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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ANDREW ELLENBERG-WILEY, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiffs, vs. SAN FRANCISCO AIDS FOUNDATION, a California nonprofit corporation; and DOES 1-50, Inclusive, Defendants.	Case No. CGC-23-609040 **DECLARATION OF JACKLAND K HOM, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: August 26, 2025 Time: 9:00 a.m. Dept.: 302

I, Jackland K Hom, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an associate attorney at Zakay Law Group, APLC (hereinafter "Class Counsel"). I am co-counsel of record for Plaintiff ANDREW ELLENBERG-WILEY (hereafter "Plaintiff") in this wage and hour class action filed against SAN FRANCISCO AIDS FOUNDATION (hereinafter "Defendant").

2. This declaration is being submitted in support of Plaintiff's motion for Preliminary Approval of Class and PAGA Action Settlement.

I. EXHIBITS

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the final Stipulation of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice. At the time of filing this Motion, the parties have circulated the final Settlement Agreement for signatures. Plaintiff will submit a fully executed Settlement Agreement prior to the hearing.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class and PAGA Action Settlement evidencing Class Counsel's compliance with California Labor Code Section 2699(l)(2).

5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement administration submitted by Apex Class Action Administration, in the amount of $8,490.00.

II. INTRODUCTION

6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

7. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

A. Overview of the Litigation

8. Defendant operates sexual health clinics throughout California, including in San Francisco, where Plaintiff worked. Plaintiff was employed by Defendant from September 2021 to October of 2022 as a non-exempt employee. Plaintiff alleges that he was denied legally compliant meal and rest periods, and minimum wages and overtime compensation at all times during his employment. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook."

9. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including reporting time pay and split shift premiums, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, compliant reimbursement practices, and it timely paid all wages due upon separation of employment.

10. On September 11, 2023, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA").

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11. On September 13, 2023, Plaintiff filed a class action complaint in the San Francisco County Superior Court, Case No. CGC-23-609040 ("Action"). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 1700, *et. seq.;* (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802.

12. On November 8, 2023, Plaintiff filed a first amended complaint to add a ninth cause of action for Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et. seq.* ("PAGA")].

13. The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data.

14. On August 20, 2024, the Parties participated in a full day mediation with highly regarded wage and hour and PAGA mediator Steven Rottman, Esq. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement. The basic terms were set forth in a signed Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

15. Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,

including his offer letter, and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry.

16. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, Defendant's handbooks, copies of Plaintiff's hiring documents, and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, provide accurate wage statements and to provide compliant meal and rest periods.

17. To prepare for mediation, Defendant produced the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed more than 9,000 pages of documents and more than 1 million unique cells of time and payroll data.

18. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in his fields and have provided his expertise on thousands of cases.

19. BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid wages, the amount of unpaid overtime, and the amount of unreimbursed business expenses.

20. In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions.

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21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

22. Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

C. The Parties Settled at Mediation

23. On August 20, 2024, the Parties conducted a full day of mediation with Steven Rottman, Esq. Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

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IV. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

24. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement. Given that there are approximately 194 Participating Class Members, ***the average gross recovery is approximately $969.42*** (Net Settlement Amount divided by Settlement Class Members).

25. The Parties participated in mediation the highly respected mediator Steven Rottman, Esq. Mediator Rottman managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) After a full day of mediated negotiations, the Parties reached an agreement and the mediation session concluded with a settlement.

26. Following the mediation, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

27. As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court.

28. Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated

with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

29. The Gross Settlement Amount of $385,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) ranged between $1,146,218.48 ("Realistic Damages") and $2,292,816.00 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 33.59% ("Realistic Damages") and 16.79% ("Maximum Damages") of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure.

30. Plaintiff's primary claim in this Action alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that due to Defendant failed to maintain time records for a significant portion of meal periods taken during the Class Period. Instead, Plaintiff alleges Defendant instead simply deducted 30 minutes from the total number of hours worked in shifts in which a meal period was triggered. The absence of clock-out or clock-in data for meal periods makes it impossible to analyze whether a meal break was actually taken, and if so, whether it was taken timely, and for at least 30-minutes. However, Plaintiff alleges that due to Defendant's understaffing and rigorous workloads, Plaintiff, Class Members, and Aggrieved Employees were often unable to take timely and duty-free meal periods, and Defendant failed to pay meal period premiums. Plaintiff estimated Defendant's exposure for failure to provide compliant meal periods to be between $138,303.56 and $184,404.75.

31. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that due to Defendant's understaffing and rigorous workloads, Plaintiffs, Class Members, and Aggrieved Employees were often unable to take timely and duty-free rest periods,

and Defendant failed to pay rest period premiums. Defendants denied liability and asserted that they maintained legally compliant rest period practices throughout the Class Period. In valuing this claim, Plaintiff recognizes the evidentiary burdens in establishing the claim. Specifically, establishing Plaintiff's rest period claim would depend, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices.") Accordingly, Plaintiff estimated Defendant's exposure stemming from this claim to be between $138,303.56 and $184,404.75, based on Plaintiff's testimony and investigation.

32. Plaintiff alleged that Defendant required Class Members and Aggrieved Employees to use their personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by Defendant. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). Specifically, Plaintiffs, Class Members, and Aggrieved Employees were required to use their personal cell phones for essential work-related communications, such as communicating with managers and supervisors about job duties and about various Covid-19 protocols. Plaintiff estimated Defendant's exposure stemming from this claim to be between $86,212.50 and $172,425.00.

33. Generally, Plaintiffs allege that Defendants' aforementioned violations resulted in derivative violations of California Labor Code sections 203 and 226(a). Class Counsel considered the

arguable presence of various penalties and weighed the potential recoveries against probable defenses, including potential obstacles in proving the "willful" prong needed to obtain waiting time penalties under Labor Code section 203, showing that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code 226, or that meal and rest period violations may not entitle employees like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444 (review granted); *Maldonado v. Epsilon Plastics, Inc*. (2018) 22 Cal. App. 5th 1308.) Although the Class arguably could have seen a significant payout for these penalties if Plaintiffs prevailed on every penalty claim, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to establish class certification to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp*., 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc*., 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which according to Defendants, were not supported by the facts. In light of the above, Plaintiff estimated the exposure for wage statement penalties to be between $177,356.25 and $236,475.00, and Defendant's exposure for waiting time penalties to be between $606,042.60 and $1,515,106.50.

34. Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between $346,706 and $524,587.

35. Here, the Parties negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 5.2% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Settlement Amount. Seventy-Five percent (75%) of the PAGA Settlement Amount ($15,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Settlement Amount ($5,000.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Settlement Amount approved by courts and should be approved.

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B. Litigation Risks

36. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

37. "The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation." (*In re Nvidia Derivs. Litig*. (N.D. Cal. 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous regardless of the strengths of merits of the claims:

> [N]othing is assured when litigating against commercial giants with vast litigative resources, particular in such complex litigation as this, which would strain the cognitive capacities of any jury. Defense judgments were hardly beyond the realm of possibility. Accordingly, this factor weighs in

favor of preliminary approval.

(Rebney v. Wells Fargo Bank (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

38. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

39. In this matter, Class Counsel negotiated a Gross Settlement Amount of $385,000.00 that is roughly between approximately 48.89% of Defendant's *class-wide* liability exposure for damages, and approximately 11.51% of Defendant's maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

C. Proposed Notice Informs the Class About the Case and Settlement

40. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice shall set forth the scope of the release, stating the number of Workweeks and the estimated amount of their Individual Settlement Payment. Agreement at § III.H.2.a. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement.

41. Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").)

D. The Court Should Preliminarily Approve the Enhancement Award

42. The Settlement provides for a Service Award of $10,000.00 to Plaintiff. The Service Award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class

Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendant a general release of all claims arising out of his employment.

43. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award.

E. The Court Should Preliminary Approve the Class Counsel Award

44. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Expenses are fair and reasonable.

45. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

F. The Court Should Provisionally Certify the Settlement Class

46. For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate.

47. Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

48. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members.

49. Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members.

Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation and evaluating the proposed settlement to assure that it is fair.

50. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

51. Finally, Class Counsel is not aware of any other pending matters or actions asserting claims that will be extinguished or adversely affected by the Settlement.

G. Class Counsel's Experience

52. Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case.. The Firm is a boutique plaintiff firm exclusively representing California employees in complex wage and hour class actions and representative actions arising under the California Labor Code Private Attorney General Act. The Firm currently consists of myself, Jackland K. Hom, Esq. (Associate Attorney), Shani O. Zakay, Esq. (Partner/Owner), Rachel Newman, Esq. (Associate Attorney), Jennifer Gerstenzang, Esq. (Associate Attorney), Eden Zakay, Esq. (Associate Attorney), Nicole Noursamadi, Esq. (Associate Attorney), Jaclyn Joyce, Esq. (Associate Attorney), Esbeidy Campos (Paralegal), Liana Rios (Legal Assistant), and Brenda Yanez (Intake Coordinator).

53. I am qualified to represent the Plaintiff, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

54. I have represented employees in California class actions exclusively for more than 5 years. I have been in practice as a plaintiffs' civil litigation attorney since November 2019.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of July, 2025, at San Diego, California.

ZAKAY LAW GROUP, APLC

By: ______________________________

Jackland K. Hom, Esq.
Attorney for Plaintiff

EXHIBIT 1

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ANDREW ELLENBERG-WILEY, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, v. SAN FRANCISCO AIDS FOUNDATION, a California nonprofit corporation; and DOES 1-50, Inclusive, Defendants.	Case No.: CGC-23-609040 [Action Filed September 13, 2023] **CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims is entered into by and between Plaintiff ANDREW ELLENBERG-WILEY (hereinafter "Plaintiff"), individually, on behalf of himself and on behalf of all persons similarly situated, and Defendant SAN FRANCISCO AIDS FOUNDATION (hereinafter "Defendant") (together the "Parties"):

I. DEFINITIONS

A. "Action" shall mean the putative class action lawsuit Ellenberg v. San Francisco Aids Foundation, Case No. CGC-23-6090404, filed in San Francisco County Superior Court.

B. "Agreement" or "Settlement Agreement" means this CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS.

C. "Aggrieved Employees" means all current and former non-exempt California employees employed by Defendant between September 11, 2022 and the earlier of the date the Court grants preliminary approval of the class settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.

D. "Attorneys' Expenses" means the award of expenses that the Court authorizes to be paid to Class Counsel for the actual costs they have incurred of up to $30,000.

E. "Attorneys' Fees" means the award of fees that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class in the Action, currently not to exceed one-third of the Gross Settlement Amount (currently estimated to be $128,333.33 out of $385,000.00). Attorneys' Fees will be divided between Class Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Plaintiff expressly consents to this fee division.

F. "Claims Administration Expenses" shall mean the amount that the Court authorizes to be paid to the Settlement Administrator for administering the Settlement pursuant to this Agreement currently estimated not to exceed $8,600.00.

G. "Class" or the "Class Members" means all persons who are or previously were employed by Defendant in California and classified as non-exempt employees at any *time during the period between September 13, 2019 and the earlier of the date the Court grants preliminary approval of the class settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.*

H. *"Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and Shani Zakay, Esq. of Zakay Law Group, APLC.*

I. *"Class Data" means information regarding Class Members that Defendant will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known address; Social Security Number; start dates and end dates of employment.*

J. *"Class Period" means the period from September 13, 2019, to the earlier of the date the Court grants preliminary approval of the Settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.*

K. *"Class Representative" shall mean Andrew Ellenberg-Wiley.*

L. *"Court" means the Superior Court for the State of California, County of San Francisco.*

M. *"Defendant" shall mean San Francisco Aids Foundation.*

N. *"Effective Date" means the date upon which both of the following have occurred the Court enters judgment granting final approval of the Settlement and the Court's judgment approving the Settlement becomes final. The judgment is final as of the following: (i) if no Class Member files a Notice of Objection to the Settlement, the day the Court enters Judgment in the Action; or (ii) if there is an appeal of the Court's 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 with any appellate court that has jurisdiction; or (iii) if a petition for review is filed, the date of denial of the petition or the date the Court's judgment is entered, pursuant to such petition; or (iv) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Court's judgment. If a timely Notice of Objection to the Settlement is* *filed (including an objection from the LWDA), the Effective Date shall be the later of: (a) the date on which the time for all appeals relating to objections to the Settlement and the final approval order has expired; or (b) if an appeal, review, or writ is sought, the date on which the highest reviewing court renders its decision denying any petition (were the immediately lower court affirmed the judgment) or affirming the judgment. Provided, however, if the LWDA has commenced an investigation or issued a citation prior to the Effective Date, as determined under the foregoing definition, the Effective Date will be extended to the date that the LWDA concludes its investigation or resolves the citation (whichever is later), or if the LWDA objects to the Settlement, the date when the LWDA's objection to the Settlement is resolved and no longer appealable.*

O. "Funding Date" shall be within thirty (30) calendar day after the Effective Date and is the date by which Defendant has paid the entire Gross Settlement Amount to the Settlement Administrator in accord with the terms of this Agreement.

P. "Gross Settlement Amount" means Three Hundred Eighty-Five Thousand Dollars and Zero Cents ($385,000.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of Individual Settlement Payments, Claims Administration Expenses, Attorneys' Fees and Attorneys' Expenses, Service Award, and the PAGA Payment and ***exclusive*** *of the employer's share of payroll tax, if any, triggered by any payment under this Settlement, and Plaintiff's individual settlement payment, which is the subject of a separate settlement agreement.*

Q. "Individual Settlement Payments" means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

R. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Attorneys' Fees and Attorneys' Expenses, Service Award, PAGA Payment, and Claims Administration Expenses.

S. "Notice Packet" means the Class Notice to be provided to the Class Members by the

*Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).*

T. *"Operative Complaint" shall mean the First Amended Complaint ("FAC") on file in the Action.*

U. *"PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 et seq.*

V. *"PAGA Payment Ratio" means the respective PAGA Pay Periods during the PAGA Period for each Aggrieved Employee divided by the sum total of the PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.*

W. *"PAGA Payment" shall mean Twenty Thousand Dollars and Zero Cents ($20,000.00) to be allocated from the Gross Settlement Amount, with 25% of the payment ($5,000.00) going to the Aggrieved Employees ("Aggrieved Employee Payment") and 75% of the payment ($15,000.00) going to the LWDA ("LWDA Payment"). The amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(l). Any reallocation of the Gross Settlement Amount to increase the PAGA Payment will not constitute grounds by either party to void this Agreement, so long as the Gross Settlement Amount remains the same.*

X. *"PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of pay periods of employment during the PAGA Period that each Aggrieved Employee worked for Defendant in California.*

Y. *"PAGA Period" means the period from September 11, 2022, to the earlier of the date the Court grants preliminary approval of the Settlement or the date on which the total number of Workweeks worked by class members equals 15,500.*

Z. *"Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant, individually.*

AA. *"Payment Ratio" means the respective Workweeks for each Class Member divided by the sum total of Workweeks for all Class Members during the Class Period.*

BB. *"Plaintiff" shall mean Andrew Ellenberg-Wiley.*

CC. *"QSF" means the "Qualified Settlement Fund" established, designated, and maintained by the Settlement Administrator to fund the Gross Settlement Amount.*

DD. *"Released Class Claims" shall mean the release all class claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Operative Complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.*

EE. *"Released PAGA Claims" shall mean all PAGA claims alleged in the Operative Complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.*

FF. *"Released Parties" shall mean Defendant and all of its past, present, and future related, direct or indirect companies, parents, owners, subsidiaries, predecessors, successors, affiliates and assigns, as well as each of its past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, and reinsurers, plus any individual or entity which could be jointly liable with Defendant.*

GG. *"Response Deadline" means the date forty-five (45) calendar days after the Settlement Administrator first mails Notice Packets to Class Members and the last date on which Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement.*

HH. *"Service Award" mean an award in the amount of $10,000.00 or in an amount that the Court authorizes to be paid to the Class Representative, in addition to his Individual Settlement Payment and his individual Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action.*

II. *"Settlement" means the disposition of the Action pursuant to this Agreement.*

JJ. *"Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive, Suite 164 Irvine, CA 92618; Tel: 1-800-355-0700. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant.* ***All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.***

KK. *"Settlement Class Members" or "Settlement Class" means all Class Members who have not submitted a timely and valid Request for Exclusion as provided in this Agreement.*

LL. *"Workweeks," or "Workweek" as used herein shall, mean a period of seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member or Aggrieved Employee was employed for at least a portion of one day by Defendant in California.*

II. RECITALS

A. *On September 11, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency ("LWDA") and served the same on Defendant.*

B. *On September 13, 2023, Plaintiff filed the Action, alleging claims for:*

1. *Unfair competition in violation of Cal. Bus. & Prof. Code § 17200 et seq;*

2. *Failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1;*

3. *Failure to pay overtime wages in violation of Cal. Lab. Code §§ 510 et seq;*

4. *Failure to provide required meal periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order;*

5. *Failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order;*

6. *Failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203;*

7. *Failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; and*

8. *Failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802.*

C. *On November 8, 2023, Plaintiff filed the FAC for the purpose of adding an additional claim for violations of the PAGA pursuant to Cal. Lab. Code §§ 2698 et seq.*

D. *The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.*

E. *Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times they complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.*

F. *The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendant pursuant to informal requests for information to prepare for mediation. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed with* *the assistance of an expert. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable, and adequate, and is in the best interest of the Settlement Class considering all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues.*

G. *On August 20, 2024, the Parties participated in mediation presided over by Steve Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement, which was subsequently memorialized in the form of a "Memorandum of Understanding".*

H. *This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties. 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 Members have merit or that Defendant bear 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.*

I. *The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to settle, compromise and discharge all disputes and claims arising from or relating to the Action fully, finally, and forever.*

J. *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 reserve all available defenses to the claims in the Action.*

Based on these recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Consideration.

1. Payment by Defendant. The Parties agree that, in consideration for a full and complete settlement of the Action and the releases set forth in this Settlement, Defendant will pay Three Hundred Eighty-Five Thousand Dollars and Zero Cents ($385,000.00) (the "Gross Settlement Amount"). Defendant shall separately pay the employer's share of applicable payroll taxes. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant.

2. Release by the Settlement Class Members. Upon funding of the Gross Settlement Amount and in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members, for themselves and their estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the release the Released Parties from the Released Class Claims for the Class Period.

3. Release by the Aggrieved Employees. Upon funding of the Gross Settlement Amount and in exchange for the consideration set forth in this Agreement, the LWDA, the State of California, the Plaintiff and the Aggrieved Employees, for themselves and their estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendant for the Released PAGA Claims. The express purpose of this Settlement is to forever bar Plaintiff, the LWDA, the State of California and the Aggrieved Employees from acting on behalf of or *purporting to act on behalf of the LWDA to assert any of the Aggrieved Employees' Released PAGA Claims against the Released Parties in any future litigation.*

4. *<u>Class Size</u>. Defendant estimates that the Settlement Class was comprised of 194 individuals who collectively worked approximately 13,500 Workweeks ("Projected Workweeks") during the Class Period. Thirty (30) calendar days following the full execution of this Agreement, Defendant shall transmit the Class Data to the Settlement Administrator in order for the Settlement Administrator to calculate the number of Class Members and the number of Workweeks during the Class Period. If the number of Workweeks is more than 15% of the estimate stated herein, Defendant shall, at its option, agree to either (a) increase the Gross Settlement Amount proportionally for the number of Workweeks over 115% of 13,500 (15,500), or (b) shorten the release by advancing the end of the Class Period and PAGA Period to the date on which the number of Workweeks was 15,500.*

5. *<u>Settlement Payment</u>. Defendant shall deposit the Gross Settlement Amount into the QSF by the Funding Date. If no funds are distributed (e.g., because final approval is reversed on appeal) then Defendant is entitled to prompt return of the principal and all interest accrued.*

B. *<u>Nullification of Settlement Agreement</u>. If (a) Defendant fails to fully fund the Gross Settlement Amount or (b) in the event the Settlement Agreement is not granted final approval by the Court, or if the Court's order granting final approval fails to become effective or is reversed, modified or withdrawn, or Defendant is otherwise prevented or prohibited from obtaining the Released Class Claims and/or the Released PAGA claims, then:*

1. *This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral* *proceeding for any purpose or with respect to any issue, substantive or procedural;*

2. *The conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and*

3. *None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.*

4. *If the Agreement is nullified due to Defendant's failure to fully fund the Gross Settlement Amount, then Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Claims Administration Expenses incurred to the date of nullification. If the Agreement is nullified for any other reason, both Parties shall equally bear the responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Claims Administration Expenses incurred to the date of nullification.*

C. *<u>Certification of the Settlement Class</u>. The Parties stipulate to conditional class certification of the Settlement Class for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Class Claims and/or the Released PAGA Claims, the conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.*

D. *<u>Tax Liability</u>. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are* *not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employees Payment.*

E. *<u>Circular 230 Disclaimer</u>. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.*

F. *<u>Preliminary Approval Motion</u>. No later than 45 days after this Settlement Agreement is fully executed, Plaintiff shall file with the Court a motion for order granting* *preliminary approval and supporting papers, which shall include this Settlement Agreement. Plaintiff will provide Defendant with a draft of the motion at least five (5) business days prior to the filing of the motion to give Defendant an opportunity to propose changes or additions to the motion.*

G. *<u>Settlement Administrator</u>. The Settlement Administrator shall perform all duties related to the administration of the Settlement as described in this Agreement including, without limitation, establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA, Aggrieved Employees and Class Members; printing and mailing the Notice Packets to the Class Members and Aggrieved Employees as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Settlement Payments and distributing tax forms for the Wage Portion, the Penalty Portion and the Interest Portion of the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities by among other things, sending a weekly status report to the Parties' counsel stating the date of the mailing, the number of Requests for Exclusion it receives (including the numbers of valid and deficient), and number of Notices of Objections received. The Settlement Administrator shall also be responsible for creating and maintaining a webpage hosted on its website containing information about the Settlement including but not limited to, a timeline for approval, dates and locations of approval hearings, and settlement distribution through the check cashing deadline.*

H. Notice Procedure.

1. Class Data. No later than ten (10) business days after Defendant receives notice of an order granting preliminary approval of this Settlement, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class Members. The Class Data will be presumed to be correct unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All Workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all Workweek disputes is final and non-appealable. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel, and it 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.

2. Notice Packets.

a) The Notice Packet shall contain the notice of class action settlement ("Class Notice") in a form substantially similar to ***Exhibit A****. The Class Notice shall inform Class Members and Aggrieved Employees that they need not do anything in order to receive their payment and to keep the Settlement Administrator apprised of any changes to their mailing address. The Class Notice shall set forth the scope of the release. Each Class Notice shall state the number of Workweeks and PAGA Pay Periods, if any, and the estimated amount of their Individual Settlement Payment and each Aggrieved Employee's individual share of the Aggrieved Employee Payment, if any. The Settlement Administrator shall use the Class Data to determine the number of Workweeks and PAGA Pay Periods. The Class Notice will* *also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the Aggrieved Employee Payment regardless of whether they request to be excluded from the Settlement.*

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than twenty-one (21) calendar days after preliminary approval of the Settlement, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. In addition, if any Notice Packets, which are *addressed to Class Members who are currently employed by Defendant, are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed Class Member provide a corrected address and transmit to the Administrator any corrected address provided by the Class Member. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.*

5. <u>Disputes Regarding Individual Settlement Payments</u>. Class Members will have the opportunity to dispute the Class Data by providing documentation and/or an explanation regarding the dispute. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Class Member and the Parties.

6. <u>Disputes Regarding Administration of Settlement</u>. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

7. <u>Exclusions</u>. The Class Notice contained in the Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion form by the Response Deadline. The written Request for Exclusion must state that the Class Member wishes to exclude himself or himself from the Settlement and (1) must contain the name, *address, and the last four digits of the Social Security number of the person requesting exclusion; (2) must be signed by the Class Member; (3) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number; and (4) contain a typewritten or handwritten notice stating in substance: "I wish to opt out of the settlement of the class action lawsuit entitled Ellenberg v. San Francisco Aids Foundation, current pending in San Francisco County Superior Court, Case No. CGC-23-609040. I understand that by requesting to be excluded from the settlement, I will receive no money from the Settlement described in this Notice." The Request for Exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also a member of the Aggrieved Employees will still receive his/her pro rata share of the Aggrieved Employee Payment, as specified below, and in consideration, will be bound by the Released PAGA Claims as set forth herein. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class*

Members who have timely submitted written Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion from the Settlement.

8. *Objections. The Class Notice contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member's Social Security number; (5) the basis for the objection; and (6) if the Settlement Class Member intends to appear at the final approval/settlement fairness hearing. Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the final approval/settlement fairness hearing with the Court's permission. Settlement Class Members will have a right to appear at the final approval/settlement fairness hearing to have their objections heard by the Court regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the order and final judgment. Class Members who submit a written Request for Exclusion may not object to the Settlement. Class Members may not object to the PAGA Payment.*

9. *Option to Nullify. Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if more than 10% of the Class Members submit Notices of Objection and/or Requests for Exclusion.*

I. *<u>Funding and Allocation of the Gross Settlement Amount</u>. Defendant is required to pay the Gross Settlement Amount, plus any employer's share of payroll taxes as mandated by law, within thirty (30) calendar days after the Effective Date.*

1. *<u>Calculation of Individual Settlement Payments</u>. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members who submit valid and timely Requests for Exclusion will be redistributed to Settlement Class Members who do not submit valid and timely Requests for Exclusion on a pro rata basis based on their respective Payment Ratios.*

2. *<u>Calculation of Individual Payments to the Aggrieved Employees</u>. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employee will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee's portion of the Aggrieved Employee Payment, $5,000.00 (25% of $20,000.00), to calculate each Aggrieved Employee's estimated share of the Aggrieved Employee Payment.*

3. *Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as 20% wages ("Wage Portion") and 40% penalties ("Penalty Portion") and 40% pre-judgment interest ("Interest Portion"). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalty Portion and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 1099 pursuant to the Settlement Agreement. Plaintiff and each Settlement Class Member shall bear the full responsibility for payment of any taxes or withholdings that are found to be owed from the Individual Settlement Payments.*

4. *Allocation of Aggrieved Employee Payments. For tax purposes, individual Aggrieved Employee Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.*

5. *No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the Aggrieved Employee Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.*

6. *All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual*

Settlement Payments and individual shares of the Aggrieved Employee Payment provided for in this Settlement Agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their individual shares of the Aggrieved Employee Payment.

7. Mailing. Individual Settlement Payments and individual shares of the Aggrieved Employee Payment shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fourteen (14) calendar days after the Funding Date.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within ninety (90) days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employee to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or Aggrieved Employee's individual share of the Aggrieved Employee Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks shall be redistributed to the Settlement Class Members who did cash their checks in the same manner they were allocated and distributed during the first disbursement.

9. Service Award. In addition to the Individual Settlement Payment as a Settlement Class Member and his individual share of the Aggrieved Employee Payment, the Class Representative will apply to the Court for an award of not more than $10,000.00 as the Service Award. Defendant will not oppose a Service Award of not more than $10,000.00 for Class Representative. The Settlement Administrator shall pay the Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Class Representative from the Gross Settlement Amount no later than fourteen (14) calendar days after the Funding Date. Any portion of the requested Service Award that is not awarded to the Class Representative shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Representative for his Service Award. Class Representative shall be solely and legally responsible to pay any and all applicable taxes on his Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Service Award. If the Court reduces or does not approve the requested Service Award, Class Representative shall not have the right to revoke the Settlement, and it will remain binding.

10. Attorneys' Fees and Attorneys' Expenses. Defendant will not object to Class Counsel filing a motion for Attorneys' Fees not to exceed one-third of the Gross Settlement Amount (currently estimated to be $128,333.33) and Attorneys' Expenses supported by declaration not to exceed Thirty Thousand Dollars ($30,000.00). Any awarded Attorneys' Fees and Attorneys' Expenses shall be paid from the Gross Settlement Amount. Any portion of the requested Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class

Counsel shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Attorneys' Fees to Class Counsel from the Gross Settlement Amount no later than fourteen (14) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Attorneys' Fees, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. <u>PAGA Payment</u>. Twenty Thousand Dollars and Zero Cents ($20,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment ($15,000.00) to the LWDA no later than fourteen (14) calendar days after the Funding Date. Twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the Aggrieved Employees as described in this Agreement. For purposes of distributing the Aggrieved Employee Payment portion of the PAGA Payment to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. <u>Claims Administration Expenses</u>. The Settlement Administrator shall be paid for the actual costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Claims Administration Expenses is $8,600.00. The Settlement Administrator shall be paid the Claims Administration Expenses no later than fourteen (14) calendar days after the Funding Date.

J. *Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a motion for order granting final approval and entering judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Service Award, the Attorneys' Fees and Attorneys' Expenses, the PAGA Payment, and the Claims Administration Expenses. Plaintiff will provide Defendant with a draft of the motion at least five (5) business days prior to the filing of the motion to give Defendant an opportunity to propose changes or additions to the motion.*

1. *Declaration by Settlement Administrator. No later than seven (7) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely Requests for Exclusion, the number of Notices of Objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Claims Administration Expenses, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.*

2. *Final Approval Order and Judgment. Class Counsel shall present an order granting final approval of class action settlement to the Court for its approval, and judgment thereon, at the time Class Counsel files the motion for final approval.*

N. *Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.*

O. *Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the final approval fairness hearing to be conducted by the Court.*

P. *Amendment or Modification*. *This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.*

Q. *Entire Agreement*. *Except for Plaintiff's individual unrelated claims, which are the subject of a separate settlement and settlement agreement, this Agreement and any attached Exhibit constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibit other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibit.*

R. *Authorization to Enter into Settlement Agreement*. *Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and 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 required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.*

S. *Binding on Successors and Assigns*. *This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.*

T. *California Law Governs*. *All terms of this Agreement and any disputes shall be governed by and interpreted according to the laws of the State of California.*

U. *Counterparts*. *This Agreement may be executed in one or more counterparts by facsimile, electronic signature, or e-mail, for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.*

V. *<u>Court Filings</u>. The Parties shall not object to any Court filings consistent with this Agreement.*

W. *<u>This Settlement Is Fair, Adequate and Reasonable</u>. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.*

X. *<u>Jurisdiction of the Court</u>. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.*

Y. *<u>Invalidity of Any Provision</u>. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.*

Z. *<u>No Unalleged Claims</u>. Except for Plaintiff's individual unrelated claims, which are the subject of a separate filed action, settlement and settlement agreement, Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant, regardless of whether Class Counsel is currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Released Parties, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.*

AA. *Waiver of Certain Appeals*. *The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only.*

BB. *No Admissions by the Parties*. *Plaintiff has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Class Claims and Released PAGA claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear their own attorney's fees and costs.*

CC. *No Public Comment*. *The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Class Counsel further agrees not to use the Settlement Agreement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Further, Class Counsel will not include, reference or use the Settlement Agreement for any marketing or promotional purposes, either before or after the motion for preliminary approval is filed.*

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 05/12/2025

Andrew Ellenberg-Wiley
Andrew Ellenberg-Wiley (May 12, 2025 19:36 PDT)
Andrew Ellenberg-Wiley

IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

05 / 09 / 2025

DATED: ________________

San Francisco AIDS Foundation

Peter Parisot

Printed Name
Chief Legal Officer

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 05/13/2025

JCL LAW FIRM, APC

By: ____________________

Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff and the Settlement Class Members

DATED: 05/13/2025

ZAKAY LAW GROUP, APLC

By: ____________________

Shani O. Zakay, Esq.
Attorneys for Plaintiff and the Settlement Class Members

DATED: May 9, 2025

MESSNER REEVES, LLP

By: Jeffrey K. Gillette

Kathleen Carter, Esq.
Jeffrey Gillette, Esq.
Attorneys for Defendant

EXHIBIT A

NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND FINAL HEARING DATE

(Ellenberg-Wiley v. San Fransisco Aids Foundation, San Francisco County Superior Court Case No. CGC-23-609040) ("Action")

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	*To receive a cash payment from the Settlement, you do **not** have to do anything.* ***Your estimated Individual Settlement Payment is: $<<__>>. See the explanation below.*** *After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.*
Exclude Yourself	*If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive **no money from the Settlement**.* *Instructions are set forth below.*
Object	*You may write to the Court about why you believe the settlement should not be approved.* *Directions are provided below.*

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court for the State of California, County of San Francisco (the "Court") has been reached between Plaintiff Andrew Ellenberg-Wiley ("Plaintiff" or "Class Representative") and Defendant San Francisco Aids Foundation ("Defendant"). The Court has granted preliminary approval of the Settlement. ***You may be entitled to receive money from this Settlement.***

You have received this Class Notice because you have been identified as a member of the Class.

The "Class" is defined as:

> *All non-exempt employees who are or previously were employed by San Francisco Aids Foundation and performed work in California during the Class Period.*

The "Class Period" is the period from September 13, 2019, to [blank].

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On September 13, 2023, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Fransisco, asserting causes of action for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 et seq.); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 516 and the applicable wage order); (6) Failure to Provide Wages When Due (Labor Code §§ 201, 202, 203); (7) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 et seq.); and (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802). In order to facilitate the settlement, on September 11, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. The operative Complaint includes an additional cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, et seq.]

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On August 20, 2024, the Parties participated in an all-day mediation with Steven Rottman, Esq., a mediator of wage and hour class actions. The mediation concluded with a settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of Three Hundred Eighty-Five Thousand Dollars and Zero Cents ($385,000.00). (the "Gross Settlement Amount") to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Settlement Class Members, Class Counsel's Attorneys' Fees and Attorneys' Costs, Claims Administration Expenses, the PAGA Payment, and the Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. "Final" means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- *"Claims Administration Expenses". Payment to the Settlement Administrator, estimated not to exceed $8,600.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.*

- *"Attorneys' Fees" and "Attorneys' Expenses". Payment to Class Counsel of Attorneys' Fees of no more than 1/3 of the Gross Settlement Amount (currently $128,333.33) and Attorneys' Expenses of not more than $30,000.00 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class* *on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.*

- *<u>"Service Award"</u>. Service Award of up to Ten Thousand Dollars ($10,000.00) to Plaintiff or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.*

- *<u>"PAGA Payment"</u>. A payment of $20,000.00 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), $15,000.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining $5,000.00 will be distributed to Aggrieved Employees.*

- *<u>Calculation of Payments to Settlement Class Members</u>. After all the above payments of the court-approved Attorneys' Fees, Attorneys' Expenses, the Service Award, the PAGA Payment, and the Claims Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount, or "Settlement Shares" shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). Settlement Class Members will be paid based on the number of workweeks worked during the Class Period. A "Workweek" is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed for at least a portion of one day by Defendant during the Class Period in California.*

- *<u>Calculation of Aggrieved Employees Payments to Aggrieved Employees.</u> The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out of the Class Settlement. The PAGA Payment will be divided by the total number of PAGA pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of PAGA pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employee" means all non-exempt employees who are or previously were employed by San Francisco Aids Foundation and performed work in California during the PAGA Period. The PAGA Period means the period from September 11, 2022, to [blank].*

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

<u>Tax Matters</u>. Twenty percent (20%) of each individual Class Settlement payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Forty percent (40%) of each individual Class Settlement payment is allocated to interest and forty percent (40%) to penalties. No taxes will be withheld from the PAGA Payment paid to Aggrieved Employees. Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for penalty portion and interest portion of the individual Class Settlement payments. In addition, no taxes will be withheld from the PAGA Payment paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

<u>No Credit Toward Benefit Plans</u>. The individual Class Settlement payments and Aggrieved Employee PAGA Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as

well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. "Released Class Claims" means all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint in the Action including, without limitation, claims for (1) unfair business practices; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or pay a premium in lieu thereof; (5) failure to authorize and permit rest periods or pay a premium in lieu thereof; (6) failure to timely pay wages including at the time of termination/end of employment; (7) failure to furnish accurate itemized wage statements; (8) failure to reimburse employees for business expenses; and (9) claims for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, California Code of Civil Procedure section 1021.5, Civil Code sections 3287, 3289, and California Business and Professions Code section 17200 et seq. (arising from violations of the labor code listed above) or any applicable IWC Wage Order. Class Members do not release any claims that cannot be released by law, including, without limitation, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The Released PAGA Claims shall be released as follows. Upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint in the Action and Plaintiff's PAGA Notice including, without limitation, claims for PAGA penalties arising from (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay wages including at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; and (8) claims for penalties under the Private Attorneys General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, 2698, et seq., California Code of Civil Procedure section 1021.5, Civil Code sections 3287, 3289,) or any applicable IWC Wage Order.

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

5. How much will my payment be?

Defendant's records reflect that you have <<_______>> Workweeks worked during the Class Period (September 13, 2019, to [blank]).

Based on this information, your estimated Class Settlement Share is <<_________>>.

Defendant's records reflect that you have <<______>> PAGA pay periods worked during the PAGA Period (September 11, 2022, to [blank]).

Based on this information, your estimated PAGA Payment as an Aggrieved Employee is <<_________>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _______________[forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment?

***To get money from the settlement, you do not have to do anything**. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.*

The Court will hold a hearing on __________________ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www.apexclassaction.com.

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

*If you do not wish to participate in the Class Settlement, you may exclude yourself from the Class Settlement or "opt out." **If you opt out, you will receive NO money from the Class Settlement, and you will not be bound by its terms, except as provided as follows**. Irrespective of whether you exclude yourself from the Class Settlement or "opt out," if you are an Aggrieved Employee, you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee portion of the PAGA Payment.*

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _______________. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel. (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or he wishes to be excluded from the settlement of the class action lawsuit entitled Ellenberg v. San Francisco Aids Foundation, San Fransisco County Superior Court Case Number CGC-23-609040. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

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

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Ellenberg v. San Francisco Aids Foundation, San Fransisco County Superior Court Case Number CGC-23-609040.*** *You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.*

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than **.** *The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel: (800) 355-0700.*

The addresses for the Parties' counsel are as follows:

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

Counsel for Defendant*:*
Kathleen Carter, Esq.
Jeffrey Gillette, Esq.
Messner Reeves, LLP
611 Anton Boulevard, Suite 450
Costa Mesa, CA 92626
Tel: (949) 612-9128
Fax: (949) 438-2304
E-Mail: kcarter@messner.com
E-Mail: JGillette@messner.com

Class Counsel:
Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 255-9047
Email: shani@zakaylaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _______________, *at the San Francisco County Superior Court, Department _, located at _______ before Judge ______. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them.*

The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. ***You are not required to attend*** *the Final Approval Hearing, although any Class Member is welcome to attend the hearing.*

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to ***Ellenberg v. San Francisco Aids Foundation,*** *San Fransisco County Superior Court Case Number CGC-23-609040, Settlement Administrator, 18 Technology Drive, Suite 164, Irvine, CA 92618 c/o Apex Class Action, LLC.*

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the administrator's website at www.apexclassaction.com.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- *You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.*

- *Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall redistribute the funds from such uncashed checks to the Settlement Class Members who cashed their original checks in the same manner that it distributed the original checks. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.*

Dropbox Sign

Audit trail

Title	DRAFT_Class and PAGA SAR (Final)_May 9
File name	DRAFT_Class and P...(Final)_May 9.pdf
Document ID	c0fbbacf6c4d193aa95aa02023ca699accd7cb70
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SENT	**05 / 09 / 2025** 18:42:40 UTC	Sent for signature to Peter Parisot (pparisot@sfaf.org) from dbratton@sfaf.org IP: 172.56.47.67
VIEWED	**05 / 09 / 2025** 19:05:52 UTC	Viewed by Peter Parisot (pparisot@sfaf.org) IP: 24.21.211.79
SIGNED	**05 / 09 / 2025** 19:06:31 UTC	Signed by Peter Parisot (pparisot@sfaf.org) IP: 24.21.211.79
COMPLETED	**05 / 09 / 2025** 19:06:31 UTC	The document has been completed.

EXHIBIT 2

EXHIBIT 3

Quotation Request:
Andrew Ward
JCL Law Firm, A.P.C.
award@jcl-lawfirm.com
888.498.6999

Case Name: Ellenberg-Wiley v San Francisco Aids Foundati
Date: Tuesday, September 24, 2024
RFP Number: 16450010

Prepared By:
Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Estimated Class Size:	**463**
Certified Language Translation:	**Yes**
Static Settlement Website	**No**
Percentage of Undeliverable Mail	**20%**

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	$125.00	2	$250.00
Data Analyst	Per Hour	$150.00	2	$300.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of $150/hr.				
			Sub Total:	$550.00
Mailing of Class Notice				
Form Set Up	Per Hour	$120.00	1	$120.00
Print & Mail Class Notice	Per Piece	$1.50	463	$694.50
USPS First Class Postage	Per Piece	$0.69	463	$319.47
Remail Undeliverable Mail (Skip-Trace)	Per Piece	$2.00	93	$185.20
Receive and Process Undeliverable Mail	Per Hour	$75.00	1	$75.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	$75.00	2	$150.00
NCOA Address Update (USPS)	Static Rate	$85.01	1	$85.01
Certified Language Translation: Spanish	Static Rate	$1,200.00	1	$1,200.00
			Sub Total:	$2,829.18
Project Management				
Project Management	Per Hour	$150.00	2	$300.00
Project Coordinator	Per Hour	$90.00	2	$180.00
Data Analyst and Reporting	Per Hour	$140.00	1	$140.00
			Sub Total:	$620.00

APEX CLASS ACTION ADMINISTRATION

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	$100.00	1	$100.00
Settlement Status Reports	Static Rate	$750.00	1	Waived
			Sub Total:	$100.00
Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	$120.00	2	$240.00
Account Management and Reconciliation	Per Hour	$140.00	2	$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	$1.25	463	$578.75
USPS First Class Postage	Per Piece	$0.69	463	$319.47
Remail Distribution to Updated Address (Skip Trace)	Per Piece	$2.00	46	$92.60
Individual Income Tax Preparation & Reporting	Per Hour	$100.00	8	$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	$1,250.00	1	$1,250.00
			Sub Total:	$3,560.82
Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	$135.00	2	$270.00
Project Management Reconciliation	Per Hour	$100.00	2	$200.00
Declarations	Per Hour	$120.00	3	$360.00
			Sub Total:	$830.00
			WILL NOT EXCEED:	**$8,490.00**

Thank you for your business!

CLASS ACTION ADMINISTRATION

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (I) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.