not limited to, for alleged back and future wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees and costs) of every and any nature, kind and character whatsoever, from the beginning of time through the execution of this Settlement and in the future as described in paragraph 64, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with Defendant and/or the remuneration for or separation from such employment (collectively, the "Class Representative's Claims").

63. Without limiting the generality of the foregoing, the term Class Representative's Claims includes, and Plaintiff expressly releases, all past, present and future claims and/or rights against Released Parties for any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages, obligations, contracts, actions, suits, rights, demands, costs, losses, debts, expenses and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from or related to Plaintiff's employment with and separation from employment with Defendant, and all conduct, statements, action or inaction, including without limitation all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental to and/or arising out of any act or omission committed or omitted by Defendant or the Released Parties including, but not limited to, a release of all claims under (a) the California Civil Code, (b) the California Fair Employment and Housing Act, (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., (d) the Age Discrimination in Employment Act of 1967, as amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621, *et seq*., (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. §§ 1981 through 1988, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities Act 42 U.S.C. § 12101, et. seq., as amended, (j) the Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control Act, as amended, (m) any other state, federal, and local law, regulation and ordinance dealing with, prohibiting or otherwise relating to discrimination, harassment or abusive conduct on the basis of race (including traits associated with race such as hair texture and protective hairstyle), color, religion (all aspects of religious beliefs, observance or practice including religious dress or grooming practices), sex, sexual orientation, gender (including gender identity, gender expression and transgender status), marital status, registered domestic partner status, pregnancy (including childbirth, breastfeeding or related medical condition), reproductive health decision-making, alienage, national origin (including language use restrictions and possession of a driver's license issued under Vehicle Code §12801.9), ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), age, off-duty use of cannabis, citizenship or immigration status, military

or veteran status, genetic information, political affiliation, position in a labor dispute, request for or use of protected leave, domestic violence victim status, or any other basis protected by applicable Federal, State or local law, or retaliation for opposing any such discrimination, harassment or abusive conduct, (n) the Occupational Safety and Health Act, as amended, (o) the Sarbanes-Oxley Act of 2002, as amended, (p) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (q) the Worker Adjustment and Benefit Protection Act of 1990, as amended, (r) the California and Federal Worker Adjustment and Retraining Notification Act, as amended, (s) any federal, state or common law claim or cause of action for breach of contract (whether oral or written, express or implied); breach of the implied covenant of good faith and fair dealing;, causes of action for wrongful termination, constructive discharge, retaliation, defamation, slander, libel, intentional or negligent infliction of emotional distress, fraudulent misrepresentation, negligent misrepresentation, fraud, promissory estoppel, any claim under contract, tort or negligence laws, or obligations arising out of any of Defendant' employment policies or practices, employee handbooks, and/or any statements by any employee or agent of either of the Defendant whether oral or written, (t) the California Labor Code, (u) any applicable California Industrial Welfare Commission Wage Orders, (v) the Government Code §12940 *et seq.,* (w) the Federal or any State Constitution, (x) the Fair Labor Standards Act, (y) the Consolidated Omnibus Budget Reconciliation Act of 1985, (z) California Family Rights Act (Gov. Code §12945.2 *et seq*.), (aa) the California Private Attorney General Act ("PAGA"), (bb) the California Unruh Civil Rights Act (Civ. Code §51, *et seq.*), (cc) the California Whistleblower Protection Act (Lab. Code §1102.5), (dd) the California Occupational Safety and Health Act (Labor Code §6300, *et seq*.), (ee) California Business and Professions Code §§17200 *et seq*., (ff) any claim under Labor Code §§132a, (gg) any claim for serious and/or willful misconduct, (hh) invasion of privacy, (ii) false imprisonment, (jj) interference with business advantage, interference with prospective economic advantage and/or interference with contractual relationship, (kk) failure to provide suitable seating, and (ll) any other federal, state or common law claim or cause of action, including, but not limited to, any claim related to civil rights, wage-hour, pension or labor laws rules or regulations, public policy, for reinstatement, back pay, bonus, attorneys' fees or costs, compensatory damages, consequential damages, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation and damage for personal, emotional or economic injury or damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and total release of any claims, whether specifically enumerated herein or not, that Plaintiff might have or have had, that exists or ever has existed, on or before the Effective Date.

64. Plaintiff further agrees as follows:

a. Plaintiff expressly waives and relinquishes all rights and benefits afforded by § 1542 of the Civil Code of the State of California and does so, understanding and acknowledging the significance of the waiver of § 1542. Section 1542 of the Civil Code of the State of California states:

> 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.

Notwithstanding the provisions of § 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff knew of, as well as all claims that he did not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to the final approval of this Settlement Agreement by the Court, and that this Settlement Agreement contemplates the extinguishment of any such Plaintiff's claims to the maximum extent permitted by law.

b. Plaintiff represents and warrants that he is not aware of any liens and/or third-party Claims of any type related in any way to this Action, Plaintiff's employment with Defendant, Plaintiff's separation from employment with Defendant, Class Representative's

Claims, or any of the Released Class Claims or Released PAGA Claims. Plaintiff shall be solely responsible for any such liens that exist and shall defend, indemnify and hold Released Parties harmless for any liability and costs, including any attorneys' fees and expert witness fees, related to any such liens that exist.

F. Interim Stay of Proceedings

65. Pending completion of all prerequisites necessary to effectuate this Settlement, including amending the Complaint, the Parties agree, subject to Court approval, to stay all proceedings in the Action except those necessary to effectuate the Settlement.

G. Notice Process

66. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard methods to obtain forwarding addresses, addressing questions from Class Members and PAGA Employees, independently reviewing and verifying documentation associated with any objections or opt-out requests, as needed, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and PAGA Employees, issuing Forms W-2 and 1099, handling all required tax payment reporting and filings related to the Settlement, disbursing payments in accordance with the Settlement and the Court's orders, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

67. Disputes Regarding Settlement Administration. Any and all disputes relating to the administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary. The Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Before presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members,

PAGA Employees, and Class Counsel any Forms W-2, Forms 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities on behalf of the Class and Defendant.

68. Class Data. Within fourteen (14) days after the Preliminary Approval Order entry, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will check the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator must be safeguarded and will not be provided to Class Counsel unless specific disclosure is required to effectuate Class Counsel's duties as specified in this Agreement and pursuant to the express written permission of Defendant's counsel or order of the Court. The Class Data will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

69. Notice. As approved by the Court, the Settlement Administrator shall send the Notice to the Class Members by first-class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. If any envelopes with the Notice are returned, the Settlement Administrator shall use standard methods, including a skip trace, to obtain forwarding addresses of Class Members.

70. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator's learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned later than the Response Deadline or fifteen (15) days after remailing the Notice, whichever is later.

71. Presumption Regarding Receipt of Notice. It will be conclusively presumed that the Class Member receives the Notice if an envelope is not returned within thirty (30) days of the mailing.

72. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt out. The Notice will inform Class Members of their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and Pay Periods during the PAGA Period. Class Members may dispute their Pay Periods Worked if they believe they were employed more Workweeks in the Class Period or Pay Periods during the PAGA Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant' records will be presumed determinative absent reliable evidence to rebut Defendant' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defendant' Counsel, who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks and Pay Periods Worked and estimated Individual Settlement Amount. If Class Counsel and Defendant's Counsel cannot agree, they will defer to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Pay Periods Worked, object, or opt out, unless the Court extends. The Response Deadline shall be sixty (60) days after the original mailing date of the Notice by the Settlement Administrator. If the Settlement Administrator increases the number of Work Weeks and/or Pay Periods Worked for any Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

73. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

74. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of the Settlement.

The Notice will inform the Class Members of the Court-established deadlines for submitting objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) <u>Requests for Exclusion from Class Members</u>. Any Class Member, other than Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words substantially to this effect:

> "I WISH TO BE EXCLUDED FROM THE CLASS IN THE *HOME OXYGEN COMPANY* CLASS ACTION SETTLEMENT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Any Request for Exclusion must include the full name, address, telephone number, employee number or last four digits of the social security number or date of birth, and the signature of the Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address for the Settlement Administrator in the Notice. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely if postmarked by the Notice Response Deadline unless the Parties otherwise agree in writing. Any Class Member who timely requests exclusion in compliance with these requirements: (1) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (2) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (3) will not be bound by this Agreement, or the Judgment, with respect to the Released Class Claims.

(b) <u>Binding Effect on Participating Class Members</u>. Except for those Class Members who exclude themselves in compliance with the procedures set forth above, all Class Members will: (1) be deemed to be Participating Class Members for all purposes under this Agreement; (2) will be bound by the terms and conditions of this Agreement, the Judgment, and the Releases set forth herein; and (3) except as otherwise provided herein, will be deemed to have waived all objections to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Provided they do not opt-out, any Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have submitted a written objection as outlined herein ("Objecting Class Member"). To object, a Class Member can inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Class Member, the case name and number, the basis for the objection, including any legal support, and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if counsel represents the Objecting Class Member, the name and address of his/her/their counsel. If any Objecting Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defendant's Counsel within three (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence described in Paragraph 73. Any Class Member who files an objection must not opt-out and will remain eligible to receive monetary compensation from the Settlement if it becomes final and binding. Where a Class Member files and submits both a timely objection and a timely request for exclusion, the request for exclusion will be deemed void, the objection will be duly noted as described in this Paragraph, and the Class Member will remain eligible to receive monetary compensation from the Settlement if it becomes final and binding. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or their counsel related to any objections to the Settlement. PAGA Employees may not object to or opt out of the Settlement with respect to the PAGA Claims.

(d) Failure to Object. Any Class Member who desires to object with respect to the Class Claims but fails to submit a timely written objection waives any right to object in writing and will be foreclosed from making any written objection to this Settlement.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Class Members at least five (5) court days before the date of the Final Approval Hearing.

75. Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail using the address provided in the Notice. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant' counsel the written objections that were timely submitted and provide the number of Requests for Exclusion submitted every week throughout the notice period and upon the request of Class Counsel or Defendant' Counsel. Within five (5) calendar days of the Notice Response Deadline, the Settlement Administrator shall provide counsel for the Parties a report containing (a) the total number of Class Members to whom notices were mailed, (b) the total number of notices that were returned and total notices that were remailed, (c) the date of the last notice remailed, (3) the total number of exclusions requests received and whether the requests were timely, and (4) the total number of objections received and whether the objections were timely.

76. Funding of the Settlement Amount. Defendant shall fund the Gross Settlement Amount in six (6) installments as follows: (a) the first payment of Thirty-Five Thousand Dollars ($35,000) shall be made within fifteen (15) days after Final Approval of the Settlement by the Court; (b) the first of four (4) payments of Twenty-Two Thousand Five Hundred Dollars ($22,500) each shall be made sixty (60) days after the first installment, with the remaining three (3) payments made every sixty (60) days thereafter; and (c) the sixth and final payment of Ten Thousand Dollars ($10,000) shall be made thirty (30) days after the fifth installment.

77. Default and Acceleration. If Defendant fails to timely make any installment payment, Defendant shall have a cure period of seven (7) calendar days after written notice from Class Counsel and/or the Settlement Administrator. If Defendant fails to cure within that period, the entire unpaid balance of the Gross Settlement Amount shall become immediately due and payable. In addition, any unpaid amounts shall accrue full. Plaintiff and Class Counsel shall be entitled to seek entry of judgment for the remaining balance plus accrued interest, attorneys' fees,

and costs incurred in enforcing the judgment.

78. Distribution of Funds. No later than seven (7) calendar days after the deposit of the final payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Award to the Class Representative (*i.e.*, Plaintiff), the payment to the LWDA for its portion of the PAGA Penalty, will pay itself the Settlement Administration Costs and will submit the employee and employer payroll tax withholdings on behalf of the Class and Defendant. The payment of Individual Settlement Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members and Aggrieved Employees (including, but not limited to, 401(k) contributions or bonuses) beyond those specified in this Agreement.

79. Deadline for Cashing Settlement Checks. Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void, and a stop payment will be issued. All unclaimed funds after the 180-day deadline shall be sent to the *cy pres* recipient mutually selected by the Parties, and approved by the Court, in the name of the class member. The release will be binding upon all Participating Class Members regardless of whether or not they cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to attempt to locate the individual. If a new address is obtained through these means or a forwarding address is available, the Administrator will have ten (10) business days to reissue the check. Neither Defendant, Defendant's Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question

has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

80. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

H. Duties of the Parties Prior to the Court's Approval

81. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order. Class Counsel will provide Defendant's Counsel with the opportunity to review and comment on all drafts of all pleadings, declarations, and proposed orders to be filed in connection with the Motion for Preliminary Approval at least 10 calendar days before filing such Motion with the Court. Class Counsel and Defense Counsel shall work together in good faith to agree upon the content of the Motion for Preliminary Approval. Defendant shall not oppose Plaintiff's Motion for Preliminary Approval to the extent it is consistent with the terms and conditions of this Agreement and the content has been approved by Defendant prior to filing the Motion for Preliminary Approval. The Preliminary Approval Order shall accomplish the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Participating Class Members and a hearing on fees, costs, and the Service Award;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members;

(d) Preliminarily approving this Settlement in accordance with this Agreement and by submitting the Proposed Preliminary Approval Order; and

(e) Preliminarily certifying the class for purposes of this Settlement.

Plaintiff will also move the Court for Final Approval of this Settlement and entry of the Final Approval Order. Class Counsel will provide Defendant' Counsel with the opportunity to review and comment on all drafts of all pleadings, declarations and proposed orders to be filed in connection with the Motion for Final Approval at least 10 calendar days before filing such Motion with the Court. Class Counsel and Defense Counsel shall work together in good faith to agree upon the content of the Motion for Final Approval. Defendant shall not oppose Plaintiff's Motion for Final Approval to the extent it is consistent with the terms and conditions of this Agreement and the content has been approved by Defendant prior to filing the Motion for Final Approval.

82. Good Faith Efforts and Cooperation to Secure Approval. In the event the Court declines to approve this Agreement on its first hearing or subsequent hearings, the Parties agree to meet and confer in good faith to address the Court's concerns and to work together in good faith to evaluate potential revisions and/or additional submissions of information, declarations, etc., to address the Court's concerns and renew a motion for approval.

I. Duties of the Parties Following Court's Final Approval

83. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit the proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, Individual Settlement Payments, the Service Award to the Class Representative, the PAGA Penalty, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving the Settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all PAGA Employees and the State of California and LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

J. Voiding the Agreement

84. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement that affects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to

all Parties herein at the option of either Party.

85. If ten percent (10%) or more of the Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to their pre-settlement positions and defenses in the Action. If Defendant exercises such option under this Paragraph, they shall be relieved of any obligation to pay the Gross Settlement Amount and all other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days after the Notice Response Deadline. If Defendant exercises its option under this Paragraph, the Parties shall each be responsible for one-half of the Settlement Administration Costs incurred.

86. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement. In addition, the Parties will be placed in the same position they were in before reaching this Settlement with the same rights, including, without limitation, the right of Defendant to contest the merits of Plaintiff's claims and class certification, and Plaintiff's pursuit of a representative action under PAGA.

87. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff unless otherwise specified in this Agreement.

K. <u>Other Terms</u>

88. <u>Full and Complete Defense.</u> This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Class Claim or Released PAGA Claim.

89. <u>Waiver</u>. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

90. <u>Parties' Authority</u>. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions

hereof.

91. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to the execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and the final entry of judgment.

92. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Settlement Agreement.

93. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices and motions for preliminary and final approval, shall, pursuant to Evidence Code § 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only. If the settlement is not approved for any reason, the stipulation will be of no force or effect.

94. Notices. Unless otherwise specifically provided herein, all notices, demands, or

other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class Members and PAGA Employees:

Mehrdad Bokhour *mehrdad@bokhourlaw.com* 1901 Avenue of the Stars, Suite 520 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa *josh@falakassalaw.com* 1901 Avenue of the Stars, Suite 520 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendant:

Stacy L. Henderson *stacy@hendersonhatfiled.com* Henderson Hatfield, A Professional Corporation 1101 15th Street Modesto, California 95354

95. <u>No Media, Press or Publicity:</u> Plaintiff and Class Counsel agree to discuss the terms of this Settlement only in declarations submitted to a court or court hearings to establish their adequacy to serve as a class representative in this case, in declarations submitted to a court in support of a motion for attorney's fees in this case, and in discussions with Class Members in the context of administering this Settlement. Plaintiff and Class Counsel, recognize, accept and agree that the Parties to this Agreement desire that the terms of this Agreement, the fact that the Agreement has been entered into, the terms of the Settlement embodied in this Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action and discovery, shall not be discussed with or presented to the media or press in any form or manner. Accordingly, Plaintiff and Class Counsel agree that they shall not initiate any press release, or publication via any form of media, and, if contacted by press or the media, their response shall be limited to a recitation of the facts, including Defendants' denial of liability for the allegations in the Complaint and PAGA Letter.

96. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

97. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

98. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by writing signed by all of the Parties hereto.

99. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs.

100. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure § 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

101. Enforceability. Pursuant to Evidence Code § 1123(a) and (b), this Agreement is

intended by the Parties to be and shall be, enforceable, binding, and admissible in a court of law.

102. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

103. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

104. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

105. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Participating Class Member execute this Settlement Agreement. The Notice will advise all Participating Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if each Participating Class Member executed this Settlement Agreement.

106. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures and photocopies of signature pages shall have the same force and effect as an original.

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APPROVAL AND EXECUTION BY PARTIES:

Dated: 12/19/2025, 2025

PLAINTIFF AND CLASS REPRESENTATIVE:

Signed by:
Cedrick Miller
855A134E38B94B5
Cedrick Miller

Dated: 1/6/2026, 2025

DEFENDANT:

HOME OXYGEN COMPANY, LLC:

Signature:

Printed Name: ANDREA EWERT

Position: CEO

CLASS COUNSEL:

Dated: 12/19/2025, 2025

FALAKASSA LAW, P.C.

DocuSigned by:
Joshua Falakassa
15A828B2C5A149C...
Joshua Falakassa
Attorneys for Plaintiff

Dated: 12/19/2025, 2025

BOKHOUR LAW GROUP, P.C.

Signed by:
MEHRDAD BOKHOUR
D8D3843F271940F...
Mehrdad Bokhour
Attorneys for Plaintiff

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Dated: Jan 6, 2026

DEFENDANT'S COUNSEL:

HENDERSON HATFIELD
A Professional Corporation

S. Henderson

Stacy L. Henderson
Attorneys for Defendant
Home Oxygen Company, LLC

EXHIBIT “B”