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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOAQUIN GARCIA-REYES, as an individual and on behalf of all others similarly situated, Plaintiff, vs. FASTCILITY CORPORATION, a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 30-2024-01430431-CU-OE-CXC [*Assigned for all purposes to the Hon. Layne H. Melzer, Dept. CX102*] **SUPPLEMENTAL DECLARATION OF SCOTT M. LIDMAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [Vol. 1]** Date: July 9, 2026 Time: 2:00 p.m. Dept.: CX102 Complaint Filed: October 4, 2024 Trial Date: Not Set

I, SCOTT M. LIDMAN, declare as follows:

1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel for the named Plaintiff Joaquin Garcia-Reyes ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am providing this supplemental declaration in support of Plaintiff's supplemental brief for preliminary approval of class action settlement.

3. The Court issued its tentative ruling identifying issues for the Parties to address in supplemental briefing. Consistent therewith, Plaintiff hereby submits the instant supplemental brief (and accompanying declaration) to address the issues identified by the Court in the same order identified in the tentative ruling.

4. The Parties have met and conferred and prepared an Amended Class Action and PAGA Settlement Agreement and Class Notice with changes in redline is attached hereto as **Exhibit A**.

5. A true and correct copy of the Amended Class Action and PAGA Settlement Agreement with Class Notice with all redlines accepted and executed by the Parties is attached hereto as **Exhibit B**.

6. A true and correct copy of the revised Class Notice with changes in redline is attached to hereto as **Exhibit C**.

7. A true and correct copy of the revised Class Notice with all redlines accepts is attached to hereto as **Exhibit D**.

8. Defendant has verified that there are 6,279 workweeks worked by class members during the Class Period of October 4, 2020 through October 4, 2025. Therefore, the escalator clause is not triggered and the Class Period's end date is certain – October 4, 2025.

9. Plaintiff alleges that he and Settlement Class Members were not fully compensated for all of their time worked. Specifically, Plaintiff alleges Defendant would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Plaintiff also alleges that this time shaving and/or rounding practice utilized by Defendant was not-even handed over

time and would almost exclusively round and shave in Defendant's favor such that the employees were routinely underpaid for their time worked and estimated on average an underpayment of approximately 5 minutes per day or 25 minutes per week. *Id*. Accordingly, Plaintiff calculated a total wage underpayment of approximately $76,496 (6,059 workweeks x . 42 hours underpaid/week x $30.06 (avg. hourly rate)).

10. Defendant contends that it compensated Settlement Class Members for all of their time worked. Defendant also contends that there were no rounding practices, and any unpaid time was *de minimis* and therefore non-compensable. Defendant further asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required and that the timekeeping data reflected no such rounding practice. In light of these defenses, Plaintiff discounted the maximum exposure by 100% for the risk of non-certification, and an additional 100% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of $0.

11. Plaintiff alleges that he and the Class Members were not provided with all legally-compliant meal periods beginning before the end of the fifth hour of work, nor were they provided second meal periods when working shifts longer than 10.0 hours. Additionally, Plaintiff alleges his meal periods were regularly interrupted by Defendant, as he was required to answer telephone calls and respond to e-mails during his meal periods. As a result of Defendant's policies and procedures and the work demands imposed by Defendant, Plaintiff alleges that Defendant often provided meal periods that were either late or interrupted or failed to provide a required meal period altogether. Accordingly, Plaintiff calculated Defendant's alleged exposure on the meal period claim at approximately $769,740.00 (22,058 facially non-compliant meal periods x $30.06 (avg. hourly rate) + $105,526 interest for unique meal periods).

12. Defendant counters that it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take all legally compliant meal periods. Defendant further argues that service technicians' (like Plaintiff) routes were structured so that they had the opportunity to take timely, duty-free meal periods. Defendant points out that it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. Defendant also argues that Plaintiff and other Class Members signed meal period waiver agreements. Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification, given that

individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $296,349.90.

13. Plaintiff alleges that he and Class Members were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Plaintiff alleges that he and other non-exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours, which was approximately 26,585 shifts. Therefore, Plaintiff calculated Defendant's maximum potential exposure for the alleged rest period violations at approximately $932,956.00 ((26,585 shifts over 3.5 hours x 100% violation rate x $30.06 (avg. hourly rate) + $134,129 interest due to rest break violations)).

14. Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Defendant also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 55% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $230,906.61.

15. Plaintiff alleges Defendant failed to reimburse non-exempt employees for all necessary business expenses incurred. Specifically, Plaintiff alleges that Defendant required Plaintiff and non-exempt employees to use their personal cell phones for work-related purposes but did not reimburse the non-exempt employees for such usage in violation of Labor Code § 2802. Plaintiff estimates employees should have been reimbursed approximately $30.00 per month or about $7.50 per week for reasonable cellular phone related expenses. Therefore, Plaintiff calculated Defendant's potential exposure for

unreimbursed business expenses at approximately $23,452.00 ((6,059 workweeks x $7.50 per workweek) + $5,469 interest due to unreimbursed business expenses).

16. Defendant contends employees, including Plaintiff, were provided with company cell phones, were not required to use their personal electronic devices to communicate with team members and would only do so at their own volition and were prohibited by Defendant's policies from using personal devices. Defendant further contends that any purportedly necessary expenses incurred by non-exempt employees were minimal. In light of these defenses, Plaintiff discounted the maximum recovery on this claim by 60% for the risk of non-certification, and an additional 30% to account for the risk that Defendant could prevail on its defenses, to arrive at a projected total of approximately $6,566.56.

17. Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid meal and rest period premium wages described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Class Members did not accurately show gross wages earned and net wages earned. Plaintiff calculated Defendant's maximum potential exposure for wage statement violations at approximately $105,450.00 (($4,000 max x 2 employees) + ((39 employees x $50 initial) + (953 pay periods x $100 subsequent violations).

18. Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Defendant also argues that recovery of wage statement penalties as a derivative claim for other alleged violations (such as unpaid wages or meal/rest periods) is an unlawful double recovery prohibited under binding California law. *Id.* As such, Plaintiff discounted the calculated exposure by 20% for a risk of non-certification and an additional 40% for a risk of being unsuccessful on the merits, to arrive at an estimated total of approximately $50,616.00.

19. Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages owed upon termination/separation of employment. There were approximately 33 Class Members who have separated their employment with Defendant

during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff calculated Defendant's maximum potential exposure for waiting time penalties at approximately $302,486.00 (33 formers x 8 hours/day x $30.06 avg. hourly rate x 30 days).

20. Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Accordingly, Plaintiff discounted the maximum exposure by 20% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately $145,193.28.

21. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Plaintiff calculated Defendant's maximum potential exposure at $586,900.00 based on each unique Labor code violation for meal period violations, rest period violations, and wage statement violations. *Id.*; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). Thus, the unique violation amounts are as follows:

- PAGA for Waiting Time (20 former employees in PAGA Period): $2,000 (20 formers x $100 violation rate);
- PAGA for unpaid Wages (41 employees and all pay periods): $117, 200 (41 x $100 + 1,131 pay periods x $100);
- PAGA for Meal Breaks (41 employees and all pay periods): $117, 200 (41 x $100 + 1,131 pay periods x $100);
- PAGA for Rest Breaks (41 employees and all pay periods): $117, 200 (41 x $100 + 1,131 pay periods x $100);
- PAGA for Wage Statements (41 employees and all pay periods): $117, 200 (41 x $100 + 1,131 pay periods x $100); and
- PAGA for Reimbursements (41 employees and all pay periods): $117, 200 (41 x $100 + 1,131 pay periods x $100)
- **<u>Total is $586,900.00</u>**

22. Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum exposure figure by 45% for a risk of being unsuccessful on the merits, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $129,118.00.

23. Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $858,750.35. The proposed settlement of $257,000.00 therefore represents approximately 29.9% of the reasonably forecasted recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Class Members and will still provide an average recovery to Class Members of ***<u>close to $2,000</u>***.

35. I have directed my office to submit a copy of the instant Supplemental Brief In Support of Plaintiff's Motion for Preliminary Approval and all supporting documents via the LWDA's website

on the same date concurrently herewith and will have a supplemental declaration filed after the Motion for Preliminary Approval and all supporting documents are submitted to the LWDA.

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

Executed on June 9, 2026, at El Segundo, California.

Scott M. Lidman

EXHIBIT A

EXHIBIT A

AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Amended Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Joaquin Garcia-Reyes ("Plaintiff") and Defendant Fastcility Corporation ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as the "Parties," or individually as "Party."

1. DEFINITIONS

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

1.1. "Action" means Plaintiff's lawsuit alleging wage and hour violations against Defendant, captioned *Joaquin Garcia-Reyes v. Fastcility Corporation,* Case No. 30-2024-01430431-CU-OE-CXC, initiated on October 4, 2024 and pending in Superior Court of the State of California, County of Orange.

1.2. "Administrator" means ILYM Group, Inc, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval.

1.4. "Aggrieved Employees" means all individuals who were employed by Defendant Fastcility Corporation in California and classified as a non-exempt employee at any time during the PAGA Period.

1.5. "Class" means all individuals who were employed by Defendant Fastcility Corporation in California and classified as a non-exempt employee at any time during the Class Period.

1.6. "Class Counsel" means Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

1.8. "Class Data" means Class Member identifying information in Defendant's possession, consisting of the Class Member's first and last name, last-known mailing address, Social Security number, e-mail address (if known and available to Defendant), and number of Workweeks and, if applicable, PAGA Pay Periods.

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

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available e-mail addresses, phone numbers, Social Security numbers, credit reports, LinkedIn and Facebook.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Notice Packet" means the Class Notice, Workweek Dispute & Change of Address Form, Request for Exclusion Form, and Objection Form to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).

1.13. "Class Period" means the period of time from October 4, 2020 through October 4, 2025 or the date the Court preliminarily approves the Settlement, whichever is earlier.

1.14. "Class Representative" means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

1.15. "Class Representative Service Payment" means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses, and for the general release of all claims by the Plaintiff.

1.16. "Court" means the Superior Court of California, County of Orange.

1.17. "Defense Counsel" means Kyle D. Kring and Kerri N. Kramer of Kring & Associates, APC.

1.18. "Effective Date" means the date upon which both of the following have occurred:

(i) Final Approval is granted by the Court, and (ii) the Judgment becomes Final. The term "Final" shall mean the latest of: (i) if there is an appeal of the Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review to the California Supreme Court and/or a petition for writ of certiorari to the United States Supreme Court, or (ii) if a petition for review or writ of certiorari is filed, the date of denial of the petition for review or writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

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

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

1.21. "Gross Settlement Amount" means Two Hundred Fifty-Seven Thousand Dollars and Zero Cents ($257,000.00) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.

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

1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35 percent of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

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

1.25. "LWDA" means the California Labor and Workforce Development Agency.

1.26. "LWDA PAGA Payment" means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (m).

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

1.28. "Non-Participating Class Member" means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.

1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.30. "PAGA Period" means the period of time from October 4, 2023 through October 4, 2025 or the date the Court preliminarily approves the Settlement, whichever is earlier.

1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

1.32. "PAGA Notice" means the Plaintiff's October 4, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.33. "PAGA Penalties" means the total amount of PAGA civil penalties ($20,000) to be paid from the Gross Settlement Amount, allocated 35 percent to the Aggrieved Employees ($7,000) and 65 percent to LWDA ($13,000) in settlement of PAGA claims.

1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion.

1.35. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.36. "Released Class Claims" means any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind that are based on the facts stated in the Operative Complaint which occurred during the Class Period and for any and all claims that were raised or could have been raised based on the factual allegations made in the Operative Complaint that occurred during the Class Period. This includes claims for (1) Failure to Pay All Minimum Wages Owed (Labor Code §§ 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages Owed (Labor Code §§ 204, 510, 558, 1194, 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 558); (4) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 516); (5) Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 226 *et seq.*); (6) Failure to Indemnify All Necessary Business Expenditures (Labor

Code § 2802); (7) Failure to Pay All Wages Owed Upon Termination (Labor Code §§ 201-203); and (8) Unfair Competition (Bus & Prof Code § 17200 *et seq.*). Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims by way of this Agreement, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation.

1.37. "Released PAGA Claims" means all claims for PAGA penalties that were or could have been alleged based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. This includes claims for PAGA penalties based on underlying claims for (1) Failure to Pay All Minimum Wages Owed (Labor Code §§ 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages Owed (Labor Code §§ 204, 510, 558, 1194, 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 558); (4) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 516); (5) Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 226 *et seq.*); (6) Failure to Indemnify All Necessary Business Expenditures (Labor Code § 2802); ~~and~~ (7) Failure to Pay All Wages Owed Upon Termination; and (8) ~~Failure to Pay All Wages Owed Upon Termination; and (8)~~ Failure to Maintain Accurate Records (Labor Code § 1174).

1.38. "Released Parties" means Defendant and any respective parent, subsidiaries, affiliates, successors and related entities, including but not limited to Fastcility Corporation, any employee benefit plans sponsored or administered by Fastcility Corporation or such related entities, and any and all of its and their respective past or present officers, directors, partners, members, insurers, agents, assigns, attorneys, employees, trustees, administrators, fiduciaries, and any other persons acting by, through, under, or in concert with any of them.

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

1.40. "Response Deadline" means sixty (60) calendar days after the Administrator mails the Class Notice Packet to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit Objections to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.41. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.

1.42. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

2. RECITALS

The Action

2.1. On October 4, 2024, Plaintiff commenced this Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Orange. Plaintiff's Complaint asserted claims for:

(a) Failure to Pay All Minimum Wages Owed (Labor Code §§ 1194, 1194.2, 1197);
(b) Failure to Pay All Overtime Wages Owed (Labor Code §§ 204, 510, 558, 1194, 1198);
(c) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 558);
(d) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 516);
(e) Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 226 *et seq.*);
(f) Failure to Indemnify All Necessary Business Expenditures (Labor Code § 2802);
(g) Failure to Pay All Wages Owed Upon Termination (Labor Code §§ 201-203); and
(h) Unfair Competition (Bus & Prof Code § 17200 *et seq.*).

2.2. On November 27, 2024, Defendant filed an Answer to Plaintiff's Complaint.

2.3. On December 19, 2024, the Parties submitted a stipulation for Plaintiff to file a first amended complaint, and on January 3, 2025 the Court issued an order permitting Plaintiff to file a first amended complaint.

2.4. On January 6, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint against Defendant. Plaintiff's First Amended Complaint added a single cause of action against Defendant for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq*. and is the "Operative Complaint" in the Action.

2.5. On February 5, 2025, Defendant filed an Answer to Plaintiff's First Amended Complaint.

Mediation and Settlement

2.6. On August 5, 2025, the Parties participated in full-day mediation with mediator Lisa Klerman, Esq., a respected wage and hour class action mediator. The Parties were able to agree to settle the Action. This Agreement replaces and supersedes any other agreements, understandings, or representations between the Parties.

2.7. Prior to mediation, Plaintiff obtained ample documents and information to adequately investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). In particular, Defendant produced electronic time records and pay records for all Class Members, as well as relevant company policies and Plaintiff's individual file.

2.8. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

2.9. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay $257,000.00 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. The Gross Settlement Amount is a material term of this Agreement. Except as set forth in Paragraph 9, to the extent Plaintiff or the Court seeks to require Defendant to pay more than the Gross Settlement Amount as part of this Settlement or Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement or Agreement.

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

(a) <u>To Plaintiff</u>: Class Representative Service Payment to the Class Representative of not more than $7,500 (in addition to any Individual Class Payment and any Individual PAGA Payment he is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any

Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for any taxes owed on the Class Representative Service Payment. The Court's approval of the Class Representative Service Payment, in the amount requested or any amount, is not a material term of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for the Class Representative Service Payment, the other terms of the Settlement and this Agreement shall continue to apply. The Court's refusal to approve the Class Representative Service Payment requested by Class Counsel does not give either the Class Representative or Class Counsel any basis to abrogate the Settlement or this Agreement.

(b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be $85,666.66, and a Class Counsel Litigation Expenses Payment of not more than $25,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments. The Court's approval of a Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment is not a material term of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel, the other terms of the Settlement and this Agreement shall still apply. The Court's refusal to approve the payments requested by Class Counsel does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the Settlement or this Agreement.

(c) To the Administrator: An Administration Expenses Payment not to exceed $5,750 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less, or the Court approves payment less than $5,750, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members. To the extent the Court approves, upon a showing of good cause, a higher Administration Expenses Payment, the difference will be paid from, and not in addition to, the Gross Settlement Amount, thereby reducing the Net Settlement Amount

(d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $20,000 to be paid from the Gross Settlement Amount, with 65 percent ($13,000) allocated to the LWDA PAGA Payment and 35 percent ($7,000) allocated to the Individual PAGA Payments.

i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35 percent share of PAGA Penalties ($7,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

ii. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

iii. The Court's reduction or increase of the PAGA Penalties amount is not a material term of the Settlement or this Agreement. If the Court approves only a lesser amount or a higher amount than that requested by Class Counsel, the other terms of the Settlement and this Agreement shall apply. The Court's reduction or increase of the PAGA Penalties portion requested by Class Counsel does not give the Class Representative or Class Counsel any basis to abrogate the Settlement or this Agreement. However, the Court's approval of a PAGA Penalties amount, including the LWDA PAGA Payment, is a material term of the Settlement and this Agreement. If the Court does not approve the PAGA Penalties amount set forth in this Agreement, then the PAGA Penalties amount shall be made in the amount required by the Court. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. If the Court requires the PAGA Penalties to be higher than as stated in this Agreement, the additional funds for the PAGA Penalties shall be taken from the Gross Settlement Amount. Thus, the Gross Settlement Amount shall not be increased if the Court requires a larger amount for this term.

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

i. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, liquidated damages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). These allocations represent the Parties' good faith allocation based on the claims asserted and potential damages. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

4. SETTLEMENT FUNDING

4.1. Class Workweeks. Based on Defendant's records, the Class consists of approximately 57 Class Members who collectively worked a total of approximately 6,059 Workweeks through the date of the Parties' mediation. Based on its records, Defendant also has represented that the number of Aggrieved Employees is 40 who collectively worked a total of approximately 2,202 PAGA Pay Periods through the date of the Parties' mediation.

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

4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount (including additional amounts, if any, pursuant to the Escalator Clause), and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than the later of: (1) thirty (30) days after the Effective Date; or (2) seven (7) business days after the Administrator provides Defense Counsel with all information needed for Defendant to fund such amounts, including calculation of all final amounts and accessible funding instructions.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will distribute funds, via first-class United States Postal Service ("USPS") mail, for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 days after the date of mailing, when the check will be voided. The Administrator will promptly cancel all checks not cashed by the void date. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment.

5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date. No Party, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Administrator.

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

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

6. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount (including any amounts due pursuant to the Escalator Clause) and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all individual and class claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and/or Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences after the end of the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

(a) Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, the Released Parties from the Released PAGA Claims.

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

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

7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or real-time video/audio conferencing software, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class

Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or real-time video/audio conferencing software, and in good faith, to determine whether they can reach an agreement to modify the Agreement and/or otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to timely perform, as a fiduciary, all duties specified in this Agreement and/or applicable orders of the Court, and any other duties reasonably necessary to carry out those so specified, in exchange for the Administration Expenses Payment. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and e-mail and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes and any other updates necessary to keep them apprised of the status of their administration of the Settlement; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

8.4. Notice to Class Members.

(a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel and Defense Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

(b) No later than three (3) business days after notification of the number of Workweeks and Pay Periods in the Class Data, should the Escalator Clause of Paragraph 9 be triggered, Defendant shall notify Class Counsel and the Administrator of its election to either (1) increase the Gross Settlement Amount, or (2) shorten the Class Period, PAGA Period, and release periods.

(c) Using best efforts to perform as soon as possible, and in no event later than 16 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

(d) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained, if different from the original mailing address used on the returned item. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members for whom no alternative mailing address can be located or whose Class Notice is returned by the USPS a second time.

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

8.5. Requests for Exclusion (Opt-Outs).

(a) Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, e-mail, or mail, a signed written Request for Exclusion not later than the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the name and case number of the Actions (or reasonable portion thereof) and the Class Member's name, address and e-mail address or telephone number, and employee ID number or Social Security number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

(b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain (including through efforts discussed below) the identity of the person as a Class Member and the Class Member's desire to be excluded. If the Administrator has reason to question the authenticity or validity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity and/or desire to be excluded. While the Administrator will attempt to resolve any such dispute, the Court ultimately will decide any unresolved dispute.

(c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

(d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.6. <u>Challenges to Calculation of Workweeks/Pay Periods</u>. Each Class Member shall have until the Response Deadline to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, e-mail or mail. The Administrator must encourage the challenging Class Member to submit copies of supporting documentation. Class Members should be warned not to submit originals, as the Administrator is not authorized to incur any expenses to return them. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges. While the

Administrator will attempt to resolve any such dispute, the Court ultimately will decide any unresolved dispute.

8.7. Objections to Settlement.

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

(b) Participating Class Members may send written objections to the Administrator, by fax, e-mail, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.

(c) Non-Participating Class Members have no right to object to any components of the Settlement.

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

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

(b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

(c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address Class Member challenges to the calculation of Workweeks and/or Pay Periods and will attempt to resolve any such disputes. The Court ultimately will decide any unresolved Workweek and/or Pay Period challenges.

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

(e) Administrator's Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

9. **ESCALATOR CLAUSE**. Defendant's records and data revealed that the Class consists of approximately 57 Class Members who collectively worked a total of approximately 6,059 Workweeks as of the time of the Parties' mediation. If the actual number of Workweeks is more than 15 percent greater that this figure (i.e., there are more than 6,968 Workweeks), Defendant will either, at its option, (1) increase the Gross Settlement Amount by the percent increase to the number of Workweeks above the 15% escalation limit (i.e., if there was an

16% increase in the number of Workweeks, Defendant would agree to increase the Gross Settlement Amount by 1%); or (2) elect to shorten the Class Period, PAGA Period, and release periods to end on the date on which the aggregate workweeks is closest to, without exceeding, 6,968 Workweeks. As noted above, Defendant shall make this election (if applicable) before any Class Notice Packets are dispatched by the Administrator.

10. **DEFENDANT'S RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion exceeds 15 percent of the total of all Class Members, or if those Class Members who submit valid Requests for Exclusion worked more than 15 percent of all Workweeks at issue, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses actually incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel or, if the validity of any Requests for Exclusion remains unresolved as of this date, when the Court has resolved such disputes. Invalid Requests for Exclusion will have no effect on this threshold for an election.

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

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

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

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

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

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

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit.

The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

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

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

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

13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8. Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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

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

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

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

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

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

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

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

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

To Plaintiff and the Class:

LIDMAN LAW, APC
Scott M. Lidman
slidman@lidmanlaw.com
Milan Moore
mmore@lidmanlaw.com
Tiara Gose-Hardy
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

To Defendant:

Kyle D. Kring, Esq.
kkring@kringandassociates.com
Kerri N. Kramer, Esq.
kkramer@kringandassociates.com
KRING & ASSOCIATES, APC
38 Corporate Park
Irvine, California 92606
Phone: (949) 393-1400
Fax: (949) 393-1430

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

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

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

~~13.20.~~13.21. Continuing Jurisdiction. The Court's continuing jurisdiction is pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h).

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: __________ ________________________________
Plaintiff Joaquin Garcia-Reyes

Dated: __________ ________________________________
________________________[name]
For Defendant Fastcility Corporation

Dated: __________ ________________________________
Scott M. Lidman
Milan Moore
Tiara Gose-Hardy

Lidman Law, APC
Attorney for Plaintiff

Dated: __________ ______________________________

Kyle D. Kring
Kerri N. Kramer
Kring & Associates, APC
Attorneys for Defendant

EXHIBIT A

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