

06/18/2024 at 03:22:00 PM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MANUEL FIMBRES, ANDY DOHRER,
RYAN HOUSER, ABENS PONCE, and
ELIOT WARNER, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

DREAMSTYLE REMODELING OF
CALIFORNIA, LLC, a Delaware limited
liability company; DREAMSTYLE
REMODELING OF CALIFORNIA, INC., a
California corporation; DREAMSTYLE
REMODELING, INC., a New Mexico
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 37-2022-00013690-CU-OE-CTL

~~[PROPOSED]~~ AMENDED ORDER AND
JUDGMENT GRANTING FINAL APPROVAL
OF CLASS AND PAGA ACTION
SETTLEMENT, APPROVAL OF CLASS
COUNSEL AWARD, AND CLASS
REPRESENTATIVE SERVICE AWARD

Date: May 17, 2024

Time: 9:00 a.m.

Judge: Hon. James A. Mangione

Dept.: C-75

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Attorney for PLAINTIFFS

1 This matter came on for hearing on May 17, 2024, at 9:00 a.m., in front of the Hon. James A.
2 Mangione, presiding, Plaintiff's unopposed Motion for Order Granting Final Approval of Class and
3 PAGA Action Settlement and Entering Judgment pursuant to California Rule of Court 3.769, with the
4 attorneys from the JCL LAW FIRM, APC, ZAKAY LAW GROUP, APLC, SELIGSON LAW P.C., as
5 counsel for plaintiffs MANUEL FIMBRES, ANDY DOHRER, RYAN HOUSER, ABENS PONCE,
6 and ELIOT WARNER (hereinafter "Plaintiffs") and counsel from CAHILL & CAMPITIELLO, LLP,
7 appearing as counsel for defendants Dreamstyle Remodeling of California, LLC, Dreamstyle
8 Remodeling of California, Inc., and Dreamstyle Remodeling, Inc. (hereinafter "Defendants").

9 The Court, having received and carefully considering the Stipulation of Settlement of Class and
10 PAGA Action Claims and Release of Claims filed on November 21, 2023, ("Agreement"), a true and
11 correct copy of which is attached hereto as Exhibit A, the supporting papers filed by the Parties, the
12 evidence and argument received by the Court in conjunction with the unopposed Motion for Preliminary
13 Approval of Class Action Settlement heard on December 15, 2023, the instant Motion for Order
14 Granting Final Approval of Class and PAGA Action Settlement, the Court grants final approval of the
15 Settlement and HEREBY ORDERS, ADJUDICATES and DECREES THE FOLLOWING:

16 1. All capitalized terms used herein shall have the same meaning as defined in the
17 Agreement.

18 2. Pursuant to the Order Granting Preliminary Approval, the Class Notice was sent to each
19 Class Member via U.S. First Class Mail. The Class Notice informed the Class Members of the terms of
20 the Settlement, and of (a) their right to receive an Individual Settlement Payments, (b) their right to
21 comment on or object to the Settlement, (c) their right to request exclusion from the Settlement and
22 pursue their own remedies, and (d) their right to appear in person or by counsel at the final approval
23 hearing and to be heard regarding approval of the Settlement. Adequate periods of time were provided
24 by each of these procedures.

25 3. Following the conclusion of the response deadline, the Administrator reports that it
26 received *zero (0) written objections* to the Settlement and *zero (0) written requests for exclusion* from
27 the Settlement.

28 4. The Court finds and determines that the notice procedure afforded adequate protections to

1 the Class and provides the basis for the Court to make an informed decision regarding approval of the
2 Settlement based on the responses of the Class. The Court finds and determines that the notice provided
3 in this case was the best notice practicable, which satisfied the requirements of law and due process.

4 5. With respect to the Class and for purposes of approving this Settlement only, this Court
5 finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder of
6 all members is impracticable; (b) there are questions of law or fact common to the Class, and there is a
7 well-defined community of interest among the Class with respect to the subject matter of the Action; (c)
8 the claims of Class Representatives Manuel Fimbres, Andy Dohrer, Ryan Houser, Abens Ponce, and
9 Eliot Warner are typical of the claims of the Class; (d) the Class Representatives have fairly and
10 adequately protected the interests of the Class; (e) a class action is superior to other available methods
11 for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
12 Representatives, i.e., Jean-Claude Lapuyade, Esq. of the JCL Law Firm, APC, Shani Zakay, Esq. of the
13 Zaky Law Group, APLC, Kenneth Seligson, Esq. of Seligson Law P.C. (hereinafter “Class Counsel”),
14 are qualified to serve as counsel for the Class Representatives and the Class.

15 6. The Court has certified the Non-Exempt Piece Rate Class and the Non-Exempt Hourly
16 Class, as those terms are defined in and by the terms of the Agreement as follows:

17 “Non-Exempt Piece Rate Class” means all non-exempt employees who
18 worked solely on a piece rate basis and hourly combination basis, who are
19 or previously were employed by Defendants and performed work in
20 California during the Class Period.

21 “Non-Exempt Hourly Class” means all non-exempt employees who worked
22 solely on an hourly basis, who are or previously were employed by
23 Defendants and performed work in California during the Class Period. The
24 Non-Exempt Piece Rate Class and the Non-Exempt Hourly Class may be
25 referred to collectively as the “Class Members”.

26 7. The Court deems the definition of Class sufficient for purposes of California Rule of Court
27 3.765(a).

28 8. The Court hereby confirms Jean-Claude Lapuyade, Esq. of the JCL Law Firm, APC, and

1 Shani Zakay, Esq. of the Zakay Law Group, APLC and Kenneth Seligson, Esq. of Seligson Law P.C. as
2 Class Counsel for the Class Representatives in this Action.

3 9. The Court hereby confirms Plaintiffs Manuel Fimbres, Andy Dohrer, Ryan Houser, Abens
4 Ponce, and Eliot Warner as the Class Representatives in this Action.

5 10. The Court finds and determines that the terms set forth in the Agreement are fair,
6 reasonable, and adequate and directs the Parties to effectuate the Settlement according to its terms having
7 found that the Settlement was reached as a result of informed and non-collusive arms' length
8 negotiations facilitated by a neutral mediator. The Court further finds that the Parties conducted
9 extensive investigation, research, and discovery and that their attorneys were able to reasonably evaluate
10 their respective positions. The Court also finds that Settlement will enable the Parties to avoid additional
11 and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
12 litigate the case. The Court has reviewed the monetary recovery provided as part of the Settlement and
13 recognizes the significant value accorded to the Class.

14 11. The Court further finds and determines that the terms of the Settlement, including the
15 Gross Settlement Amount of \$1,363,126.56 are fair, reasonable and adequate to the Class and to each
16 member of the Class and that the Settlement is ordered finally approved, and that all terms and provisions
17 of the Settlement should be and hereby are ordered to be consummated.

18 12. The Court further finds and determines that Class Counsel satisfied California Labor Code
19 § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising under the Private
20 Attorney General Act ("PAGA") on December 4, 2023.

21 13. The Court finds and determines that the Individual Settlement Payments to be paid to
22 participating members of the Class as provided for by the Settlement are fair and reasonable. The Court
23 hereby gives final approval to and orders the payment of those amounts be made to the participating
24 Class Members in accordance with the Agreement.

25 14. The Court finds and determines that the LWDA Payment (75% of the PAGA Settlement)
26 of \$37,500.00 and the Aggrieved Employee Payment (25% of the PAGA Settlement) of \$12,500.00 in
27 this case are fair, reasonable, and appropriate. The Court hereby gives final approval to and orders that
28 the payment of those amounts be paid in accordance with the Agreement.

1 15. The Court finds and determines that the fees and expenses in administrating the Settlement
2 incurred by Apex Class Action LLC in the amount of \$12,500.00 are fair and reasonable. The Court
3 hereby gives final approval to and orders that the payment of that amount in accordance with the
4 Settlement.

5 16. The Court finds and determines the Class Representative Service Award in the amount of
6 \$52,500.00 to the Class Representatives, \$10,000 for each Plaintiff Andy Dohrer, Ryan Houser, Abens
7 Ponce, and Eliot Warner and \$12,500 for Plaintiff Manuel Fimbres, is fair and reasonable. The Court
8 hereby orders the Administrator to make this payment to the Class Representatives in accordance with
9 the terms of the Agreement.

10 17. Pursuant to the terms of the Settlement, and the authorities, evidence and arguments
11 submitted by Class Counsel, the Court hereby awards a payment of a Class Counsel Award in the total
12 sum of \$484,375.52. The payment of the Class Counsel Award is comprised of two components. First,
13 \$454,375.52 as attorneys' fees which represents one-third of the Gross Settlement Amount. The
14 attorneys' fee portion of the payment for Class Counsel Award shall be allocated as follows: 45% to the
15 JCL Law Firm, APC, 45% to the Zakay Law Group, APLC, and 10% to Seligson Law P.C. Second, up
16 to \$17,907.30 for litigation expenses as evidenced by Class Counsels' billing records. The
17 Administrator shall allocate the expenses award according to Class Counsels' actually incurred litigation
18 expenses as stated and supported in their respective declarations filed in support of this motion. The
19 Court finds such amounts to be fair and reasonable. The Court hereby orders the Administrator to make
20 these payments in accordance with the terms of the Agreement.

21 18. Without affecting the finality of this order or the entry of judgment in any way, the Court
22 retains jurisdiction of all matters relating to the interpretation, administration, implementation,
23 effectuation, and enforcement of this order and the Settlement.

24 19. Neither Defendants nor any related persons or entities shall have any further liability for
25 costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided
26 for by the Agreement.

27 20. Neither the making of the Agreement nor the entry into the Agreement constitutes an
28 admission by Defendants, nor is this Order a finding of the validity of any claims in the Action or of any

1 other wrongdoing. Further, the Agreement is not a concession, and shall not be used as an admission of
2 any wrongdoing, fault, or omission of any entity or persons; nor may any action taken to carry out the
3 terms of the Agreement be construed as an admission or concession by or against Defendants or any
4 related person or entity.

5 21. Nothing in this order shall preclude any action to enforce the Parties' obligations under
6 the Settlement or under this order, including the requirement that Defendants make payments to the
7 participating Class Members in accordance with the Settlement.

8 22. The Court hereby enters final judgment in accordance with the terms of the Agreement,
9 the Order Granting Preliminary Approval of Class and PAGA Action Settlement granted on December
10 15, 2023, and this order.

11 23. The Parties will bear their own costs and attorneys' fees except as otherwise provided by
12 this Court's Order awarding the payment of attorneys' fees and costs.

13 24. Upon completion of administration of the Settlement, the Settlement Administrator will
14 provide written certification of such completion to the Court and counsel for the Parties which shall be
15 filed with the Court five (5) court days before the Status Conference set for September 6, 2024, at 9:45
16 a.m. in Dept. C-75.

17 25. Accordingly, the motions for Final Approval of Class and PAGA Action Settlement and,
18 Motion for Final Approval of the payment of the Class Counsel Award, and the Class Representative
19 Service Awards are GRANTED.

20
21 IT IS SO ORDERED, ADJUDICATED AND DECREED

22
23 Date: 06/18/2024



James A. Mangione

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MANUEL FIMBRES; ANDY DOHRER;
RYAN HOUSER; ABENS PONCE; ELIOT
WARNER, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

DREAMSTYLE REMODELING OF
CALIFORNIA, LLC, a Delaware limited
liability company; DREAMSTYLE
REMODELING OF CALIFORNIA, INC., a
California corporation; DREAMSTYLE
REMODELING, INC., a New Mexico
corporation; and DOES 1 through 50, Inclusive,

Defendants.

Case No.: 37-2022-00013690-CU-OE-CTL

[Action Filed April 12, 2022]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

1
2 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
3 entered into by and among Plaintiff MANUEL FIMBRES, Plaintiff ANDY DOHRER, Plaintiff
4 RYAN HOUSER, Plaintiff ABENS PONCE, and Plaintiff ELIOT WARNER (hereinafter
5 collectively referred to as “Plaintiffs” and/or “Plaintiff”), individuals, on behalf of the Settlement
6 Class, and in their representative capacity on behalf of the State of California and the Aggrieved
7 Employees, and Defendant DREAMSTYLE REMODELING OF CALIFORNIA, LLC, a Delaware
8 limited liability company, Defendant DREAMSTYLE REMODELING OF CALIFORNIA, INC., a
9 California corporation, and Defendant DREAMSTYLE REMODELING, INC., a New Mexico
10 corporation (hereinafter collectively referred to as “Defendants” and/or “Defendant”):

11 **I. DEFINITIONS**

- 12 A. “Action” shall mean the putative class action lawsuit designated *Manuel Fimbres, et*
13 *al. v. Dreamstyle Remodeling of California, LLC, et al.*, San Diego County Superior
14 Court, Case No. 37-2022-00013690-CU-OE-CTL, filed April 12, 2022.
- 15 B. “Administration Costs” shall mean the amount paid to the Settlement Administrator
16 from the Gross Settlement Amount for administering the Settlement pursuant to this
17 Agreement currently estimated not to exceed \$12,000.00.
- 18 C. “Aggrieved Employees” means all non-exempt employees who are or previously
19 were employed by Defendants and performed work in California during the period of
20 February 18, 2021 to December 31, 2023 or the date the court grants preliminary
21 approval, whichever is sooner (the “PAGA Period”).
- 22 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
23 Class and PAGA Action and Release of Claims.
- 24 E. “Attorneys’ Expenses” means the award of expenses that the Court authorizes to be
25 paid to Class Counsel for the expenses they have incurred of up to \$30,000.00.
- 26 F. “Attorneys’ Fees” means the award of fees that the Court authorizes to be paid to
27 Class Counsel for the services they have rendered to Plaintiffs and the Settlement
28

Class in the Action, currently not to exceed one-third of the Gross Settlement Amount currently estimated to be \$450,000.00 out of \$1,350,000.00. Attorneys' fees will be divided between Class Counsel as follows (45% to JCL Law Firm, APC, 45% to Zakay Law Group, APLC, and 10% to The Law Office of Ken Seligson).

G. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, Shani Zakay of Zakay Law Group, APLC, and Ken Seligson of The Law Office of Ken Seligson.

H. "Class Data" means information regarding Class Members currently in Defendants' possession. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known mailing address; Social Security Number; start dates and end dates of employment and Class Period Workweeks and PAGA Pay Periods.

I. "Class Period" means the period between April 12, 2018, through December 31, 2023 or the date the court grants preliminary approval, whichever is sooner.

J. "Class Representatives" shall mean Plaintiffs Manuel Fimbres, Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner.

K. "Court" means the Superior Court for the State of California, County of San Diego currently presiding over the Action.

L. "Defendants" or "Defendant" shall mean Dreamstyle Remodeling of California, LLC, a Delaware limited liability company, Dreamstyle Remodeling of California, Inc., a California corporation, and Dreamstyle Remodeling, Inc., a New Mexico corporation.

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

Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

N. “Enhancement Award” means an award in the amount of \$10,000 or in an amount that the Court authorizes to be paid to each of the following Plaintiffs: Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner, in addition to their Individual Settlement Payment and their Individual Aggrieved Employee Payment, in recognition of their efforts and risks in assisting with the prosecution of the Action. Plaintiff Manuel Fimbres shall receive an Enhancement Award of \$12,500 or in an amount that the Court authorizes to be paid to Plaintiff Manuel Fimbres, 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. Each Plaintiff assumes full responsibility and liability for any and all taxes owed on their individual Enhancement Award.

O. “Final Approval” means the Court’s order granting final approval of the Settlement.

P. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

Q. “Funding Date” shall mean the date by which Defendants have paid the entire Gross Settlement Amount to the Settlement Administrator in accord with the terms of this Agreement. Defendants will pay the Gross Settlement Amount to the Settlement Administrator no later than fourteen (14) days after the Effective Date.

R. “Gross Settlement Amount” means One Million Three Hundred and Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) that Defendants must pay into the QSF in connection with this Settlement, which will be used to pay Individual Settlement Payments, Administration Costs, Attorneys’ Fees and Attorneys’ Expenses, Enhancement Awards, and the PAGA Penalties and *exclusive* of the employer’s share of payroll taxes owed as calculated in accordance with Section III M(3) and Section III M(4) of this Agreement, if any, triggered by any payment under this Settlement.

- 1 S. "Individual Settlement Payments" means the amount payable from the Net Settlement
2 Amount to each Settlement Class Member and excludes any amounts distributed to
3 Aggrieved Employees pursuant to PAGA.
- 4 T. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 5 U. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less
6 Attorneys' Fees and Attorneys' Expenses, Enhancement Awards, PAGA Penalties,
7 and Administration Costs.
- 8 V. "Non-Exempt Piece Rate Class" means all non-exempt employees who worked solely
9 on a piece rate basis and hourly combination basis, who are or previously were
10 employed by Defendants and performed work in California during the Class Period.
- 11 W. "Non-Exempt Hourly Class" means all non-exempt employees who worked solely on
12 an hourly basis, who are or previously were employed by Defendants and performed
13 work in California during the Class Period. The Non-Exempt Piece Rate Class and
14 the Non-Exempt Hourly Class may be referred to collectively as the "Class
15 Members".
- 16 X. "Notice Packet" means the Class Notice to be provided to the Class Members by the
17 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other
18 than formatting changes to facilitate printing by the Settlement Administrator).
- 19 Y. "Operative Complaint" shall mean the Second Amended Complaint adding the names
20 of the additional Plaintiffs to be filed in San Diego County Superior Court by
21 Plaintiffs following the execution of this Agreement.
- 22 Z. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
23 Labor Code § 2698 *et seq.*
- 24 AA. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period
25 for each Aggrieved Employee divided by the total of the Pay Periods for all Aggrieved
26 Employees during the PAGA Period.
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- 1 BB. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
2 Employee Payment, as defined herein, means the number of pay periods of
3 employment during the PAGA Period that each Aggrieved Employee worked in
4 California.
- 5 CC. "PAGA Period" means the period beginning between February 18, 2021, to
6 December 31, 2023, or the date the court grants preliminary approval, whichever is
7 sooner.
- 8 DD. "PAGA Payment" shall mean Fifty Thousand Dollars (\$50,000.00) to be allocated
9 from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved
10 Employees ("Aggrieved Employee Payment") and 75% of the payment going to the
11 Labor and Workforce Development Agency ("LWDA Payment"). The amount of the
12 PAGA Penalties is subject to Court approval pursuant to California Labor Code
13 section 2699(l). Any reallocation of the Gross Settlement Amount to increase the
14 PAGA Penalties will not constitute grounds by either party to void this Agreement,
15 so long as the Gross Settlement Amount remains the same.
- 16 EE. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean either
17 Plaintiffs or Defendants.
- 18 FF. "Payment Ratio" means the respective Workweeks for each Class Member divided
19 by the total Workweeks for all Class Members.
- 20 GG. "Plaintiffs" or "Plaintiff" shall mean collectively Manuel Fimbres, Andy Dohrer,
21 Ryan Houser, Abens Ponce, and Eliot Warner.
- 22 HH. "Preliminary Approval" means the Court's Order Granting Preliminary approval of
23 the Settlement.
- 24 II. Preliminary Approval Order" means the proposed Order Granting Preliminary
25 Approval and Approval of the PAGA Settlement.
- 26 JJ. "QSF" means the Qualified Settlement Fund established, designated, and maintained
27 by the Settlement Administrator to fund the Gross Settlement Amount.
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1 KK. "Released Class Claims" means the claims being released by the Settlement Class
2 Members of all class claims alleged, or reasonably could have been alleged based on
3 the facts alleged, in the Operative Complaint which occurred during the Class Period,
4 and expressly excluding all other claims, including claims for vested benefits,
5 wrongful termination, unemployment insurance, disability, social security, workers'
6 compensation, and class claims outside of the Class Period.

7 LL. "Released PAGA Claims" means all PAGA claims, including claims for PAGA
8 penalties alleged in the Operative Complaint and Plaintiffs' PAGA notices to the
9 LWDA which occurred during the PAGA Period, and expressly excluding all other
10 claims, including claims for vested benefits, wrongful termination, unemployment
11 insurance, disability, social security, workers' compensation, and PAGA claims
12 outside of the PAGA Period.

13 MM. "Plaintiffs' Release" means all claims that were or could have been made by Plaintiffs
14 in their individual capacity against the Released Parties, including without limitation
15 a waiver of any and all provisions of California Civil Code section 1542, except only
16 for claims that by law cannot be waived by private agreement, which are more
17 particularly described in Section III D.

18 NN. "Released Parties" shall mean Defendants and each of their parent entities,
19 subsidiaries, "Affiliates", divisions, predecessors, insurers, successors and assigns
20 and their current and former employees, directors, officers, shareholders, owners,
21 members, agents and attorneys. For purposes of this Agreement, the term "Affiliates"
22 means all persons and entities directly or indirectly controlling, controlled by or under
23 common control with each Defendant where control may be by management
24 authority, equity interest or otherwise. The term "Affiliates" as defined herein, also
25 specifically includes predecessors of any of the foregoing persons and entities.
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1 OO. "Response Deadline" means the date forty-five (45) calendar days after the Settlement
2 Administrator mails Notice Packets to Class Members and the last date on which
3 Class Members may submit requests for exclusion or objections to the Settlement.

4 PP. "Settlement" means the disposition of the Action pursuant to this Agreement and the
5 Judgment.

6 QQ. "Settlement Administrator" means APEX Class Action LLC, 18 Technology Drive,
7 Ste. 164, Irvine, CA 92618; Tel: 1-800-355-0700; Fax: 1-949-878-3536. The
8 Settlement Administrator establishes, designates, and maintains, a QSF under
9 Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into
10 which the amount of the Gross Settlement Amount is deposited for the purpose of
11 resolving the claims of Settlement Class Members. The Settlement Administrator
12 shall maintain the funds until distribution in an account(s) segregated from the assets
13 of Defendants and any person related to Defendants. *All accrued interest shall be*
14 *paid and distributed to the Settlement Class Members as part of their respective*
15 *Individual Settlement Payment.*

16 RR. "Settlement Class Members" or "Settlement Class" means all Class Members who
17 have not submitted a timely and valid request for exclusion as provided in this
18 Agreement.

19 SS. "Workweek" means any seven (7) consecutive days beginning on Sunday and ending
20 on Saturday, in which a Class Member is employed and earned any form of
21 compensation from Defendants.

22 **II. RECITALS**

23 A. On February 18, 2022, Plaintiff Manuel Fimbres filed a Notice of Violations with the
24 Labor and Workforce Development Agency (LWDA) and served the same on
25 Defendants.

26 B. On April 12, 2022, Plaintiff Manuel Fimbres filed the original Complaint, alleging
27 claims for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2) Failure
28

1 to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay
2 Overtime Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal
3 Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to
4 Provide Required Rest Periods (Labor Code §§ 226.7, 516 and the applicable wage
5 order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and
6 226.2 *et seq.*); (7) Failure to Provide Wages When Due (Labor Code §§ 201, 202,
7 203); and (8) Failure to Reimburse Employees for Required Expenses (Labor Code §
8 2802).

9 C. On April 25, 2022, Plaintiff Manuel Fimbres filed the First Amended Complaint,
10 which added a ninth cause of action for violation of the Private Attorneys General Act
11 (Labor Code §§ 2698 *et seq.*).

12 D. On May 3, 2022, JCL Law Firm, APC and Zakay Law Group, APLC entered into an
13 Association of Counsel and Joint Prosecution Agreement with the Law Office of Ken
14 Seligson. Mr. Seligson was retained by four additional Plaintiffs, Andy Dohrer, Ryan
15 Houser, Abens Ponce, and Eliot Warner.

16 E. On June 8, 2022, Plaintiff Elliot Warner filed a Notice of Violations with the LWDA
17 and served the same on Defendants.

18 F. On July 1, 2022, Plaintiff Abens Ponce filed a Notice of Violations with the LWDA
19 and served the same on Defendants.

20 G. On or before the filing of the Motion for Preliminary Approval, the Plaintiffs will file
21 a Second Amended Complaint, adding Andy Dohrer, Ryan Houser, Abens Ponce, and
22 Eliot Warner as Plaintiffs to the Action.

23 H. The Class Representatives believe they have claims based on alleged violations of the
24 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
25 that class certification is appropriate because the prerequisites for class certification
26 can be satisfied in the Action, and this action is manageable as a PAGA representative
27 action.

1 I. Defendants deny any liability or wrongdoing of any kind associated with the claims
2 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
3 Representatives are owed, and further contends that, for any purpose other than
4 settlement, the Action is not appropriate for class or representative action treatment.
5 Defendants contend, among other things, that at all times it complied with the
6 California Labor Code and the Industrial Welfare Commission Wage Orders.

7 J. The Class Representatives are represented by Class Counsel. Class Counsel
8 investigated the facts relevant to the Action, including conducting an independent
9 investigation as to the allegations, reviewing documents and information exchanged
10 through informal discovery, and reviewing documents and information provided by
11 Defendants pursuant to informal requests for information to prepare for mediation.
12 Defendants produced for the purpose of settlement negotiations certain employment
13 data concerning the Settlement Class, which Class Counsel reviewed and analyzed
14 with the assistance of an expert. Based on their own independent investigation and
15 evaluation, Class Counsel are of the opinion that the Settlement with Defendants is
16 fair, reasonable, and adequate, and is in the best interest of the Settlement Class
17 considering all known facts and circumstances, including the risks of significant
18 delay, defenses asserted by Defendants, uncertainties regarding class certification,
19 and numerous potential appellate issues. Although it denies any liability, Defendants
20 agree to this Settlement solely to avoid the inconveniences and cost of further
21 litigation. The Parties and their counsel have agreed to settle the claims on the terms
22 set forth in this Agreement.

23 K. On September 7, 2023, the Parties participated in mediation presided over by Steve
24 Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions.
25 The mediation concluded with a settlement, which was subsequently memorialized in
26 the form of a Memorandum of Understanding.

1 L. This Agreement replaces and supersedes the Memorandum of Understanding and any
2 other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendants that the claims in the Action of Plaintiffs or the Class Members have merit
6 or that Defendants bear any liability to Plaintiffs or the Class on those claims or any
7 other claims, or as an admission by Plaintiffs that Defendants' defenses in the Action
8 have merit.

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

15 N. The Parties agree to certification of the Non-Exempt Piece Rate Class and the Non-
16 Exempt Hourly Class for purposes of this Settlement only. If for any reason the Court
17 does not grant Preliminary Approval, Final Approval or enter Judgment, such that the
18 Settlement does not become effective, Defendants reserve the right to contest
19 certification of any class for any reason and Defendants reserve all available defenses
20 to the claims in the Action.

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

22 **III. TERMS OF AGREEMENT**

23 A. Settlement Consideration and Settlement Payments by Defendants.

- 24 1. Settlement Consideration. In full and complete settlement of the Action, and
25 in exchange for the releases set forth below, Defendants will pay the sum of
26 One Million Three Hundred and Fifty Thousand Dollars and Zero Cents
27 (\$1,350,000.00) and no more as the Gross Settlement Amount to cover the
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1 Individual Settlement Payments, the Enhancement Award, the Attorneys'
2 Fees and Attorneys' Expenses, PAGA Penalties, and the Administration
3 Costs, as specified in this Agreement. . The Parties agree that this is a non-
4 reversionary Settlement and that no portion of the Gross Settlement Amount
5 shall revert to Defendants. Other than the Defendants' share of employer
6 payroll taxes and as provided in Section III.A.2 below, Defendants shall not
7 be required to pay more than the Gross Settlement Amount.

- 8 2. Class Data. Defendants represent that the Settlement Class was comprised of
9 689 individuals who collectively worked approximately 21,618 Workweeks
10 ("Projected Workweeks") during the Class Period. The Settlement
11 Administrator will calculate the number of Workweeks worked by Class
12 Members during the Class Period and the amount to be paid to Class Members
13 per Workweek based on information provided to the Settlement Administrator
14 by Defendants in accordance with Section III L1. The Workweeks will be
15 calculated based on Defendants' Workweek data and will be presumed to be
16 correct unless a particular Class Member timely proves otherwise to the
17 Settlement Administrator by credible written evidence. All Workweek
18 disputes will be resolved and decided by the Settlement Administrator, and
19 the Settlement Administrator's decision on all Workweek disputes will be
20 final and non-appealable. Should the total number of Projected Workweeks
21 increase by more than 10% of what was represented at the mediation through
22 the end of the Class Period, the Gross Settlement Amount will increase
23 proportionally for the number of Workweeks over 110% of 21,618 count. For
24 example, if the total workweeks in the Class Period are 115% of 21,618, the
25 Gross Settlement Amount shall increase by 5%. Defendants will provide the
26 total number of Non-Exempt Piece Rate Class Members and their
27 corresponding Workweek count during the Class Period as well as the total
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1 number of Non-Exempt Hourly Class Members and their workweek count
2 during the Class Period. Defendants will provide a declaration under penalty
3 of perjury confirming the number of all Non-Exempt Piece Rate Class
4 Members and Non-Exempt Hourly Class Members and the corresponding
5 Workweeks they worked during the applicable Class Period two court days
6 prior to the hearing on Plaintiffs' motion for preliminary approval of the
7 Settlement.

8 3. Settlement Payment. Defendants shall deposit the Gross Settlement Amount
9 into the QSF, through the Settlement Administrator no later than fourteen (14)
10 days after the Effective Date. Any interest accrued will be added to the NSA
11 and distributed to the Settlement Class Members except that if final approval
12 is reversed on appeal, then Defendants are entitled to prompt return of the
13 principal and all interest accrued.

14 4. Defendants' Share of Payroll Taxes. Defendants' share of employer side
15 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
16 together with the Gross Settlement Amount on the Funding Date.

17 B. Release by Settlement Class Members. Effective as of the Funding Date, in exchange
18 for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class
19 Members on behalf of themselves and their respective former and present
20 representatives, agents, attorneys, heirs, administrators, successors and assigns, release
21 the Released Parties from the Released Class Claims for the Class Period.

22 C. Release by the Aggrieved Employees. Effective as of the Funding Date, in exchange
23 for the consideration set forth in this Agreement, the Plaintiffs, the LWDA and the
24 State of California release the Released Parties from the Released PAGA Claims for
25 the PAGA Period. As a result of this release, the Aggrieved Employees on behalf of
26 themselves and their respective former and present representatives, agents, attorneys,
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1 heirs, administrators, successors and assigns, shall be precluded from bringing claims
2 against Defendants for the Released PAGA Claims.

3 D. General Release by Plaintiffs. In addition to the Settlement Class Members' Released
4 Claims and the Released PAGA Claims, effective as of the Funding Date, for the
5 consideration set forth in this Agreement, including without limitation the
6 Enhancement Award, Plaintiffs on behalf of themselves and their respective former
7 and present representatives, agents, attorneys, heirs, administrators, successors and
8 assigns, waive, release, acquit and forever discharge the Released Parties from any and
9 all claims, whether known or unknown, which exist or may exist on any of the
10 Plaintiffs' behalf as of the date of this Agreement, including without limitation any
11 claims relating to or arising from any aspect of their respective employment, or
12 termination of employment with Defendants, any and all tort claims, contract claims,
13 wage claims, wrongful termination claims, disability claims, benefit claims, public
14 policy claims, retaliation claims, statutory claims, personal injury claims, emotional
15 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum
16 meruit claims, and any and all claims arising under any federal, state or other
17 governmental statute, law, regulation or ordinance, including, without limitation
18 claims for violation of the Fair Labor Standards Act, the California Labor Code, the
19 Wage Orders of California's Industrial Welfare Commission, other state wage and
20 hour laws, the Americans with Disabilities Act, the Age Discrimination in
21 Employment Act (ADEA), the Older Workers Benefits Protection Act ("OWBPA"),
22 the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
23 1964, the California Fair Employment and Housing Act, the California Family Rights
24 Act, the Family Medical Leave Act, California's Whistleblower Protection Act,
25 California Business & Professions Code Section 17200 et seq., and any and all claims
26 arising under any federal, state or other governmental statute, law, regulation or
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1 ordinance. Plaintiffs also waive and relinquish any and all claims, rights or benefits
2 that they may have under California Civil Code § 1542, which provides as follows:

3
4 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
5 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
6 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
7 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
8 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
9 ***OR RELEASED PARTY.***

10 Thus, notwithstanding the provisions of section 1542, and to implement a full and
11 complete release and discharge of the Released Parties, Plaintiffs expressly
12 acknowledge this Settlement Agreement is intended to include in its effect, without
13 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at
14 the time of signing this Settlement Agreement, and that this Settlement Agreement
15 contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs
16 have read this Settlement Agreement, including this waiver of California Civil Code
17 section 1542, and that Plaintiffs have consulted with or had the opportunity to consult
18 with counsel of Plaintiffs' choosing about this Settlement Agreement and specifically
19 about the waiver of section 1542, and that Plaintiffs understand this Settlement
20 Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter
21 into this Settlement Agreement. Plaintiffs further acknowledge that Plaintiffs later may
22 discover facts different from or in addition to those Plaintiffs now know or believe to
23 be true regarding the matters released or described in this Settlement Agreement, and
24 even so Plaintiffs agree that the releases and agreements contained in this Settlement
25 Agreement shall remain effective in all respects notwithstanding any later discovery
26 of any different or additional facts. Plaintiffs expressly assume any and all risk of any
27 mistake in connection with the true facts involved in the matters, disputes, or
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1 controversies released or described in this Settlement Agreement or with regard to any
2 facts now unknown to Plaintiffs relating thereto.

3 Plaintiffs Jorge Fimbres and Andy Dohrer are each 40 years old or older, and by
4 signing this Agreement they individually acknowledge and agree that they have been
5 informed that they have the right to legal counsel and are entitled to twenty-one (21)
6 calendar days from receipt of this Agreement to consider whether the terms are
7 acceptable to them, and each has consulted with legal counsel about waiving and
8 releasing all rights they may have under the ADEA and the OWBPA. Plaintiffs Jorge
9 Fimbres and Andy Dohrer are further hereby notified of their respective right to revoke
10 the release of claims arising, if any, under the ADEA within a period of seven (7)
11 calendar days after they sign this Agreement. In order to be effective, the revocation
12 must (a) be in writing; and (b) be delivered to Class Counsel Shani Zakay of Zakay
13 Law Group, APLC, via electronic mail addressed to: shani@zakaylaw.com within the
14 required period.

15
16 E. Conditions Precedent: This Settlement will become final and effective only upon the
17 occurrence of all of the following events:

- 18 1. The Court enters the Preliminary Approval Order; ;
- 19 2. The Court enters an order granting final approval of the Settlement and a
20 Judgment;
- 21 3. If an objector appears at the Final Approval Hearing, the time for appeal of
22 the Judgment and Order Granting Final Approval of Class Action Settlement
23 expires; or, if an appeal is timely filed, there is a final resolution of any appeal
24 from the Judgment and Order Granting Final Approval of Class Action
25 Settlement; and
- 26 4. Defendants fully fund the Gross Settlement Amount.

1 F. Nullification of Settlement Agreement. If this Settlement Agreement is not
2 preliminarily or finally approved by the Court and/or the LWDA, or if the appellate
3 court fails to approve the Settlement, or if the Settlement Agreement is otherwise
4 terminated, fails to become effective, or is reversed, withdrawn or modified by the
5 Court or an appellate court, or in any way prevents or prohibits Defendants from
6 obtaining a complete resolution of the Released Class Claims, the PAGA Released
7 Claims and/or the claims released by the individual Plaintiffs, or if Defendants fail to
8 fully fund the Gross Settlement Amount:

- 9 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
10 and shall not be admissible in any judicial, administrative or arbitral
11 proceeding for any purpose or with respect to any issue, substantive or
12 procedural, and the Parties shall be restored to their respective positions prior
13 to entering into the Settlement Agreement, and no party shall be bound by any
14 of the terms of the Settlement Agreement, including Defendants' obligation
15 to make payments to the Settlement Class Members, the Settlement
16 Administrator, the LWDA, Plaintiffs or Class Counsel;
- 17 2. The conditional class certifications (obtained for any purpose) shall be void
18 *ab initio* and of no force or effect, and shall not be admissible in any judicial,
19 administrative or arbitral proceeding for any purpose or with respect to any
20 issue, substantive or procedural;
- 21 3. None of the Parties to this Settlement will be deemed to have waived any
22 claims, objections, defenses or arguments in the Action, including with respect
23 to the issue of class certification;
- 24 4. Any Preliminary Approval Order, final approval order or Judgment, shall be
25 vacated;
- 26 5. The Settlement Agreement and all negotiations, statements, proceedings and
27 data relating thereto shall be deemed confidential mediation settlement
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1 communications and not subject to disclosure for any purpose in any
2 proceeding;

3 6. Defendants shall bear the sole responsibility for any reasonable cost to issue
4 or reissue any curative notice to the Settlement Class Members and all
5 reasonable Settlement Administration Costs incurred to the date of
6 nullification.

7 G. Certification of the Settlement Class. The Parties stipulate to conditional class
8 certification of the Non-Exempt Piece Rate Class and the Non-Exempt Hourly Class
9 for the Class Period for purposes of settlement only. In the event that this Settlement
10 is not approved by the Court, fails to become effective, or is reversed, withdrawn or
11 modified by the Court or the appellate court, or in any way prevents or prohibits
12 Defendants from obtaining a complete resolution of the Released Class Claims, the
13 PAGA Released Claims and/or the claims released by the individual Plaintiffs, the
14 conditional class certifications (obtained for any purpose) shall be void *ab initio* and
15 of no force or effect, and shall not be admissible in any judicial, administrative or
16 arbitral proceeding for any purpose or with respect to any issue, substantive or
17 procedural.

18 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
19 effect of the payments called for, and Class Members and/or Aggrieved Employees are
20 not relying on any statement or representation by the Parties in this regard. Class
21 Members and/or Aggrieved Employees understand and agree that they will be
22 responsible for the payment of any taxes and penalties assessed on the Individual
23 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
24 Employee Payment described and will be solely responsible for any penalties or other
25 obligations resulting from their personal tax reporting of Individual Settlement
26 Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee
27 Payment.
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1 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
2 the “acknowledging party” and each Party to this Agreement other than the
3 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
4 of this Agreement, and no written communication or disclosure between or among the
5 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
6 such communication or disclosure constitute or be construed or be relied upon as, tax
7 advice within the meaning of United States Treasury Department circular 230 (31 CFR
8 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
9 her or its own, independent legal and tax counsel for advice (including tax advice) in
10 connection with this Agreement, (b) has not entered into this Agreement based upon
11 the recommendation of any other Party or any attorney or advisor to any other Party,
12 and (c) is not entitled to rely upon any communication or disclosure by any attorney
13 or adviser to any other party to avoid any tax penalty that may be imposed on the
14 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
15 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by
17 the acknowledging party of the tax treatment or tax structure of any transaction,
18 including any transaction contemplated by this Agreement.

19 J. Preliminary Approval Motion. Class Counsel shall draft and file the motion for
20 preliminary approval within thirty (30) calendar days of execution of this Agreement,
21 or within the statutory timeframe as determined by the Court’s setting of the
22 preliminary approval hearing, which shall include this Settlement Agreement.
23 Plaintiffs will provide Defendants with a draft of the Motion at least 3 business days
24 prior to the filing of the Motion to give Defendants an opportunity to propose changes
25 or additions to the Motion.

26 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
27 establishing and administering the QSF; calculating, processing and mailing payments
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1 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
2 mailing the Notice Packets to the Class Members as directed by the Court; receiving
3 and reporting the objections and requests for exclusion; calculating, deducting and
4 remitting all legally required taxes from Individual Settlement Payments and
5 distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
6 Portion of the Individual Settlement Payments and/or Aggrieved Employees'
7 individual shares of the Aggrieved Employee Payment; processing and mailing tax
8 payments to the appropriate state and federal taxing authorities; providing
9 declaration(s) as necessary in support of preliminary and/or final approval of this
10 Settlement; and other tasks as the Parties mutually agree or the Court orders the
11 Settlement Administrator to perform. The Settlement Administrator shall keep the
12 Parties timely apprised of the performance of all Settlement Administrator
13 responsibilities by among other things, sending a weekly status report to the Parties'
14 counsel stating the date of the mailing, the of number of Elections Not to Participate
15 in Settlement it receives (including the numbers of valid and deficient), and number of
16 objections received. The Settlement Administrator shall provide Defendants through
17 their counsel of record, a written verification of its operative procedures for protecting
18 the security of Class Data, the amounts of insurance coverage for any data breach,
19 defalcation of funds or other misfeasance and the name(s) of the insurance companies
20 providing the foregoing insurance coverage.

21 L. Notice Procedure.

- 22 1. Class Data. No later than ten (10) business days after the Preliminary
23 Approval Date, Defendants shall provide the Settlement Administrator with
24 the Class Data for purposes of preparing and mailing Notice Packets to the
25 Class Members.
- 26 2. Notice Packets.

- 1 a) The Notice Packet shall contain the Notice of Class Action Settlement
2 in a form substantially similar to the form attached as **Exhibit A**. The
3 Notice of Class Action Settlement shall inform Class Members and
4 PAGA Class Members that they need not do anything in order to
5 receive an Individual Settlement Payment and/or Aggrieved
6 Employees' individual shares of the Aggrieved Employee Payment
7 and to keep the Settlement Administrator apprised of their current
8 mailing address, to which the Individual Settlement Payments and/or
9 Aggrieved Employees' individual shares of the Aggrieved
10 Employment Payment will be mailed following the Funding Date. The
11 Notice of Class Action Settlement shall set forth the release to be given
12 by all members of the Class who do not request to be excluded from
13 the Settlement Class and/or Aggrieved Employees in exchange for an
14 Individual Settlement Payment and/or Aggrieved Employees'
15 individual shares of the Aggrieved Employment Payment, the number
16 of Workweeks worked by each Class Member during the Class Period
17 and PAGA Period, if any, and the estimated amount of their Individual
18 Settlement Payment if they do not request to be excluded from the
19 Settlement and each Aggrieved Employees' share of the Aggrieved
20 Employment Payment, if any. The Settlement Administrator shall use
21 the Class Data to determine Class Members' Workweeks and PAGA
22 Workweeks. The Notice will also advise the Aggrieved Employees
23 that they will release the Released PAGA Claims and will receive their
24 share of the Aggrieved Employee Payment regardless of whether they
25 request to be excluded from the Settlement.
- 26 b) The Notice Packet's mailing envelope shall include the following
27 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
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1 ENTITLED TO PARTICIPATE IN A CLASS ACTION
2 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
3 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
4 NOTICE.”

- 5 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
6 Settlement Administrator will perform a search based on the National Change
7 of Address Database to update and correct any known or identifiable address
8 changes. No later than twenty-one (21) calendar days after preliminary
9 approval of the Settlement, the Settlement Administrator shall mail copies of
10 the Notice Packet to all Class Members via regular First-Class U.S. Mail. The
11 Settlement Administrator shall exercise its best judgment to determine the
12 current mailing address for each Class Member. The address identified by the
13 Settlement Administrator as the current mailing address shall be presumed to
14 be the best mailing address for each Class Member.
- 15 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
16 Administrator as non-delivered on or before the Response Deadline shall be
17 re-mailed to any forwarding address provided. If no forwarding address is
18 provided, the Settlement Administrator shall promptly attempt to determine a
19 correct address by lawful use of skip-tracing, or other search using the name,
20 address and/or Social Security number of the Class Member involved, and
21 shall then perform a re-mailing, if another mailing address is identified by the
22 Settlement Administrator. In addition, if any Notice Packets, which are
23 addressed to Class Members who are currently employed by Defendants, are
24 returned to the Settlement Administrator as non-delivered and no forwarding
25 address is provided, the Settlement Administrator shall notify Defendants.
26 Defendants will request that the currently employed Class Member provide a
27 corrected address, and transmit to the Administrator any corrected address
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1 provided by the Class Member. Class Members who received a re-mailed
2 Notice Packet shall have their Response Deadline extended fifteen (15) days
3 from the original Response Deadline.

4 5. Disputes Regarding Individual Settlement Payments. Class Members will
5 have the opportunity, should they disagree with Defendants' records regarding
6 the start and end dates of employment to provide documentation and/or an
7 explanation to show contrary dates. If there is a dispute, the Settlement
8 Administrator will consult with the Parties to determine whether an
9 adjustment is warranted. The Settlement Administrator shall determine the
10 eligibility for, and the amounts of, any Individual Settlement Payments under
11 the terms of this Agreement. The Settlement Administrator's determination
12 of the eligibility for and amount of any Individual Settlement Payment shall
13 be binding upon the Class Member and the Parties.

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

20 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
21 Packet shall state that Class Members who wish to exclude themselves from
22 the Settlement must submit a written request for exclusion to the Settlement
23 Administrator by the Response Deadline. The written request for exclusion
24 must state that the Class Member wishes to exclude himself or herself from
25 the Settlement and (1) must contain the name, address, and the last four digits
26 of the Social Security number of the person requesting exclusion; (2) must be
27 signed by the Class Member; (3) must be postmarked or fax stamped by the
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1 Response Deadline and returned to the Settlement Administrator at the
2 specified address or fax telephone number; and (4) contain a typewritten or
3 handwritten notice stating in substance that he or she wishes to be excluded
4 from the settlement of the class action lawsuit entitled *Manuel Fimbres, et al.*
5 *v. Dreamstyle Remodeling of California, LLC., et al.*, currently pending in
6 Superior Court of San Diego, Case No. 37-2022-00013690-CU-OE-CTL.
7 The request for exclusion will not be valid if it is not timely submitted, if it is
8 not signed by the Class Member, or if it does not contain the name and address
9 and last four digits of the Social Security number of the Class Member. The
10 date of the postmark on the mailing envelope or fax stamp on the request for
11 exclusion shall be the exclusive means used to determine whether the request
12 for exclusion was timely submitted. Any Class Member who submits a timely
13 request for exclusion shall be excluded from the Settlement Class will not be
14 entitled to an Individual Settlement Payment and will not be otherwise bound
15 by the terms of the Settlement or have any right to object, appeal or comment
16 thereon. However, any Class Member that submits a timely request for
17 exclusion that is also a member of the Aggrieved Employees will still receive
18 his/her pro rata share of the PAGA Settlement, as specified below, and in
19 consideration, will be bound by the Release by the Aggrieved Employees as
20 set forth herein. Settlement Class Members who fail to submit a valid and
21 timely request for exclusion on or before the Response Deadline shall be
22 bound by all terms of the Settlement and any final judgment entered in this
23 Action if the Settlement is approved by the Court. No later than twenty-one
24 (21) calendar days after the Response Deadline, the Settlement Administrator
25 shall provide counsel for the Parties with a final list of the Class Members
26 who have timely submitted timely requests for exclusion. At no time shall any
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1 of the Parties or their counsel seek to solicit or otherwise encourage members
2 of the Class to submit requests for exclusion from the Settlement.

3 8. Objections. The Notice of Class Action Settlement contained in the Notice
4 Packet shall state that Class Members who wish to object to the Settlement
5 may submit to the Settlement Administrator a written statement of objection
6 (“Notice of Objection”) by the Response Deadline. The postmark date of
7 mailing shall be deemed the exclusive means for determining that a Notice of
8 Objection was served timely. The Notice of Objection, if in writing, must be
9 signed by the Settlement Class Member and state: (1) the case name and
10 number; (2) the name of the Settlement Class Member; (3) the address of the
11 Settlement Class Member; (4) the last four digits of the Settlement Class
12 Member’s Social Security number; (5) the basis for the objection; and (6) if
13 the Settlement Class Member intends to appear at the Final
14 Approval/Settlement Fairness Hearing. Class Members who fail to make
15 objections in writing in the manner specified above may still make their
16 objections orally at the Final Approval/Settlement Fairness Hearing with the
17 Court’s permission. Settlement Class Members will have a right to appear at
18 the Final Approval/Settlement Fairness Hearing to have their objections heard
19 by the Court regardless of whether they submitted a written objection. At no
20 time shall any of the Parties or their counsel seek to solicit or otherwise
21 encourage Class Members to file or serve written objections to the Settlement
22 or appeal from the Order and Final Judgment. Class Members who submit a
23 written request for exclusion may not object to the Settlement. Class Members
24 may not object to the PAGA Penalties.

25 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
26 pay the Gross Settlement Amount plus any employer’s share of payroll taxes as
27 mandated by law within the time specified hereinabove on the Funding Date.
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1 1. Calculation of Individual Settlement Payments. The Net Settlement Amount
2 shall be split between the Non-Exempt Piece Rate Class and the Non-Exempt
3 Hourly Class, with 75% of the Net Settlement Amount to be allocated to the
4 Non-Exempt Piece Rate Class and 25% of the Net Settlement Amount to be
5 allocated to the Non-Exempt Hourly Class. Individual Settlement Payments
6 shall be paid from the Net Settlement Amount pursuant to the formulas set
7 forth herein:

8 a) **Non-Exempt Piece Rate Class:** Using the Class Data, the Settlement
9 Administrator shall add up the total number of Workweeks for members of
10 the Non-Exempt Piece Rate Class. The respective Workweeks for each Non-
11 Exempt Piece Rate Class member will be divided by the total Workweeks for
12 all Non-Exempt Piece Rate Class members, resulting in the Payment Ratio for
13 each Non-Exempt Piece Rate Class member. Each Non-Exempt Piece Rate
14 Class member's Payment Ratio will then be multiplied by portion of the Net
15 Settlement Amount allocated to the Non-Exempt Piece Rate Class (i.e. 75%
16 of the Net Settlement Amount), to calculate each Non-Exempt Piece Rate
17 Class member's estimated Individual Settlement Payments. Each Individual
18 Settlement Payment will be reduced by any legally mandated employee tax
19 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
20 Payments for Members of the Non-Exempt Piece Rate Class who submit valid
21 and timely requests for exclusion will be redistributed to Members of the Non-
22 Exempt Piece Rate Class who do not submit valid and timely requests for
23 exclusion on a pro rata basis based on their respective Payment Ratios.

24 b) **Non-Exempt Hourly Class:** Using the Class Data, the Settlement
25 Administrator shall add up the total number of Workweeks for members of
26 the Non-Exempt Hourly Class. The respective Workweeks for each Non-
27 Exempt Hourly Class member will be divided by the total Workweeks for all
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1 Non-Exempt Hourly Class members, resulting in the Payment Ratio for each
2 Non-Exempt Hourly Class Member. Each Non-Exempt Hourly Class
3 member's Payment Ratio will then be multiplied by portion of the Net
4 Settlement Amount allocated to the Non-Exempt Hourly Class (i.e. 25% of
5 the Net Settlement Amount), to calculate each Non-Exempt Hourly Class
6 member's estimated Individual Settlement Payments. Each Individual
7 Settlement Payment will be reduced by any legally mandated employee tax
8 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
9 Payments for Members of the Non-Exempt Hourly Class who submit valid
10 and timely requests for exclusion will be redistributed to Members of the Non-
11 Exempt Hourly Class who do not submit valid and timely requests for
12 exclusion on a pro rata basis based on their respective Payment Ratios.

13 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
14 Class Data, the Settlement Administrator shall add up the total number of
15 PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.
16 The respective PAGA Pay Periods for each Aggrieved Employees will be
17 divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting
18 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
19 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
20 Aggrieved Employee Payment to calculate each Aggrieved Employee's
21 estimated share of the Aggrieved Employee Payment.

22 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
23 Settlement Payments shall be allocated and treated as 25% wages ("Wage
24 Portion") and 75% penalties and pre-judgment interest ("Penalties and Interest
25 Portion"). The Wage Portion of the Individual Settlement Payments shall be
26 reported on IRS Form W-2 and the Penalties and Interest Portion and Interest
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1 Portion of the Individual Settlement Payments shall be reported on IRS Form
2 1099 issued by the Settlement Agreement.

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

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

17 6. All monies received by Settlement Class Members under the Settlement which
18 are attributable to wages shall constitute income to such Settlement Class
19 Members solely in the year in which such monies actually are received by the
20 Settlement Class Members. It is the intent of the Parties that Individual
21 Settlement Payments and individual shares of the PAGA Penalties provided for
22 in this Settlement agreement are the sole payments to be made by Defendants to
23 Settlement Class Members and/or Aggrieved Employees in connection with this
24 Settlement Agreement, with the exception of Plaintiffs, and that the Settlement
25 Class Members and/or Aggrieved Employees are not entitled to any new or
26 additional compensation or benefits as a result of having received the Individual
27 Settlement Payments and/or their shares of the Aggrieved Employee Payment.
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- 1 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
2 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
3 and/or Aggrieved Employees' last known mailing address no later than fifteen
4 (15) calendar days after the Funding Date.
- 5 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
6 Employees shall remain valid and negotiable for one hundred and eighty (180)
7 days from the date of their issuance. If a Settlement Class Member and/or
8 Aggrieved Employees does not cash his or her settlement check within 90
9 days, the Settlement Administrator will send a letter to such persons, advising
10 that the check will expire after the 180th day, and invite that Settlement Class
11 Member and/or Aggrieved Employees to request reissuance in the event the
12 check was destroyed, lost or misplaced. In the event an Individual Settlement
13 Payment and/or Aggrieved Employees' individual share of the PAGA
14 Penalties check has not been cashed within one hundred and eighty (180) days,
15 all funds represented by such uncashed checks, plus any interest accrued
16 thereon, shall be paid to the Community Law Project, a Cy Pres, in accordance
17 with California Code of Civil Procedure section 384.
- 18 9. Enhancement Award. In addition to the Individual Settlement Payments as
19 Settlement Class Members and their individual shares of the Aggrieved
20 Employee Payments, Plaintiffs Andy Dohrer, Ryan Houser, Abens Ponce, and
21 Eliot Warner will apply to the Court for an award of not more than \$10,000.00,
22 as the Enhancement Award. In addition to the Individual Settlement Payment
23 as a Settlement Class Member and his individual share of the Aggrieved
24 Employee Payment, Plaintiff Manuel Fimbres will apply to the Court for an
25 award of not more than \$12,500.00, as the Enhancement Award. Defendants
26 will not oppose an Enhancement Award of not more than \$10,000.00 for
27 Plaintiffs Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner, and
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1 Defendants will not oppose an Enhancement Award of not more than
2 \$12,500.00 for Plaintiff Manuel Fimbres. The Settlement Administrator shall
3 pay the Enhancement Award, either in the amount stated herein if approved
4 by the Court or some other amount as approved by the Court, to Plaintiffs
5 from the Gross Settlement Amount no later than fifteen (15) calendar days
6 after the Funding Date. Any portion of the requested Enhancement Award
7 that is not awarded to the Class Representative shall be part of the Net
8 Settlement Amount and shall be distributed to Settlement Class Members as
9 provided in this Agreement. The Settlement Administrator shall issue an IRS
10 Form 1099 — MISC to Plaintiffs for their Enhancement Award. Plaintiffs
11 shall be solely and legally responsible to pay any and all applicable taxes on
12 their Enhancement Award and shall hold harmless the Released Parties from
13 any claim or liability for taxes, penalties, or interest arising as a result of the
14 Enhancement Award. Approval of this Settlement shall not be conditioned on
15 Court approval of the requested amount of the Enhancement Award. If the
16 Court reduces or does not approve the requested Enhancement Award,
17 Plaintiffs shall not have the right to revoke the Settlement, and it will remain
18 binding.

- 19 10. Attorneys' Fees and Attorneys' Expenses. Defendants understand Class
20 Counsel will file a motion for or Attorneys' Fees not to exceed one-third of
21 the Gross Settlement Amount currently estimated to be \$450,000.00 **and**
22 Attorneys' Expenses supported by declaration not to exceed Thirty Thousand
23 Dollars (\$30,000.00). Any awarded Attorneys' Fees and Attorneys' Expenses
24 shall be paid from the Gross Settlement Amount. Any portion of the requested
25 Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class
26 Counsel shall be part of the Net Settlement Amount and shall be distributed
27 to Settlement Class Members as provided in this Agreement. The Settlement
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1 Administrator shall allocate and pay the Attorneys' Fees to Class Counsel
2 from the Gross Settlement Amount no later than fifteen (15) calendar days
3 after the Funding Date. Class Counsel shall be solely and legally responsible
4 to pay all applicable taxes on the payment made pursuant to this paragraph.
5 The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class
6 Counsel for the payments made pursuant to this paragraph. In the event that
7 the Court reduces or does not approve the requested Attorneys' Fees, Plaintiffs
8 and Class Counsel shall not have the right to revoke the Settlement, or to
9 appeal such order, and the Settlement will remain binding. Released Parties
10 shall have no liability to Class Counsel or any other Plaintiff's counsel arising
11 from any claim to any portion of any Attorney's Fees and/or Attorney's
12 Expenses. Class Counsel will hold Defendants harmless, and protect and
13 indemnify Defendants, from any dispute or controversy regarding division or
14 sharing of these payments.

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- 16 11. PAGA Penalties. Fifty Thousand Dollars (\$50,000.00) shall be allocated from
17 the Gross Settlement Amount for settlement of claims for civil penalties under
18 the Private Attorneys General Act of 2004 ("PAGA Penalties"). The
19 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
20 Penalties (\$37,500.00) to the California Labor and Workforce Development
21 Agency no later than fifteen (15) calendar days after the Effective Date
22 (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA
23 Penalties (\$12,500.00) will be distributed to the Aggrieved Employees as
24 described in this Agreement (hereinafter "Aggrieved Employee Payment").
25 For purposes of distributing the PAGA Penalties to the Aggrieved Employees,
26 each Aggrieved Employee shall receive their pro-rata share of the Aggrieved
27 Employee Payment using the PAGA Payment Ratio as defined above.
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12. Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Administration Costs is \$12,000.00. The Settlement Administrator shall be paid the Administration Costs no later than fifteen (15) calendar days after the Effective Date.

N. Final Approval Motion. Class Counsel and Plaintiffs 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 Enhancement Awards, the Attorneys' Fees and Attorneys' Expenses, the PAGA Penalties, and the Administration Costs. Plaintiffs will provide Defendants with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendants 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 Plaintiffs' 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 objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Administration Costs, 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

1 approval, and Judgment thereon, at the time Class Counsel files the Motion
2 for Final Approval.

3 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
4 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
5 Final Approval, including the Order Granting Final Approval of Class Action
6 Settlement, and Judgment before filing with the Court. The Parties and their counsel
7 will cooperate with each other and use their best efforts to effect the Court's approval
8 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
9 Judgment.

10 O. Cooperation. The Parties and their counsel will cooperate with each other and use
11 their best efforts to implement the Settlement.

12 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
13 except such proceedings necessary to implement and complete the Settlement, pending
14 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

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

17 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
18 Agreement among these Parties, and no oral or written representations, warranties or
19 inducements have been made to any Party concerning this Agreement or its Exhibit
20 other than the representations, warranties and covenants contained and memorialized
21 in this Agreement and its Exhibit.

22 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
23 represent they are expressly authorized by the Parties whom they represent to negotiate
24 this Agreement and to take all appropriate Action required or permitted to be taken by
25 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
26 documents required to effectuate the terms of this Agreement. The persons signing
27 this Agreement on behalf of Defendants represents and warrants that he/she is
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1 authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and
2 warrant that they are authorized to sign this Agreement and that they have not assigned
3 any claim, or part of a claim, covered by this Settlement to a third-party.

4 T. No Public Comment: The Parties and their counsel agree not to issue any press
5 releases, initiate any contact with the press, respond to any press inquiry or make any
6 public communication about the fact, amount or terms of the settlement, except
7 however that this does not prohibit disclosures required by law and/or within Plaintiffs
8 and Plaintiffs' counsel and expert, Defendants and Defendants' counsel and expert,
9 and those within Defendants' organization or financial advisors/accountants with a
10 need to know in order to approve or execute the terms of this Settlement Agreement.

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

13 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
14 shall be governed by and interpreted according to the laws of the State of California.

15 W. Execution in Counterparts. This Agreement may be executed in one or more
16 counterparts by facsimile, electronic signature, or email which for purposes of this
17 Agreement shall be accepted as original. All executed counterparts and each of them
18 will be deemed to be one and the same instrument. Any executed counterpart will be
19 admissible in evidence to prove the existence and contents of this Agreement.

20 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
21 is a fair, adequate and reasonable settlement of this Action and have arrived at this
22 Settlement after extensive arms-length negotiations, taking into account all relevant
23 factors, present and potential.

24 Y. Continuing Jurisdiction. The Parties agree that the Court shall retain continuing
25 jurisdiction over this case under CCP Section 664.6 to ensure the continuing
26 implementation of the provisions of this Settlement and that the time within which to
27 bring this Action to trial under CCP Section 583.310 shall be extended from the date
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1 of the signing of the Memorandum of Understanding between the Parties by all Parties
2 until the entry of the final approval order and judgment or if not entered, the date the
3 Memorandum of Understanding between the Parties shall no longer be of any force or
4 effect.

5 Z. Court Filings. The Parties agree not to object to any Court filings consistent with this
6 Agreement.

7 AA. Disputes. Any dispute between the Parties as to the remaining terms of the Settlement
8 Agreement shall be presented to the mediator for resolution and the mediator's
9 decision on all such disputes will be final and non-appealable.

10 BB. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
11 the Court shall first attempt to construe the provisions valid to the fullest extent
12 possible consistent with applicable precedents so as to define all provisions of this
13 Agreement valid and enforceable.

14 CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
15 certification for purposes of this settlement only.

16 DD. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
17 Released Claims have merit and give rise to liability on the part of Defendants.
18 Defendants claim that the Released Claims have no merit and do not give rise to
19 liability. This Agreement is a compromise of disputed claims. Nothing contained in
20 this Agreement and no documents referred to and no action taken to carry out this
21 Agreement may be construed or used as an admission by or against the Defendants or
22 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
23 than as may be specifically set forth herein, each Party shall be responsible for and
24 shall bear its/his own attorney's fees and costs.

25 EE. Use and Return of Class Data. Information provided to Class Counsel pursuant to
26 California Evidence Code section 1152, and all copies and summaries of the Class
27 Data provided to Class Counsel by Defendants in connection with mediation, or in
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connection with this Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than fifteen (15) days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiffs, through Class Counsel and Class Counsel shall destroy, all paper and electronic versions of Class Data received from Defendants.

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

DATED: Nov 21, 2023



Manuel fimbres (Nov 21, 2023 11:11 PST)

Manuel Fimbres

DATED: Nov 30, 2023



Andrew Dohrer (Nov 30, 2023 12:22 PST)

Andy Dohrer

DATED: Dec 1, 2023



Ryan Houser (Dec 1, 2023 14:00 PST)

Ryan Houser

DATED: Nov 30, 2023



Abens ponce (Nov 30, 2023 12:04 PST)

Abens Ponce

DATED: Nov 30, 2023



Eliot warner (Nov 30, 2023 11:18 PST)

Eliot Warner

IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

DREAMSTYLE REMODELING OF CALIFORNIA,
LLC, a Delaware limited liability company

Printed Name

Title

1 connection with this Settlement, may be used only with respect to this Settlement, and
2 no other purpose, and may not be used in any way that violates any existing contractual
3 agreement, statute, or rule of court. Not later than fifteen (15) days after the date when
4 the Court discharges the Administrator's obligation to provide a declaration
5 confirming the final pay out of all Settlement funds, Plaintiffs, through Class Counsel
6 and Class Counsel shall destroy, all paper and electronic versions of Class Data
7 received from Defendants.

8
9 **IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:**

10 DATED: _____

11 _____
Manuel Fimbres

12 DATED: _____

13 _____
Andy Dohrer

14 DATED: _____

15 _____
Ryan Houser

16 DATED: _____

17 _____
Abens Ponce

18 DATED: _____

19 _____
Eliot Warner

20 **IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:**

21
22 DATED: __ 11-21-23 _____

23 Vince Nardo
24 Vince Nardo (Nov 21, 2023 15:10 PST)

25 DREAMSTYLE REMODELING OF CALIFORNIA,
26 LLC, a Delaware limited liability company

27 Vince Nardo _____

28 Printed Name

President _____

Title

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2 DATED: _____

Vince Nardo

Vince Nardo (Nov 21, 2023 15:10 PST)

DREAMSTYLE REMODELING OF CALIFORNIA,
INC., a California corporation

Printed Name

Title

Vince Nardo

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8 DATED: _____

Vince Nardo (Nov 21, 2023 15:10 PST)

DREAMSTYLE REMODELING, INC., a New
Mexico Corporation

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Printed Name

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: November 21, 2023

JCL LAW FIRM, A.P.C.

By: _____

Attorneys for Plaintiffs and the Settlement Class
Members

DATED: November 21, 2023

ZAKAY LAW GROUP, APLC

By: _____

Attorneys for Plaintiffs and the Settlement Class
Members

1 DATED: 12.4.2023
2
3

THE LAW OFFICE OF KEN SELIGSON

By: 
Ken Seligson, Esq.

Attorneys for Plaintiffs and the Settlement Class
Members

4
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6
7
8 DATED: 11-21-23

CAHILL & CAMPITIELLO

9
10 By: Lawrence Campitiello
11 Lawrence G. Campitiello, Esq.

12 Attorneys for Defendants
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EXHIBIT A

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

(Fimbres v. Dreamstyle Remodeling of California, LLC, et al., San Diego County Superior Court Case No. 37-2022-00013690-CU-OE-CTL)

**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: \$«Total_Est_PMT». 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 Defendants 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 Diego (the “Court”) has been reached between Plaintiffs Manuel Fimbres, Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner (Plaintiffs”) and Defendants Dreamstyle Remodeling of California, LLC, Dreamstyle Remodeling of California, Inc., and Dreamstyle Remodeling, Inc. (“Defendants”). 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 Non-Exempt Piece Rate Class and/or a member of the Non-Exempt Hourly Class.

The Non-Exempt Piece Rate Class is defined as:

All non-exempt employees who worked solely on a piece rate basis or on a piece rate and hourly combination basis, who are or previously were employed by Defendants and performed work in California during the Class Period.

The Non-Exempt Hourly Class is defined as:

All non-exempt employees who worked solely on an hourly basis, who are or previously were employed by Defendants and performed work in California during the Class Period.

The “Class Period” is the period of time running from April 12, 2018, to December 31, 2023.

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 April 12, 2022, Plaintiff Manuel Fimbres filed a Complaint against Defendants in the Superior Court of the State of California, County of San Diego, 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 Accurate Itemized Statements (Labor Code § 226 and 226.2 et seq.); (7) Failure to Provide Wages When Due (Labor Code §§ 201, 202, 203); and (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802). On April 25, 2022, Plaintiff Manuel Fimbres filed the First Amended Complaint, adding a claim for violation of the Private Attorneys General Act

(Labor Code §§ 2698 et seq.). On November 27, 2023, the Plaintiffs filed the operative Second Amended Complaint, adding Plaintiffs Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner to the Action.

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

On September 7, 2023, the Parties participated in an all-day mediation with Steven Serratore, Esq., a mediator of wage and hour class actions. The mediation concluded with a settlement. The Court granted preliminary approval of the Settlement on December 15, 2023. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC, Zakay Law Group, APLC, and The Law Office of Ken Seligson to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Three Hundred Sixty-Three Thousand One Hundred Twenty-Six Dollars and Fifty-Six Cents (\$1,363,126.56) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the PAGA Payment, and the Class Representative Service Payment to the Plaintiffs.

After the Judgment becomes Final, Defendants 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:

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$12,000.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of Attorneys’ Fees of no more than 1/3 of the Gross Settlement Amount (currently \$454,375.52) and Attorneys’ Costs of not more than \$30,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs 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.
- Class Representative Service Payment. Class Representative Service Payment of up to Ten Thousand Dollars (\$10,000) to each, Plaintiff Andy Dohrer, Plaintiff Ryan Houser, Plaintiff Abens Ponce, and Plaintiff Eliot Warner, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook. Class Representative Service Payment of up to Twelve Thousand Five Hundred Dollars (\$12,500) to Plaintiff Manuel Fimbres, 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.
- PAGA Payment. A payment of \$50,0000.00 relating to Plaintiffs’ claim under the Private Attorneys General Act (“PAGA”), \$37,500.00 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) and the remaining \$12,500.00 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Participating Class Members”). The Settlement Share for each Participating Class Member will be split between the Non-Exempt Piece Rate Class and the Non-Exempt Hourly Class, with 75% of the Net Settlement Amount to be allocated to the Non-Exempt Piece Rate Class and 25% of the Net Settlement Amount to be allocated to the Non-Exempt Hourly Class. Participating Class Members in the Non-Exempt Piece Rate Class will be paid based on the number of workweeks worked during the Class Period. Participating Class Members in the Non-Exempt Hourly Class will be paid based on the number of workweeks worked during the Class Period. A “workweek” is defined as a normal

seven-day week of work during the Class Period in which, according to Defendants' records, a member of the class worked at least one-day during any such workweek.

- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The PAGA Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of 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 Defendants and performed work in California during the PAGA Period. The PAGA Period means the period between February 18, 2021, to December 31, 2023, or the date the court grants preliminary approval, whichever is sooner.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement 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.

Tax Matters. Twenty-Five percent (25%) of each Individual 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. Seventy-Five percent (75%) of each Individual Settlement Payment is allocated to interest, penalties, and other non-wage payments, and 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 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 Defendants' 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.

No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee 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 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.

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 entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiffs and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged, or 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. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Member shall be deemed to be an opt-in for purposes of releasing Released Parties from any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the operative complaint.

The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, 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 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.

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 Defendants 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?

Defendants' records reflect that you have «Total_Workweeks» Workweeks worked during the Class Period (April 12, 2018 through December 31, 2023).

Based on this information, your estimated Settlement Share is \$«Total_Class_PMT».

Defendants' records reflect that you have «Pay_Periods» pay periods worked during the PAGA Period (February 18, 2021 through December 31, 2023).

Based on this information, your estimated PAGA Payment Share is \$«Est_PAGA_PMT».

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 March 21, 2024.

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 May 17, 2024, 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/dreamstyle.

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," 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 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 March 21, 2024. The address for the Settlement Administrator is P.O. Box 54668, Irvine, CA 92619; 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 she wishes to be excluded from the settlement of the class action lawsuit entitled *Manuel Fimbres, et al. v. v. Dreamstyle Remodeling of California, LLC, et al.*, currently pending in Superior Court of San Diego, Case No. 37-2022-00013690-CU-OE-CTL. 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 March 21, 2024, 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 may 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 *Manuel Fimbres, et al. v. Dreamstyle Remodeling of California, LLC, et al., Superior Court of San Diego, Case No. 37-2022-00013690-CU-OE-CTL*. 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 March 21, 2024. The address for the Settlement Administrator is P.O. Box 54668, Irvine, CA 92619; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
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Tel.: (619) 599-8292
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9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 9:00 AM on May 17, 2024, at the San Diego County Superior Court, Department C-75, located at 330 W Broadway, San Diego, CA 92101 before Judge James A. Mangione. 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 *Manuel Fimbres, et al. v. Dreamstyle Remodeling of California, LLC, et al., Superior Court of San Diego, Case No. 37-2022-00013690-CU-OE-CTL*, Settlement Administrator, P.O. Box 54668, Irvine, CA 92619 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/dreamstyle.

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 pay all funds from such uncashed checks to the State Controller's Unclaimed Property Fund. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.