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Attorneys for Plaintiff DEVIKA PATEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DEVIKA PATEL, Individually and on
behalf of all other current and former
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

APEX RECOVERY, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2021-00044618-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

DECLARATION OF BRIAN R. SHORT

Hearing Date: March 17, 2023

Time: 9:30 A.M.

Date Complaint Filed: October 20, 2021

Judge: Hon. Kenneth Medel

Dept.: C-66

1 I, Brian R. Short, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am the managing shareholder of ShortLegal, APC in San Diego, California. I am thoroughly familiar with
4 and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would
5 competently testify thereto.

6 2. My law firm, ShortLegal, APC and my Associate Dorota A. James are the attorneys of
7 record for Plaintiff Devika Patel (“Plaintiff”) in the case *Patel v. APEX Recovery LLC.*, San Diego County
8 Superior Court, Case No.: 37-2021-00044618-CU-OE-CTL filed October 20, 2021. I submit this
9 declaration in support of Plaintiff Devika Patel’s Unopposed Motion for Preliminary Approval of Class
10 Action Settlement which seeks primarily: (1) the granting of preliminary approval of the proposed
11 Settlement; (2) the approval of the distribution of the Class Notice to the Class; (3) the appointment of
12 Brian Short of ShortLegal, APC as Class Counsel, the appointment of Plaintiff Devika Patel as a Class
13 Representative, and Phoenix Settlement Administrator as Claims Administrator; (4) and the setting of a
14 hearing for final approval and class counsel’s requested fees and costs and Class Representative’s service
15 award request. The Stipulation of Class and PAGA Action and Release of Claims (“Stipulation” or
16 “Agreement”) and the Proposed Notice to the class are attached hereto as Exhibits 1 and 2, respectively.

17 CLASS COUNSEL’S CLASS ACTION EXPERIENCE

18 3. I have been a member of the State Bar of California since 2005. I am also admitted to
19 practice in various Districts of United States District Court. I have been practicing almost exclusively in
20 complex class action matters in state and federal courts since I began my legal practice in 2005. Since
21 February 2009, I have spent almost my entire practice representing employees in class and PAGA
22 representative action wage and hour litigation. My primary practice in complex class action litigation
23 spans more than 17 years.

24 4. During just the last 13 years, I have served as plaintiff’s counsel of record in the following
25 wage/hour employment class action and PAGA action cases, where I was responsible for the prosecution
26 of said cases: Garcia v. J.C. Penney Corporation, Inc., Superior Court for the County of San Diego (27,726
27 PAGA members); Weaver v. Hallmark Marketing Corporation, United States District Court for the
28

1 Central District of California (3,846 class members); Mahoney v. AT&T Corp, Superior Court for the
2 County of Los Angeles; Thomson v. LawInfo.com, Superior Court for the County of San Diego; Vest v.
3 Scher Tire, Inc., Superior Court for the County of Riverside; Duarte v. Rainbow Disposal Co., Inc.,
4 Superior Court for the County of Orange; Julio v L&M Tire Co., Inc., Superior Court for the County of
5 San Diego; Lucarini v. Dresser, Inc., Superior Court for the County of Los Angeles; Stevenson v. Falcon
6 Critical Care Transport, Superior Court for the County of Contra Costa; Iskandaryan v. Casual Male Retail
7 Group, Inc., Superior Court for the County of Los Angeles; Williams v. OneLegacy, Superior Court for
8 the County of Los Angeles; Corral v. Lifecare Solutions, Inc., et al., Superior Court for the County of Los
9 Angeles; Huerta v. Venture Petroleum Company, Inc., Superior Court for the County of San Diego;
10 Frugard v. Unified Protective Services, et al., Superior Court for the County of Los Angeles; Turnage v.
11 Park Management Corp. dba. Six Flags Discovery Kingdom, Superior Court for the County of Solano;
12 Clancy, et al. v. Scripps Health, Superior Court for the County of San Diego; Solaberrieta v. Baker Hughes
13 Oilfield Operations, Inc., et al., Superior Court for the County of Los Angeles; Gutierrez v. L & M Tire
14 Company, Inc., Superior Court for the County of San Diego; Stafford v. Dollar Tree Stores, Inc., Eastern
15 District of California; Stafford v. Dollar Tree Stores, Inc., Superior Court for the County of Solano;
16 Turnage v. Old Dominion Freightlines, Inc., Central District of California; Green v. Lawrence Service
17 Company, United States District Court for the Central District of California; Radford v. ACD Direct,
18 Superior Court for the County of San Diego; De La Rosa v. Quten Research Institute, LLC, Superior Court
19 for the County of San Diego; Frayre v. UPS, Superior Court for the County of San Diego; Leonard et al.
20 v. ABTTC, Inc., Superior Court for the County of Riverside; Loveless v. ASM Affiliates, Superior Court
21 for the County of San Diego; Alfaro v. KSC Studios dba OneKreate, LLC, Superior Court for the County
22 of San Diego; Madriz v. North County Ford, Inc., Superior Court for the County of San Diego; Troxel
23 v. LA Leasing, Inc., Superior Court for the County of San Diego, and Garcia v. WSI, et al, Superior Court
24 for the County of San Diego; and Enriquez v. Colt Services, Superior Court for the County of San Diego;
25 Virissimo v. L'Oreal USA Products, Inc. et al, Superior Court for the County of San Diego; Horton v.
26 Socket Payment Services, United States District Court for the Southern District of California; Alfaro v.
27 Ten Stories, Inc., Superior Court for the County of San Diego; Lemar v. Earthlite, LLC, et al., Superior
28

1 Court for the County of San Diego; Rodriguez v. Chimney Sweeps, Superior Court for the County of San
2 Diego; Burgueno v. Tayman Industries, Inc., Superior Court for the County of San Diego; Rivera v.
3 Octavian FM, LLC, Superior Court for the County of San Diego; Virissimo v. L'Oreal USA Products,
4 Inc. et al., Superior Court for the County of San Diego; Ruess v. Fun Bike Center, Superior Court for the
5 County of San Diego; Hitchko et al v. NPTI of Southern California, et al., Superior Court for the County
6 of San Diego; Dortch v. Southern California Addiction Center, Superior Court for County of Orange; Fox
7 v. Capital Growth Properties, Inc.; Superior Court for the County of San Diego; Davis v. SoCal Interiors,
8 Inc., Superior Court for the County of San Diego; Hubbard v. L'Oreal USA Inc., Superior Court for the
9 County of San Francisco; Fox v. Capital Growth Properties, Inc.; Superior Court for the County of San
10 Diego; Burns v. Driveline Retail Merchandising Inc., Superior Court for the County of Sacramento;
11 Guiher v. Punch Bowl of San Diego, et al., Superior Court for the County of Sacramento; Flores v. New
12 Age Distribution, Inc., Superior Court for the County of Orange; Lara v. The Pep Boys Manny Moe &
13 Jack of California, Superior Court for the County of San Diego; Paul v. Hygeia, Superior Court for the
14 County of San Diego; Brewer v. Pyramid Enterprises, Inc., Superior Court for the County of San Diego;
15 Hoffman v. Crest Beverage, LLC, Superior Court for the County of San Diego; and Guzman-Lopez v.
16 The American Bottling Company, et al., United State District Court, Central District.

17 5. My Associate Dorota A. James has a long history of experience litigating complex wage
18 and hour class actions. Ms. James is a sixth-year attorney who has extensive experience dealing with
19 complex wage and hour litigation. She received her Paralegal Certificate from the USD Paralegal
20 Program in 2007. Prior to that, she was trained at the Law School at the University of Wroclaw, Poland
21 where she graduated in 1994. Thereafter, Ms. James moved to Germany where she first received her
22 LL.M. degree and then earned her title of Doctor of the Science of Law (S.J.D) at the University of
23 Saarland (Germany). While completing her LL.M. degree, Ms. James worked as a law assistant in a
24 German attorney's office with the focus on a civil and business litigation, including labor disputes. Ms.
25 James completed the L.L.M. Program in Comparative Law at the University of San Diego and became a
26 licensed member of the California State Bar in June 2016. Ms. James has significant experience and
27 knowledge of complex class actions against employers in wage and hour disputes. Before she joined my
28

1 law firm, Ms. James worked with myself as a senior litigation paralegal at another San Diego law firm
2 which specialized in representing plaintiffs in wage and hour employment litigation. During her time
3 spent at my current firm and the time she spent at our previous firm she provided all aspects of litigation
4 support pertaining to complex class action litigation from pre-filing research, discovery, pre-mediation
5 analysis through to post-settlement claims. She is actively assisting in the litigation of each of the cases
6 listed in paragraph 4, above. During her career as employment law paralegal she assisted with and
7 worked on more than 50 employment class action cases.

8 6. During just the last 4 years, my Associate Dorota A. James has served as plaintiffs' counsel
9 of record in the following wage/hour employment class action and PAGA action cases, where she was
10 responsible for the prosecution of said cases: Garcia v. J.C. Penney Corporation, Inc., Superior Court for
11 the County of San Diego; Fox v. Capital Growth Properties, Inc.; Superior Court for the County of San
12 Diego; Burns v. Driveline Retail Merchandising Inc., Superior Court of the County of Sacramento; Guhier
13 v. Punch Bowl of San Diego, et al., Superior Court of the County of Sacramento; Ruess v. Fun Bike
14 Center, San Diego Superior Court of San Diego; Hitchko et al v. NPTI of Southern California, et al.,
15 Superior Court for the County of San Diego; Dortch v. Southern California Addiction Center, Superior
16 Court for County of Orange; Davis v. SoCal Interiors, Inc., Superior Court for the County of San Diego;
17 Flores v. New Age Distribution, Inc., Superior Court for County of Orange; Rivera v. Octavian FM, LLC,
18 Superior Court for the County of San Diego; Lara v. The Pep Boys Manny Moe & Jack of California,
19 Superior Court for the County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego;
20 Brewer v. Pyramid Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest
21 Beverage, LLC, Superior Court for the County of San Diego; and Guzman-Lopez v. The American
22 Bottling Company, et al., United State District Court, Central District.

23 7. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of record
24 in the following wage/hour and employment class action and/or PAGA representative action cases:
25 Enriquez v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Taalib-
26 Din v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Martin v. Herc
27 Rentals, Inc.; Superior Court for the County of San Diego, Superior Court for the County of San Diego;
28

1 Salcedo v. Jackson and Blanc; Superior Court for the County of San Diego; Superior Court of for the
2 County of San Diego; Fox v. Prime Asset Management, Inc., Superior Court of for the County of San
3 Diego; and Albrecht v. Smooth and Elegant, L.P., Superior Court of for the County of San Diego.

4 8. Ms. James and I have extensive experience litigating class actions, other complex litigation
5 and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage
6 and hour laws is evidenced by our representation of employees in numerous disputes in state and federal
7 courts in California.

8 9. Ms. James and I are the attorneys of record for Plaintiff Devika Patel, who is a former
9 employee of Defendant Apex Recovery, LLC (“Defendant” or “APEX”). Plaintiff was employed by
10 Defendant in various non-exempt positions including as a behavioral health technician, lead behavioral
11 health technician, and recovery house manager from December 31, 2020 through June 30, 2021 when she
12 was terminated.

13 10. In or around July 2021, Plaintiff contacted our law firm with concerns arising out of her
14 employment with Defendant. We immediately sent out a request for a copy of Plaintiff’s pay records, time
15 records, and personnel file. Accordingly, based on the information known at that time, on July 30, 2021
16 Plaintiff submitted the requisite notice letter to the Labor Workforce and Development Agency.
17 Subsequently, on October 20, 2021 my firm filed a putative class action lawsuit on behalf of the Plaintiff
18 and similarly-situated employees of Defendant in the California Superior Court, County of San Diego,
19 Case No.: is 37-2021-00044618-CU-OE-CTL.

20 11. Prior to filing the complaint, my firm conducted a lengthy investigation into the merits of
21 Plaintiff’s claims, Defendant’s potential affirmative defenses, and the complex issues pertaining to the
22 claims asserted in the constantly changing environment of procedural and merits-based issues surrounding
23 the class and representative wage and hour actions. Plaintiff alleged that Defendant failed to pay Plaintiff
24 and other similarly-situated employees minimum, regular, and overtime wages for all hours worked.
25 Plaintiff further alleged that Defendant failed to reimburse Plaintiff and other similarly-situated employees
26 for employment related expenses, including but not limited to personal cell phone expenses. Plaintiff also
27 alleged that Defendant failed to provide and authorize complaint meal and rest periods; pay timely wages;
28

1 furnish accurate itemized wage statements, and maintain employment records. Additionally, Plaintiff
2 sought to recover damages, penalties, interest, disgorgement of profits, injunctive relief and attorney's
3 fees and costs. Plaintiff also individually alleged claims for retaliation in violation for Labor Code Section
4 98.6 for Defendant's wrongful termination of Plaintiff after she made complaints related to Defendant's
5 illegal wage and hour policies. Plaintiff has separately and independently settled these claims and the
6 terms of this agreement can be made available for *in camera* review upon request. However, the value of
7 the settlement was significantly discounted in order to achieve this settlement and the value of the
8 individual settlement is far less than similar settlements for claims of retaliation in these circumstances
9 and Plaintiff did not receive or consider any compensation in its evaluation of the instant settlement which
10 was separately and independently negotiated.

11 12. Defendant denied and continues to deny each of the claims and contentions alleged by
12 Plaintiff in the instant litigation.

13 13. Before commencing the civil action against Defendant, my firm thoroughly analyzed
14 employment related documents related to Defendant's policies and practices that were maintained by
15 Plaintiff.

16 14. During the litigation process, Defense counsel approached Plaintiff's counsel and
17 indicated that there were serious financial considerations that would affect Defendant's ability to
18 withstand any judgment and/or continue in a contentious litigation. During the ensuing discussions,
19 Defendant agreed to produce reliable financial documents which supported their claimed financial
20 condition.

21 15. Soon thereafter, the parties agreed to exchange information and documents informally and
22 to participate in a private mediation.

23 16. In order to provide a complete analysis of the claims, defenses and potential damages for
24 mediation, Plaintiff's counsel requested and Defendant produced a statistically significant number of wage
25 statements and corresponding time cards for putative class members. In addition, Plaintiff provided a
26 variety of information regarding Defendant's policies and practices in place in her various job positions
27 held throughout her employment.

17. Prior to mediation, the parties engaged in several pre-mediation discussions in order to understand and evaluate the merits and potential defenses which would be asserted at the mediation. These additional pre-mediation discussions are not often utilized in class action cases, but I believe that it significantly narrowed the scope and arguments which were presented at mediation. Moreover, it permitted the parties to better analyze the claims asserted, defenses raised and was a significant factor in the parties' ability to reach eventual resolution at mediation.

18. My firm meticulously scrutinized and analyzed the informal discovery documents and records for accuracy and compliance with the California Labor Code. We also performed comprehensive legal research based on each theory of recovery and the possible legal defenses thereto. In addition, our firm performed a comprehensive class-wide damage study under each theory of recovery to evaluate the extent of the class wage loss after receiving employee payroll records. The damages included calculations of the estimated value for wage and hour violations, as well as the penalties and wage premiums for failure to provide meal and rest periods and the amount of waiting time penalties and other penalties that would result from the above violations.

19. The total calculated potential class-wide damages if Plaintiff was successful on *all class claims at trial* are as follows:

i. **Failure to Pay all Waiting Time Penalties: \$88,695**

Plaintiff contends that Defendant failed timely to pay all wages upon separation, thereby owing their employees waiting time penalties. This was calculated by determining the average daily hours worked (6 hours), the average hourly rate of pay (\$18.25) and multiplying this amount by 30 days to determine the waiting time penalty owed to one employee. This was then multiplied by the total number of former employees within the Class Period (27). As set forth below, Defendant vigorously contested that any waiting time penalties were owed due to the contested amount of wages due or that any such wages, if owed, were willfully withheld and therefore subject to these penalties.

ii. **Unpaid Rest Period Premium Wages: \$556,686**

Plaintiff alleged that Defendant failed to authorize and permit Plaintiff and other similarly-situated employees complaint and off-duty rest breaks and never paid them rest break premiums as required under the applicable provisions of the Labor Code. Plaintiff calculated the amount of wages owed by Defendant for its failure to provide and authorize rest breaks by first determining the total number of shifts worked greater than 3.5 hours in duration during the Class Period (30,503). This number was then multiplied by the average rate of pay (\$18.25) to reflect the missed premium wages for rest periods for all eligible shifts. As set forth below, Defendant contested the basis for Plaintiff's claims that any premiums were owed as well as the amount of breaks which were prevented. Defendant also contested the amount of wage premiums calculated and presented evidence that they believe demonstrated that any missed breaks were authorized and permitted and therefore not subject to a wage premium. As a result, this claim was discounted accordingly for settlement purposes.

iii. **Unpaid Meal Period Premium Wages: \$278,343**

Plaintiff alleged that putative Class Members were not authorized and permitted to take complaint 30-minute, off-duty, uninterrupted meal periods and, consequently, were entitled to meal period premium wages which Defendant failed to pay as required under the California Labor Code. Plaintiff calculated the amount of damages resulting from Defendant's failure to pay the meal break premiums by first determining the total number of shifts longer than 5 hours within the Class Period. Based on the interview with Plaintiff regarding her ability to take uninterrupted 30 minute meal breaks, Plaintiff's counsel calculated that only 50% of the total number of shifts were affected by the violation during the Class Period (15,252). This number was then multiplied by the average rate of pay (\$18.25) to reflect the missed premium wages for meal periods for all eligible shifts. As set forth below, Defendant contested the basis for Plaintiff's claims that any premiums were owed

as well as the amount of breaks which were eligible for a meal period due to many of the employees not working shifts eligible for a meal period. In addition, Defendant claimed that many of the shifts were exactly 6 hours and therefore these meal periods could be and were waived. As a result, the potential defenses were considered as well as the risk of certification of this claim and the value of the claim was discounted accordingly for settlement purposes.

vi. Failure to Reimburse the Putative Class Members for Employment-Related Expenses: \$70,392

Plaintiff further alleged that she and other putative Class Members incurred cell phone expenses in discharge of their duties but Defendant failed to indemnify them for this employment-related expense. Plaintiff calculated the total amount of damages resulting from the Defendant's failure to reimburse its employees for the costs their incurred on behalf of Defendant but multiplying the average monthly costs of cell phones per employee (\$50) by the total number of the months within the Class (52.14) and then the average number of employees working at any given time during the Class Period (27). As set forth below, Defendant contested the necessity of the use of these expenses due to the provision of other office facilities and equipment which they argued negated the need for these expenses in the carrying out of their job duties.

iv. Failure to Pay Regular, Min, and Overtime wages for off-the-clock work: \$222,674.40

Plaintiff alleged that Defendant failed to compensate the putative Class Members for all work performed, including off-the-clock work. The damages resulting from Defendant's failure to pay for the overtime, were calculated by multiplying the average amount of unpaid wages per employee per pay period (\$73.00) by the total number of pay periods within the Class Period worked by the average number of employees employed at any given time (3,050). As set forth below, Defendant

highly contested the off-the-clock claims and therefore the entirety of the amount calculated for wages. In addition, Defendant presented substantial evidence that they claimed indicated that Plaintiff's calculations with respect to the regular and overtime work performed was dramatically over-assessed.

v. **Failure to Provide Wage Statements: \$176,850**

Plaintiff contended that the class was owed penalties and damages due to Defendant's failure to include total hours worked, proper regular and overtime hourly pay rates, total number of regular and overtime hours worked during the pay period on the putative Class Members' wage statements. The relevant Labor Code provisions allow for recovery of the greater of all actual damages recovered, or a penalty of \$50-100 per pay period (up to a maximum of \$4,000 per affected employee). The total amount of damages resulting from Defendant's failure to provide accurate wage statements was calculated by multiplying the number of the putative class members by the maximum amount of the penalties allowed under the Labor Code. Because these amounts were essentially predicated on the underlying violations and were derivative, Defendant argued that these damages were unrecoverable.

20. On February 21, 2022, the Parties engaged in a full-day mediation session with Steve Pearl¹, who is a well-respected, neutral third-party mediator, well-versed and experienced in wage and hour class actions and corresponding PAGA actions. During the mediation session, the Parties engage in a good-faith negotiations, exchange additional information regarding the realistic damages exposure to Defendant, discussed the strength and weaknesses of Plaintiff's claims, the risks, costs, and delays of further litigation, the competing valuations of Plaintiff's potential class-wide damages, and the difficulty in maintaining class certification of each claims. In addition, a significant portion of the time at mediation was spent discussing Defendant's precarious financial status and therefore its ability to pay for any settlement. As a result of these discussions, the parties agreed to settlement that included two separate

¹ More information about Steve Pearl and his background may be found at www.stevepearlmediation.com

1 payments consisting of ½ of the total settlement funds. At all times, the parties' negotiations were
2 conducted at arm's length between attorneys with substantial wage and hour class action experience. Mr.
3 Pearl's role in mediating the case was very helpful with respect to managing the parties' expectations and
4 provided a useful and neutral analysis of the issues and risks of all parties.

5 21. Following the full-day mediation, the parties were able to reach a settlement to resolve
6 Plaintiff's class and PAGA claims, subject to the preparation and execution of a comprehensive Settlement
7 Agreement, as well as the entry of Final Approval and Judgment by the Court. It was only after an
8 agreement in-principal for the settlement of the class action claims was reached that the parties negotiated
9 Plaintiff's separate individual retaliation claim. Together, these settlements comprise the entirety of the
10 action and claims asserted. Based on Plaintiff's Counsel's analysis of the documents and data and their
11 evaluation of this case in general, Plaintiff's Counsel is of the opinion that the class and PAGA settlement
12 is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses
13 asserted by Defendant, the financial condition of the Defendant after review of the reliable evidence
14 provided by Defendant, potential adverse findings regarding liability, and various potential appellate
15 issues.

16 22. Defendant vehemently denied all of the Class Action allegations and that Plaintiff's action
17 is appropriate for class treatment for any purpose other than setting the instant litigation. Defendant
18 contends, among other things, that it complied with the California Labor Code, applicable Wage Orders
19 and the California Business and Professions Code at all times.

20 23. Defendant maintained several arguments to counter Plaintiff's theories of liability.
21 Defendant claimed that the company paid the putative Class Members for all hours worked and that it was
22 unaware of any work being performed off-the-clock. Additionally, Defendant contended Plaintiff and the
23 putative Class Members had plenty of opportunities to take the required rest and meal breaks and/or that
24 any breaks were not received were due to shifts being too short to require such breaks or that employees
25 waived these breaks. Defendant consequently discredited Plaintiff's meal and rest break claims.

26 24. With respect to Plaintiff's claim regarding Defendant's failure to pay overtime, Defendant
27 argued that the Class Members were required to keep track of their hours work and that many employees
28 only worked 6 hours per shift. Therefore, Defendant did not give a lot of monetary value to this claim.

1 25. With respect to Labor Code Section 2802 violation, Defendant alleged that employees
2 were not required to maintain cell phones as part of their job duties and that any use of such cell phones
3 was made for the convenience of employees. Therefore, Defendant claimed Plaintiff's estimated damages
4 were inaccurate as they were based on the assumption that all Class Members were required to use these
5 cell phones as part of their job duties.

6 26. With respect to the imposition of waiting time penalties, Defendant contended that the
7 underpayment of wages affected a very small percentage of the Class Members who worked off-the-clock,
8 and therefore the waiting time penalties effected only a small fraction of former employees who worked
9 for Defendant. Therefore, Defendant did not give a lot of monetary value to this claim.

10 27. In addition to the defenses on the merits, Plaintiff considered the Defendant's position that
11 PAGA penalties are discretionary in nature and that even if Plaintiff were successful at trial, the Court has
12 discretion to significantly decrease the amount of penalties damages awarded in this action. In support of
13 its argument, Defendant pointed to some recent California Superior Court's Orders and the California
14 Court of Appeal decisions confirming that it was within the Court's discretion to significantly reduce
15 PAGA penalties even when there is a finding that a violation of the California Labor Code occurred.
16 Defendant also argued that the heightened penalties for "subsequent violations" under California's Private
17 Attorney General Act (PAGA) cannot be imposed since neither the Labor Commissioner nor a court
18 notified APEX of the alleged Labor Code violation(s) at issue.

19 28. Accordingly, Plaintiff considered the risks of receiving no recovery whatsoever, and/or
20 very lengthy litigation and appeals process, balanced by the exhaustive analysis and investigation. Plaintiff
21 has also taken into account the uncertain outcome and the risk of loss in any litigation, especially in
22 complex actions such as this litigation. These factors create additional complexity and therefore trial could
23 potentially be complicated and arduous, and require the input of multiple experts who are well-versed in
24 industry-specific issues. Even though Plaintiff believes that her case possesses substantial merit, the
25 litigation cannot legitimately be characterized as being without risk or that Plaintiff would inevitably
26 prevail at trial or at the appeals process. Defendant is represented by able counsel who have mounted a
27 vigorous and knowledgeable defense on its behalf.

29. The parties would have to undergo further extensive discovery motion practice regarding documents and information related to class certification and the merits if the case did not settle. There are significant risks to certifying the off-the-clock and meal period claims due to the fact that the best evidence of these claims is the employees themselves and there is a lack of reliable documentary evidence that supports these allegations. Even if class certification was achieved, there could be potential motions for decertification of the class. The parties would file cross-motions for summary judgment. In addition, the precarious financial condition of the company created a well-founded risk that Defendant could be forced to claim bankruptcy.

30. It was after months of preparation for mediation, an extended full-day of negotiations and months-long post-mediation settlement discussions, reviews of calculations, comparison of data and exchange of information that Plaintiff agreed to accept \$150,000 in settlement of all of the class and representative claims presented as part of a periodic two-payment schedule as outlined in the settlement agreement. Based on all of the circumstances, including the uncertain outcome and the risk of the litigation, I believe that this is a fair and reasonable settlement value considering the highly disputed nature of Plaintiff's claims. Our determination of a fair value of the settlement was based on number of factors, including our investigation of the applicable law as it applied to the facts, the suitability of the case for class treatment, Plaintiff's analysis of the provided financial documents, plaintiff's valuation of the claims and the associated damages, as well as Defendant's potential defenses.

31. All of the Net Fund Value Amount, approximately \$63,250 before any residuals are added in (the amount remaining from the Gross Fund Value Amount after deducting the requested reasonable attorney's fees and litigation costs, reasonable Claims Administration Costs, reasonable Service Award, and PAGA penalties) will be allocated among the participating Class Members. This equates to an average payment of \$359.38 per class member.

32. In order to participate in the settlement, putative Class Members are not required to affirmatively perform any duties. They are not required to submit a claim form and a check will automatically be sent to their best available address in a timely manner after the address-verification procedures are performed. The participating Class Members shall be paid their Individual Settlement

1 Amounts from the Net Settlement calculated based on the workweeks worked by the Participating Class
2 Member while he/she was employed by Defendant in California during the Class Period. In other words,
3 the settlement of each Class Member's claims for wage and hour violations will accurately reflect the
4 amount of time and effort each Class Member put into his or her job.

5 33. Defendant has agreed to pay the Labor and Workforce Development Agency (LWDA) a
6 penalty payment of \$15,000 from the settlement proceeds. This equates \$11,250 (75% of the total PAGA
7 penalties) being made payable to the LWDA, and the remaining 25% distributed amount the participating
8 Class Members. We believe this is a fair and reasonable apportionment in light of the fact that the
9 assessment of civil penalties at trial has not been well-tested the actual probability of recovery remains
10 relatively speculative. This amount provides a reasonable percentage in comparison to the fund available
11 to the Class and allows for more wages to be distributed to the affected employees.

12 34. Plaintiff's firm will request attorney's fees of no more than one-third of the gross
13 settlement amount (\$50,000), and for reimbursement of the law firms' actual litigation costs up to \$12,000.
14 The amount requested is reasonable if evaluated pursuant to the percentage of common fund or lodestar
15 methodology and further details of these analysis will be provided to the court in conjunction with the
16 filing of Plaintiff's fee application. At this point, the requested fees will ultimately likely be a reduction
17 in the total lodestar accrued by Plaintiff's counsel during the litigation of this action and my firm is willing
18 to undertake this reduction in order to accomplish what I believe to be a reasonable and justified settlement
19 under the circumstances of this action.

20 35. I believe that the maximum potential attorney's fees request is fair and reasonable because
21 of the real monetary results achieved for the class members in the face of the knowledgeable defense
22 attorney's in this action; the difficulties presented in these highly-technical and novel issues resulting out
23 Plaintiff's wage and hour claims brought; the wide-ranging experience necessary to negotiate a settlement
24 which contemplates claims that are in a constant state of flux due to the changing landscape of wage and
25 hour litigation. The attorneys and paralegal staff at my firm record time worked and billed
26 contemporaneously in increments of tenths of an hour. Upon the submission of my firm's fee request,
27 which will be submitted to be heard in conjunction with the Motion for Final Approval, the request will
28

1 be supported by a detailed explanation of the qualifications of each timekeeper along with an explanation
2 of the tasks performed by my office during the litigation. The costs requests will also be supported at the
3 time of final approval with an explanation of the amount and nature of the costs incurred.

4 36. Plaintiff Devika Patel spent a great deal of time and made personal sacrifices to act as Class
5 Representative in furtherance of the litigation. Plaintiff contributed extensively during the case, including
6 reviewing complaint, correspondence to LWDA, frequently communicating with counsel, providing
7 valuable factual resources, searching for and providing numerous documents, and rearranging personal
8 obligations in order to make herself available for the full-day mediation and settlement negotiations. At
9 all times, she acted to protect the best interests of the Class to achieve the proposed settlement. Plaintiff
10 was always available to respond to her Counsel's inquiries and made significant time available as the date
11 of mediation approached. She also assisted with evaluating the proposed settlement. This work was
12 undertaken in order to achieve the proposed settlement. A declaration detailing the extent of the named
13 Plaintiff's work and hours worked for the benefit of the class will be submitted in conjunction with the
14 Motion for Final Approval.

15 37. Plaintiff accepted a great deal of risk by bringing this action against APEX. Plaintiff
16 understood that bringing this action may result or preclude or negatively affect her ability to find
17 employment with another company in the future due to the public nature of this lawsuit against her
18 employer. This is this age of social media and Google searching where a future potential employer can
19 readily search Plaintiff's name and may very easily forgo hiring Plaintiff upon learning about this lawsuit
20 against her employer for violation of the wage and hour California Labor Code. For this precise reason,
21 employees are very often intimidated and discouraged from bringing actions against their current and
22 former employers and are even more deterred from acting as a Class Representative. Indeed, on several
23 previous cases in my office, a simple Google search of class representative names along with the term
24 "class action" has yielded search results that place their lawsuit at the top page of results and were therefore
25 readily available to any potential future employer. Plaintiff nevertheless had the courage to bring this
26 action and placed the class interests before her own to benefit all current and former employees of
27 Defendant. Plaintiff's participation as the Class Representative was an essential element that allowed my
28

1 firm to settle the class claims. I believe other Class Members would not have taken any action
2 individually, and they would not have received the compensation afforded by this Settlement but for
3 Plaintiff's contribution.

4 38. In addition, Plaintiff has agreed to significantly discount the value of her separately-
5 negotiated and independent retaliation claims and is agreeing to a much broader general release and §1542
6 waiver which leaves her without recourse for known and unknown potential claims she may have against
7 Defendant now or in the future. This concession is significant and real. Considering these risks, Plaintiff's
8 selfless desire to see that all similarly situated employees are included in this recovery is to be commended
9 and should be recognized. I believe that the requested service award in the total amount of \$7,500 for
10 Plaintiff is fair and reasonable.

11 39. Granting approval of the class action settlement would create a settlement fund that would
12 streamline this process and Class Members who participate in the settlement will receive payments for
13 their claims and other damages and penalties in the immediate future.

14 40. My Associate Dorota A. James and I are qualified to evaluate the class claims and viability
15 of defenses in this unpaid wage class action based on our combined experience in other wage and hour
16 cases. The recovery for each class member is reasonable, fair and adequate, and a settlement at this time
17 is in the best interests of the class. The settlement gives each class member a fair amount of payment for
18 waiting time penalties, overtime compensation, rest and meal periods, and penalties.

19 41. I believe that the settlement of \$150,000 is an excellent result. It is fair, reasonable, and in
20 the parties' best interests, especially after balancing the proposed settlement terms against the probable
21 outcome of liability, the untested issues, the range of recovery at trial, and the likelihood of collection of
22 any recovery at trial, the financial strain of the litigation on Defendant, the prospect of an adverse ruling
23 on summary judgement and/or class certification, the difficulties of complex litigation, the lengthy
24 process of establishing specific damages; individual issues, and possible delays and appeals. This
25 provides a fair recovery to the class, the amount of which easily falls within the range of reasonableness.
26 As such, the evidence utilized to assess the magnitude of the class's potential damages, as well as the
27
28

1 sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot Locker Retail,*
2 *Inc.* (2008) 168 Cal.App.4th 116.

3 42. Defendant has agreed to accept electronic service of this filing in lieu of personal service
4 as though personally served on the date of filing.

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

7 Dated: February 23, 2023

ShortLegal, APC



By: _____

Brian R. Short, Esq.
Attorney for Plaintiff
Devika Patel

Exhibit 1

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
SHORTLEGAL, APC
Email: Dorota@ShortLegal.com
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FISHER PHILLIPS
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San Diego, CA 92121
Telephone: 858.597.9600
Facsimile: 858.597.9601

Attorneys for Defendant Apex Recovery LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DEVIKA PATEL, Individually and on
behalf of all other current and former
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

APEX RECOVERY, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2021-00044618-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

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

Date Complaint Filed: October 20, 2021
Judge: Hon. Kenneth Medel
Dept.: C-66

ARTICLE I

INTRODUCTION

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in the "Definitions" section or as defined elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

Plaintiff Devika Patel ("Representative Plaintiff") and the putative Class Members, make this agreement with Defendant Apex Recovery, LLC ("APEX" or "Defendant"). Representative Plaintiff and Defendant collectively are referred to in this Agreement as "the Parties."

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total maximum amount of One Hundred and Fifty Thousand Dollars (\$150,000.00), as provided in Section 5.06 below ("Gross Fund Value Amount"), upon the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to a release of all claims by Representative Plaintiff and the Class Members as set forth herein.

ARTICLE II

RECITALS

This Agreement is made in consideration of the following facts:

WHEREAS on October 20, 2021 Representative Plaintiff filed her complaint in San Diego County Superior Court asserting the following causes of action on a class action and/or representative basis:

- (1) Failure to Pay Minimum and Regular Wages;
- (2) Failure to Pay All Overtime Wages;
- (3) Failure to Authorize and Permit Meal Periods;
- (4) Failure to Provide Rest Periods;
- (5) Failure to Indemnify/Reimburse Expenses;

- (6) Failure to Provide and Maintain Accurate Itemized Wage Statements;
(7) Failure to Timely Pay Wages Upon Separation of Employment;
(8) Unfair Business Practices (Violation of Business & Professions Code §17200, et seq.);
(9) PAGA Claims for Civil Penalties (“PAGA”); and
(10) Retaliation in violation of Labor Code Section 98.6

WHEREAS, the Parties engaged in extensive informal discovery, exchanging information, documents and reviewing and analyzing extensive data made available by Defendant which enabled the parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative class, Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

WHEREAS, the Parties attended a virtual mediation session via Zoom with professional mediator Steve Pearl and reached terms resulting in this arm’s-length Settlement;

WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties are due from Defendant to any Class Member, including Representative Plaintiff, and/or to the California Labor and Workforce Development Agency (“LWDA”) and/or to any allegedly aggrieved employees;

WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought, based on the facts and allegations in the operative Complaint, against Defendant or related persons in the Action, including all claims brought on a putative class, collective and representative basis in the Action;

WHEREAS, based on the discovery exchanged as well as their own independent investigation and evaluation, the Parties have considered the claims asserted by Plaintiff, the defenses asserted by Defendant, the risks associated with the continued prosecution of the Action, the cost of continued litigation through trial and appeals, and after considering all the circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, or (iv) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiff for herself and on behalf of the Participating Class Members and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the released Class Claims, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

ARTICLE III

DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

- a. "Action" means the civil action commenced by Plaintiff on October 20, 2021 in the California Superior Court, County of San Diego entitled *Devika Patel v. Apex Recovery, LLC*, Case No.: 37-2021-00044618-CU-OE-CTL.
- b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including the Class Notice, as defined below, attached as Exhibit A.
- c. "Claims Administrator" means the third-party administrator approved by the court who will administer the settlement as set forth below.

d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in administration of the Settlement, including, but not limited to address verification measures, mailing of notice to the Class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks, administration of uncashed checks, generation of checks to Class Counsel for attorneys' fees and costs, generation of the check to the Representative Plaintiff for her Service Award, generation of a check to the LWDA for its share of PAGA penalties, and generation and submission of all tax-related documents, all pursuant to the terms of this Agreement.

e. "Class Claims" means all claims for wages, benefits and related penalties actually alleged or that could have been alleged in the Action by Plaintiff, on behalf of herself and the California Class Members, based on the facts asserted in the Complaint, including but not limited to: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Authorize and Permit Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay Wages Due Upon Separation of Employment; (8) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) PAGA Claim for Civil Penalties (the "Litigation").

f. "Class Counsel" means the attorneys for the Class, the Class Members, Plaintiff and PAGA representative Group who are:

Brian R. Short
Brian@shortlegal.com
ShortLegal, APC
350 10th Avenue, Suite 1000
San Diego, California 92101
Telephone: (619) 272-0720
Facsimile: (619) 839-3129

g. "Class Member(s)" means all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period, which is estimated to consist of approximately 176 current and former employees from the beginning of the Class Period through the date of the mediation.

h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as Exhibit "A" or in substantially the same form as ultimately approved by the Court.

- i. "Class Period" means the period from July 30, 2017 through February 21, 2022.
- j. "Defendant" shall mean Apex Recovery, LLC.
- k. "Defense Counsel" means counsel for Defendant, who are:
FISHER PHILLIPS
Danielle Moore
dmoore@fisherphillips.com
Lauren Bushman
lbushman@fisherphillips.com
4747 Executive Dr., Suite 1000
San Diego, CA 92121
Telephone: 858.597.9600
Facsimile: 858.597.9601
- l. "Final Effective Date" means the date on which the Settlement is approved and the Court's Final Order and Judgment becomes Final. The Court's Final Order and Judgment becomes final upon the later of: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-five (65) calendar days following the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.
- m. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the Representative Plaintiff's Service Award should be approved; and whether the applications of Class Counsel for attorneys' fees and costs should be approved.
- n. "Final Order" refers to the order of the Court granting final approval of this Agreement as to the Final Settlement Class (defined below) and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent written agreement of the Parties.

- 1 o. "Final Settlement Class" refers to the Representative Plaintiff and all Participating Class
2 Members who do not timely and validly exclude themselves from the class in compliance with
3 the exclusion procedures set forth in Section 5.04.a of this Agreement.
- 4 p. "Gross Fund Value Amount" means the One Hundred and Fifty Thousand Dollars (\$150,000) to
5 be paid by Defendant as provided by this Agreement to settle this Action exclusive of employer-
6 side taxes. This is an "all in" and non-reversionary number that includes, without limitation, all
7 monetary benefits and payments for the Final Settlement Class Members, the Service Awards,
8 the Class Counsel Award, the Settlement Administrator expenses and the PAGA Payment,
9 employee's share of payroll taxes, and all other claims for interest, fees, and costs. Other than the
10 employer's share of payroll taxes, in no event will Defendant pay more than the Gross Fund
11 Value Amount.
- 12 q. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
13 Amount that shall be paid to the Participating Class Members less employee's portion of payroll
14 taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of
15 the Net Fund Value Amount (which share shall be determined by the calculations provided in
16 this Agreement at Section 5.06.c.).
- 17 r. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.
- 18 s. "LWDA" means the California Labor and Workforce Development Agency.
- 19 t. "Net Fund Value Amount" means the Gross Fund Value Amount of One Hundred and Fifty
20 Thousand Dollars (\$150,000.00) less all of the following amounts approved by the Court:
21 (1) Class Counsel's court-approved attorneys' fees to Plaintiff's counsel (not to exceed 1/3 of the
22 Gross Fund Value and currently Fifty Thousand dollars and Zero cents (\$50,000.00)); (2) Class
23 Counsel's court-approved collective litigation costs (not to exceed Twelve Thousand Dollars
24 (\$12,000.00)); (3) the court-approved Service Award to be paid to the Representative Plaintiff
25 (not to exceed Seven Thousand Five Hundred (\$7,500.00)); (4) the amount of court-approved
26 PAGA penalties to be paid to the LWDA of Eleven Thousand Two Hundred Fifty Dollars
27 (\$11,250.00), which equates to 75% of the total amount allocated for PAGA Penalties of Fifteen

Thousand Dollars (\$15,000.00); and (5) the Claims Administrator's court-approved fees in the anticipated amount of not more than Six Thousand Dollars (\$6,000.00). The Net Fund Value Amount is estimated to be Sixty Three Thousand Two Hundred Fifty Dollars (\$63,250.00) plus any residuals from amounts requested in this paragraph which are not ultimately distributed to the respective Parties due to invoicing of a lesser amount by the Claims Administrator or court approval of a lesser amount than requested.

u. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims Administrator a valid and timely written request to be excluded from the Class pursuant to Section 5.04.a below.

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

w. "PAGA Representative Group" Each person eligible to participate in this Settlement who has worked for Defendant in California during the PAGA Period as defined below.

x. "PAGA Period" The time period from July 30, 2020 through the date of Preliminary Approval.

y. "PAGA Penalties" The PAGA Penalties consists of \$15,000.00 of the Gross Fund Value Amount allocated to satisfy the PAGA penalties claim as alleged in the Action. Seventy-five percent (75%) of the PAGA Penalties (\$11,250) shall be paid to the LWDA, and twenty-five percent (25%) (\$3,750) of the PAGA Penalties shall be part of the Net Fund Value Amount distributed to PAGA Representative Group.

z. "Participating Class Member(s)" means those Class Members who do not submit valid requests for exclusion.

aa. "Parties" means Representative Plaintiff and Defendant as defined herein.

bb. "Released Parties" means Defendant Apex Recovery, LLC as well as its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant.

cc. "Representative Plaintiff" and/or "Patel" means named Plaintiff Devika Patel.

- 1 dd. "Release Period" means the Release of Claims for the Class Period shall be for July 30, 2017
2 through June 20, 2022..
- 3 ee. "Service Award" means a monetary amount not to exceed Seven Thousand Five Hundred Dollars
4 (\$7,500) for the Representative Plaintiff which, subject to Court approval, shall be paid pursuant
5 to Section 5.06.b.3 of the Agreement, as provided below.
- 6 ff. "Settlement" means the disposition of this Action and all related claims effectuated by this
7 Agreement.

8 **ARTICLE IV**

9 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

10 **Section 4.01. Certification Of Class And Claims.** Solely for the purposes of this Settlement, the
11 Parties stipulate and agree that the Court may certify a class consisting of "all individuals who are or were
12 employed by Defendant as non-exempt employees in California from July 30, 2017 through February 21,
13 2022" (the "Class Period") (which is estimated to consist of approximately 176 current and former
14 employees from the beginning of the Class Period though the date of the mediation).

15 **Section 4.02. Appointment Of Class Representative.** Solely for the purposes of this
16 Settlement, the Parties stipulate and agree Representative Plaintiff shall be appointed as representative of
17 the Final Settlement Class.

18 **Section 4.03. Appointment Of Class Counsel.** Solely for the purposes of this Settlement, the
19 Parties stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement
20 Class.

21 **Section 4.04. Appointment Of Settlement Administrator.** Solely for the purposes of this
22 Settlement, the Parties stipulate and agree that Phoenix Settlement Administrators shall be appointed to
23 serve as Settlement Administrator.

24 **Section 4.05. Conditional Nature Of Stipulation For Certification.** Solely for the purposes of
25 this Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should,
26 for whatever reason, the Settlement not become effective, the fact that the Parties were willing to
27

1 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in
2 connection with, the issue of whether the Class Members and/or the Class Claims should be certified in
3 a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to
4 oppose claim or class certification in this or any other action should this Settlement not become
5 effective.

6 **Section 4.06. Stay Of Proceedings.** The Parties agree to stay all proceedings in the Action,
7 except such proceedings necessary to implement and complete the Settlement, pending the Final
8 Approval hearing to be conducted by the Court.

9 **ARTICLE V**

10 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

11 Because the Parties have stipulated to the certification of the Class for settlement purposes only,
12 this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth in
13 Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent
14 upon the approval and certification by the Court. If the Court does not grant either the Preliminary or
15 Final Approval of the settlement, the fact that the Parties were willing to stipulate to class certification
16 for the purposes of this Agreement shall have no bearing on, or be admissible in connection with, the
17 issue of whether any class should be certified in a non-settlement context. If the Final Effective Date
18 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever,
19 and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right
20 to challenge the propriety of class certification for any purpose if the settlement does not become final.

21 The Parties and their respective counsel shall take all steps that may be requested by the Court
22 relating to the approval and implementation of this Agreement and shall otherwise use their respective
23 best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court
24 approval of and implementing this Agreement shall be as follows.

25 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

26 Representative Plaintiff shall bring a motion before the Court for an order conditionally
27

certifying the Class based on the preliminary approval of this Agreement, including the Class Notice attached hereto as Exhibit "A." The date that the Court grants preliminary approval of this Agreement shall be the "Preliminary Approval Date."

Section 5.02: The Claims Administrator

A court-appointed third-party Claims Administrator will serve to administer this Settlement pursuant to the terms herein. The Claims Administrator will administer the settlement by performing address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if necessary, performing a single skip trace, receiving and recording completed Settlement Opt-Outs, adjudicating Class Members' disputes over wages earned during the Class Period in the relevant positions as an hourly and/or non-exempt employees, providing Class Counsel and counsel for Defendant with weekly updates on the status of Opt-Outs without disclosing names of individuals, and handling any potential inquiries about the calculation of the Individual Settlement Amounts. The Claims Administrator shall provide the Defendant only with the names of individuals who submitted timely Opt-Outs after the expiration of the claims period for inclusion in the proposed final approval Order unless otherwise ordered by the court. The actions of the Claims Administrator shall be governed by the terms of this Stipulation. The Parties, through their counsel, may provide written information needed by the Claims Administrator pursuant to the Stipulation.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering disbursements from the Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement ("Claims Administration Costs"), anticipated to be not more than Six Thousand Dollars (\$6,000), shall be paid out of the Gross Fund Value Amount.

Section 5.03: Notice to Class Members

a. Initial Identification of Class Members: Within fifteen (15) calendar days following entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a confidential list in an Excel spreadsheet format containing the name and last known address, telephone number, and social security number of each Class Member. This list shall also contain the commencement dates and termination dates (if applicable) relating to each individual Class Member during the Class Period. This information shall be treated as confidential and shall not be shared with Plaintiff or Class Counsel.

b. Mailing of Class Notice: Promptly upon receipt of the Class Member information from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class Members from the U.S. Postal Service and Accurint. Within Twenty (20) calendar days after receipt of the Class Member information from Defendant, or receipt of any updated addresses from the U.S. Postal Service, whichever is later, the Claims Administrator shall mail the Class Notice to all Class Members via first-class mail using the updated address information. With respect to each Class Notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to determine a correct address using an additional skip trace service such as Experian and shall re-send the Class Notice via first-class mail to any new address thereby determined within 10 days of receiving the notice that the Class Notice was undeliverable.

c. Notification to Counsel: The Claims Administrator shall provide a weekly status report to both Plaintiff's and Defense Counsel but will not include individual names. No later than ten (10) days prior to the Final Fairness and Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to completion of the notice process, including any attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy the requirement of due process. Nothing else shall be required of the Parties, Class Counsel, Defense Counsel, or the

1 Claims Administrator to satisfy the requirements of providing notice of the proposed Settlement and the
2 Final Fairness and Approval Hearing.

3 **Section 5.04: Responses to Notice**

4 **a. Requests for Exclusion from Class**

5 For any other Class Member to validly exclude himself or herself from the Class and this
6 Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class Member
7 or his or her authorized representative, and must be sent to the Claims Administrator, postmarked by no
8 later than thirty (30) days after the date the Claims Administrator initially mails the Class Notice to the
9 Class Members. For Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, the
10 written request for exclusion must be postmarked by no later than forty-five (45) days of the initial
11 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The Class Notice
12 shall contain individualized estimated payments, set forth instructions on how to opt-out.. The date of
13 the initial mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed
14 request for exclusion was postmarked, shall be conclusively determined according to the records of the
15 Claims Administrator. Any Class Member who timely and validly requests exclusion from the Class
16 and this Settlement shall become a Non-Participating Class Member and shall not be entitled to any
17 Individual Settlement Payment, shall not be bound by the terms and conditions of this Agreement, and
18 shall not have any right to object, appeal, or comment thereon.

19 **b. Objections to Settlement**

20 For any Class Member to file a written objection to this Agreement, or any term of it, the person
21 making the objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no
22 later than forty five (45) days after the Class Notice was initially mailed to the Class Members, file with
23 the Court and serve on Class Counsel and Defense Counsel, a written statement of the grounds of
24 objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers.
25 Class Members may also appear at the Final Approval Hearing and state their oral objections and any
26 legal basis for those objections. For Class Notices re-mailed by the Claims Administrator pursuant to
27 section 5.03.b, written statements of the grounds for objection must be filed and served no later than

1 forty-five (45) days after the initial mailing of the Class Notice or twenty (20) days of the re-mailing,
2 whichever is later. The date of mailing or re-mailing of the Class Notice to the objecting Class Member
3 shall be conclusively determined according to the records of the Claims Administrator. The Court
4 retains final authority with respect to the consideration and admissibility of any Class Member
5 objections.

6 Counsel for the Plaintiff shall file any response to the objections submitted by objecting Class
7 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or ten
8 (10) days after the receipt of the notice of objection, whichever is later.

9 **c. Failure to Object**

10 Any Class Member who fails to timely file and serve such a written statement of his or her
11 intention to object shall be foreclosed from making any objection to this settlement, unless otherwise
12 ordered by the Court.

13 **d. Failure to Timely Request Exclusion**

14 Any Class Member who fails to submit a timely request for exclusion from the Class
15 automatically shall be deemed a member of the Final Settlement Class whose rights and claims with
16 respect to the issues raised in the Action are determined by the Court's Final Order, and by the other
17 rulings in the Action.

18 **e. Right of Parties to Void Agreement**

19 If ten percent (10%) or more of Class Members make a valid request to be excluded from the
20 Class as described in Section 5.04.a above and thus become Non-Participating Class Members,
21 Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises
22 that right to void the Agreement, then the Parties shall have no further obligations under the Agreement,
23 including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that
24 otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims
25 Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their right
26 to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are exercising
27 the right to void the Agreement no later than ten (10) calendar days after the Claims Administrator

1 notifies the Parties of the final total number of valid requests to be excluded.

2 **Section 5.05: Final Fairness and Approval Hearing**

3 **a. Final Approval Hearings**

4 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
5 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed Class
6 Action Settlement, or on such other reasonable date as set by the Court, a Final Fairness and Approval
7 Hearing shall be held before the Court in order (1) to review this Agreement and determine whether the
8 Court should give it final approval; and (2) to consider any timely objections made pursuant to Section
9 5.04.b above and all responses by the Parties to such objections. At the Final Fairness and Approval
10 Hearing, the Parties shall ask the Court to give final approval to this Agreement and shall submit to the
11 Court a proposed Final Order approving the Settlement and which shall be entered in the Action.

12 **b. Vacating, Reversal, or Material Modification of Final Order and Judgment on**
13 **Appeal or Review**

14 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or
15 application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that
16 there is a material modification to the Settlement and that court's decision is not completely reversed,
17 and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative
18 Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement, which
19 the Party must do by giving written notice to the other Parties, the final reviewing court, and the Court
20 not later than ten (10) business days after the final reviewing court's decision vacating, reversing, or
21 materially modifying the Final Order becomes final and non-appealable. If either Party exercises its
22 right to void the Agreement under this section, then the Parties shall have no further obligations under
23 the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any
24 amounts that otherwise would have been owed under this Agreement. The Party exercising its right to
25 void the Agreement shall pay the Claims Administrator's reasonable fees and expenses incurred as of the
26 date the Party exercises its right to void the Agreement. If the Parties mutually agree to void the
27 Agreement, then the Claims Administrator's reasonable fees and expenses incurred as of the date the

Parties exercise their right to void the Agreement shall be split equally. A vacation, reversal, or modification of the Court's award of the Service Award or Class Counsel's fees or costs shall not constitute a vacation, reversal, or material modification of the Final Order and Judgment within the meaning of this paragraph.

Section 5.06: Settlement Payment Procedures

a. Settlement Sum

In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross Fund Value Amount of One Hundred and Fifty Thousand Dollars (\$150,000.00), which is the total and all-inclusive maximum amount Defendant shall be obligated to pay under the Settlement embodied by this Agreement, exclusive only of employer-side payroll taxes. The Settlement Sum includes Class Counsel's attorneys' fees of not more than Fifty Thousand Dollars (\$50,000.00) and litigation costs not to exceed Twelve Thousand Dollars (\$12,000.00), a Service Award for Representative Plaintiff of not more than Seven Thousand Five Hundred Dollars (\$7,500.00), the PAGA penalty payment of Ten Thousand Dollars (\$15,000.00), which includes the payment of Eleven Thousand Two Hundred and Fifty Dollars (\$11,250.00) to the LWDA, and the Claims Administration Costs anticipated to be not more than Six Thousand Dollars (\$6,000.00).

The Net Fund Value Amount is estimated to be Sixty Three Thousand Two Hundred Fifty Dollars (\$63,250.00) plus any residuals from amounts requested in this paragraph which are not ultimately distributed to the respective Parties due to invoicing of a lesser.

: Should the number of workweeks increase by more than 20%, the payout will increase proportionately over the 20% grace (*i.e.* meaning if the workweeks increase by 21% the settlement will increase by 1%). However, if the escalator clause is triggered, Defendant may choose to end the Class Period on the date that the increase was triggered.

b. Allocation of Settlement Amount: In full and complete settlement of the Action and subject to this Settlement being approved by the Court, Defendant shall pay an aggregate sum not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00), (the "Gross Fund Value Amount"). The Gross Fund Value Amount of \$150,000.00 shall be paid to the Claims Administrator in two

instalments. If no objection to the settlement is made, the first instalment of Seventy Five Thousand Dollars (\$75,000) shall be paid by Defendant within fifteen (15) calendar days after the Final Effective Date, but no earlier than January 1, 2023 ("First Instalment"). If an objection to the settlement is made but no appeal is filed, the First Instalment shall be tendered to the class claims administrator within fifteen (15) days of the end of the period in which an appeal could be filed. If an appeal is filed, the First Instalment shall be tendered to the class claims administrator within fifteen (15) days of the date the judgment is final and no longer subject to appeal. The second instalment of Seventy-Five Thousand Dollars (\$75,000) shall be paid the later of 1) six (6) months after the Initial Instalment is paid; or 2) July 1, 2023 ("Second Instalment"). If the Court does not grant final approval upon the material terms of the settlement (other than modification of the requested attorneys' fees, costs or class representative service award) or if fifteen (15%) or more to the putative class members request exclusion as set forth in Section 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further obligation under this Agreement. If the Court grants final approval of the settlement, the settlement funds shall be disbursed as follows:

1. Reasonable attorneys' fees and litigation expenses: Class Counsel have stated they shall request that the Court award them reasonable attorneys' fees in an amount up to 1/3 of the Gross Fund Value Amount or Fifty Thousand (\$50,000) and litigation costs in an amount up to Twelve Thousand Dollars (\$12,000). Defendant has agreed neither to oppose nor adversely comment on the fees and litigation costs request. The award of reasonable litigation costs granted by the Court shall be paid out of the Gross Fund Value Amount within ten (10) calendar days of the Final Effective Date in accordance with Section 5.06.d.2-3, below. One half of Plaintiff's Counsel's attorney's fees awarded by the Court shall be paid within ten (10) calendar days after the Initial Instalment and the remaining half within ten (10) calendar days of the Second Instalment as set forth in Section 5.06(b), above. Class Counsel may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of its attorneys' fees paid to Class Counsel in periodic payments, through a structured settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such attorneys' fees and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or

1 penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in
2 connection with any such periodic payments, including, without limitation, any such issues, claims
3 and/or disputes brought by the state or federal government concerning the payment of taxes thereon.
4 Class Counsel shall indemnify, defend, and hold Defendant harmless for any and all taxes, costs,
5 liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out
6 of, related to, or incurred in connection with any such periodic payments.

7 **2. Reasonable expenses of the Claims Administrator:** The Claims Administrator
8 shall be paid out of the Gross Fund Value Amount and such payment shall not constitute payment to any
9 Participating Class Member(s). The Claims Administration Costs, expected not to exceed Six Thousand
10 Dollars (\$6,000.00), shall be paid out of the settlement funds one-half (\$3,000) within thirty (30)
11 calendar days after the Final Effective Date in accordance with Section 5.06.d.1, below and one-half
12 (\$3,000) upon the Second Instalment payment.

13 **3. Reasonable Service Award to the Representative Plaintiff:**
14 Subject to Court approval, the Representative Plaintiff shall make a separate application for up to
15 Seven Thousand Five Hundred Dollars (\$7,500.00) as a Service Award. One half of the Service Award
16 shall be paid by check made payable to the Representative Plaintiff, which shall be delivered by the
17 Claims Administrator to Class Counsel within ten (10) calendar days after the First Instalment and the
18 second half shall be paid within ten (10) calendar days of the Second Instalment as set forth in Section
19 5.06(b), above. The Service Award shall be paid out of the Gross Fund Value Amount and shall not
20 constitute payment(s) to any Participating Class Member(s).

21 It is the intent of the Parties that the Service Award represent payment to Representative Plaintiff
22 for the additional risks undertaken in prosecuting this action and her service to the Class Members, and
23 not wages, thus, the Claims Administrator shall not withhold any taxes from the Service Award. The
24 Service Award shall be reported on an IRS Form 1099, which shall be provided by the Claims
25 Administrator to the Representative Plaintiff and to the pertinent taxing authorities as required by law.
26 Although it is the contemplation of the Parties that the Service Award does not represent wages, the
27 Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take

the position that some or all of the Service Award constitutes wages for income tax and withholding purposes. The Representative Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Service Award paid under this Agreement.

4. PAGA Penalties: A payment of Fifteen Thousand Dollars (\$15,000.00) shall be allocated to PAGA penalties, Eleven Thousand Two Hundred and Fifty Dollars (\$11,250.00) of which shall be payable to the California LWDA. The PAGA penalties shall be paid out of the Gross Fund Value Amount within ten (10) calendar days of the payment of the Second Instalment as set forth in Section 5.06(b), above. To the PAGA Representative Group. The remaining portion of the PAGA penalties shall be distributed pro-rata to the PAGA Representative Group as set forth below in Section 5.06.c.1.

5. Allocation to Participating Class Members and PAGA Representative Group: After both the First Instalment and Second Installment are received, the amount remaining from the Gross Fund Value Amount after deducting the court-awarded reasonable attorneys' fees and litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed to members of the Final Settlement Class in accordance with the formula set forth below in Section 5.06.c. Final Settlement Class members are not eligible to receive any compensation other than the Individual Settlement Payments discussed below.

c. Individual Settlement Payments: The Individual Settlement Payments shall be calculated as follows:

1. Calculation: Each Class Member of the Final Settlement Class who does not Request Exclusion shall be eligible to receive his/her Individual Settlement Payment, which shall be based on information contained in Defendant's pertinent payroll records, and calculated as follows:

i) Each Class Member of the Final Settlement Class shall be allocated a payment equal to the proportionate share of the Net Fund Value Amount that is equal to (i) the number of

1 weeks he or she worked for Defendant in California based on the data provided by Defendant,
2 divided by (ii) the total number of weeks worked by all Class Members based on the same Class
3 data, which is then multiplied by the Net Fund Value Amount. One day worked in a given week
4 will be credited as a week for purposes of this calculation. Therefore, the value of each Class
5 Member's Individual Settlement Payment ties directly to the amount of weeks that he or she
6 worked. The same methodology shall apply to the PAGA Representative Group based on pay
7 periods worked during the PAGA Period with respect to payment of their respective portions of
8 the PAGA Payment.

9 ii) The Individual Settlement Payments shall be allocated as 90% non-wage
10 income and 10% wages. The employee's share of the payroll taxes shall be deducted and paid
11 from the Individual Settlement Payment. The Claims Administrator shall calculate the Individual
12 Settlement Payments and the amount of the employee's share of payroll taxes to be deducted
13 therefrom in order to determine the net Individual Settlement Payment.

14 **2. Dispute Resolution:** The Claims Administrator shall have the initial responsibility of
15 resolving all disputes that arise during the claims administration process, including, without limitation,
16 disputes, if any, regarding the calculation of the total number of wages earned by each Class Member
17 where the information submitted by Defendant based on their employment records differs from the
18 information submitted by Class Members. In resolving such disputes, Defendant's employment records
19 shall be presumed to be accurate and correct, and shall be final and binding, unless the information
20 submitted by the Claimant (e.g., pay stubs, employment records, etc.) proves otherwise. In the event the
21 Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims
22 Administrator shall request a conference call between the Claims Administrator, Class Counsel, and
23 Defense Counsel to discuss and resolve the dispute. After such call, the Claims Administrator shall resolve
24 the dispute, and such resolution shall be final and binding on the Class Member. In advance of the
25 conference call, the Claims Administrator shall fax or email copies of all available information to all
26 counsel.

27 **3. Fair Formula:** The Parties hereby agree that the formula for allocating payments to
28

Participating Class Members as provided herein is reasonable and designed to provide a fair settlement to the Participating Class Members.

4. Allocation of Net Fund Value Amount Payments and Taxes: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated as follows: ten percent (10%) to wages and the remaining ninety percent (90%) to penalties and interest. The Claims Administrator shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the amount allocated to wages. The amounts allocated to penalties and interest shall not be subject to tax withholding, but Participating Class Members will receive an IRS Form 1099, if necessary, for those payments. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of this Agreement.

The Parties understand and agree that Defendant is not providing tax or legal advice, or making representations regarding tax obligations or consequences, if any, related to this Agreement, and that the members of the Final Settlement Class will assume any such tax obligations or consequences that may arise from this Agreement, and that Final Settlement Class Members shall not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Final Settlement Class Member, such Class Member assumes all responsibility for the payment of any such taxes.

d. Timing of Settlement Payments: As set forth in Section 5.06.b. above, no later than fifteen (15) calendar days following the Final Effective Date, but not before January 1, 2023, Defendant shall remit the Initial Instalment to the Claims Administrator via wire transfer (or other method reasonably calculated to be received by the Claims Administrator within fifteen (15) calendar days after the Final Effective Date) for the purposes of making the payments described herein. The Second Instalment shall be paid by Defendant the later of 1) six months after the initial payment; or 2) July 1, 2023. The Payments from the Gross Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b. If Defendant fails to make the required payments necessary pursuant to this Agreement, Plaintiff's counsel shall notify Defendant's counsel of the alleged breach as set forth in Section 8.12 below.

1 Defendant shall have fifteen (15) business days to make the necessary payments in accordance with the
2 terms of this Agreement. If Defendant thereafter fails to make the payments necessary under the terms of
3 this Agreement, the Agreement and Releases specified herein shall become null and void and the Parties
4 shall maintain all rights and statutes of limitation as they stood prior to the execution of this Agreement.

5 **e. Residuals**

6 If any amount of the Gross Fund Value Amount remains unallocated as a result of modification to
7 the requested attorneys' fees, costs, Class Representative Service Award or Claims Administration Costs,
8 this amount shall become part of the Net Fund Value Amount and be distributed pursuant to Section
9 5.06.c.

10 **f. Circular 230 Disclaimer**

11 Each party to this agreement (for purposes of this section, the "acknowledging party" and each
12 party to this agreement other than the acknowledging party, an "other party") acknowledges and agrees
13 that (1) no provision of this agreement, and no written communication or disclosure between or among
14 the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication
15 or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
16 States Treasury Department Circular No. 230 (31 CFR part 10, as amended); (2) the acknowledging party
17 (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including
18 tax advice) in connection with this agreement, (b) has not entered into this agreement based upon the
19 recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to
20 rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax
21 penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
22 has imposed any limitation that protects the confidentiality of any such attorneys' or adviser's tax
23 strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging
24 party of the tax treatment or tax structure of any transaction, including any transaction contemplated by
25 this agreement.

ARTICLE VI

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 6.01: No Admission

Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed to comply with the law in any respect, that Defendant has any liability to anyone based upon the claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be certified in this Action. This Agreement is entered into solely for the purpose of compromising highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and resources of Defendant has been spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

As to the claims and allegations in this Action, including but not limited to wage claims, meal and rest period claims, overtime pay claims, minimum wage claims, unreimbursed expenses claims, claims for uncompensated work time, wage statement claims, claims for waiting time penalties, unfair business practices claims, and claims for PAGA penalties, Defendant denies and continues to deny each of those claims and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

Section 6.02: Non-Evidentiary Use

Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not

1 limited to, evidence of a presumption, concession, indication, or admission by any of the Released
2 Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to,
3 or offered in evidence against any of the Released Parties in any further proceeding in the Action, or any
4 other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the
5 Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved
6 any of his/her claims released through this Agreement.

7 **Section 6.03: Nullification**

8 The Parties have agreed to the certification of the Class for the sole purpose of effectuating this
9 Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the Court
10 should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the
11 amount of attorneys' fees, costs, and Service Awards awarded), or (c) the Court should for any reason
12 fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered void,
13 then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the
14 related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall
15 stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed
16 with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification as part of
17 the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of
18 whether a class should be certified in a non-settlement context in this Action or any other action, and in
19 any of those events, Defendant expressly reserves the right to oppose any motion for class certification.

20 Invalidity of any material portion of this Agreement, except for the amount of attorneys' fees,
21 costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
22 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

23 **ARTICLE VII**

24 **RELEASES**

25 **Section 7.01: Releases by Class Members**

26 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.
27

Section 7.02: Release of All Claims Relating To The Action

Upon the court's final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class and PAGA Representative Group will release the Released Parties from those claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to, minimum wages, overtime and double time wages (including, but not limited to, any claims for additional wages owed due to "off the clock work,") meal and rest breaks, failure to maintain accurate employment records, failure to pay overtime and/or penalties at the regular rate of pay, wage statement violations, separation pay violations, failure to pay wages timely during employment, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices; and PAGA. during the Release Period

Section 7.03: 1542 Release By Plaintiff Devika Patel

In addition to the Settlement Class Members' Released Class Claims described above, in exchange for the consideration recited in this Agreement, including but not limited to the court-approved Class Representative Service Award, Patel enters into a Complete and General Release which releases, acquits, and discharges any covenants not to sue any of the Releasees for any claim, whether known or unknown, which Patel has ever had, or hereafter may claim to have, arising on or before the date that she signs this Agreement, including without limitation to, any claims relating to or arising out of any aspect of her employment, or the termination of her employment, with Defendant, any claims for unpaid compensation, wages, reimbursement for business expenses, penalties, or waiting time penalties under the California Labor Code, the California Business and Professions Code, the California Government Code, or any federal, state, county or city law or ordinance, , including, without limitation, the following:

- (a) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (b) Title 42 of United States Code section 1981;
- (c) The California Fair Employment and Housing Act;
- (d) Section 503 of the Rehabilitation Act of 1973;
- (e) The Fair Labor Standards Act (including the Equal Pay Act);
- (f) The California and United States Constitutions;

- (g) The California Labor Code specifically including, but not limited to, the Private Attorney General Act pursuant to Labor Code section 2699 et seq.;
- (h) The California Business and Professions Code;
- (i) The Employee Retirement Income Security Act, as amended;
- (j) The California Family Rights Act;
- (k) The Americans with Disabilities Act;
- (l) The Family Medical Leave Act;
- (m) The California Wage Orders;
- (n) The National Labor Relations Act;
- (o) The Immigration Reform and Control Act;
- (p) California Occupational Safety and Health Act, or the Federal equivalent;
- (r) The Age Discrimination in Employment Act of 1967, as amended;
- (s) The Older Workers' Benefit Protection Act; and
- (t) The Families First Coronavirus Response Act.

Patel acknowledges and agrees that the foregoing general release is given in exchange for the consideration provided to her under this Agreement by Defendant. However, this release shall not release any claims alleged for retaliation or wrongful termination which are the subject of a concurrently-negotiated Settlement Agreement and Release. Collectively, these two Agreements are intended to resolve all past or present known or unknown claims. The release shall also not apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot be waived or released.

Patel expressly waives any rights or benefits available to her under the provisions of Section 1542 of the California Civil Code, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**

HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Patel understands fully the statutory language of Civil Code section 1542 and, with this understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date of her signature to this Agreement, and specifically waives all rights she may have under California Civil Code section 1542. This general release shall not operate to release any of Plaintiff's previously asserted individual claims alleged in the Complaint and which are the subject of a separate and concurrently-negotiated Settlement Agreement.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

Section 8.02: Representations and Warranties of Defendant's Records

Defendant represent and warrant that the documents provided to Class Counsel during and after mediation that constituted a material condition to this Settlement are substantially accurate to the best of their knowledge.

Section 8.03: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 8.04: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall

1 be determined, in accordance with the laws of the State of California, irrespective of the State of
2 California's choice of law principles.

3 **Section 8.05: Entire Agreement**

4 This Agreement, including the Exhibit referred to herein, which form an integral part hereof,
5 contains the entire understanding of the Parties hereto with respect of the subject matter contained
6 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
7 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
8 controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings
9 governing the subject matter of this Agreement other than those expressly set forth or referred to herein.
10 This Agreement supersedes all prior agreements and understandings among the Parties hereto with
11 respect to the settlement of the Action including correspondence between Class Counsel and Defense
12 Counsel and the Memorandum of Understanding signed by the Parties. No rights hereunder may be
13 waived except in writing.

14 **Section 8.06: Counterparts and Fax Signatures**

15 This Agreement, and any amendments hereto, may be executed in any number of counterparts
16 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
17 when executed and delivered shall be deemed to be an original and all of which counterparts taken
18 together shall constitute one instrument. It shall not be necessary in making proof of this Agreement or
19 any counterpart hereof to produce or account for any of the other counterparts. A fax or electronic
20 signature on this Agreement shall be as valid as an original signature.

21 **Section 8.07: Meet and Confer Regarding Disputes**

22 Should any dispute arise among the Parties or their respective counsel regarding the
23 implementation or interpretation of this Agreement, a representative of Class Counsel and a
24 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
25 disputes prior to submitting such disputes to the Court.

26 **Section 8.08: Agreement Binding on Successors**

27 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest of

each of the Parties.

Section 8.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

Section 8.10: Fair Settlement

Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this Agreement through arm's-length negotiation and believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action considering all relevant factors, current and potential, and believe the Agreement is consistent with public policy and fully complies with applicable provisions of law.

Section 8.11: Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

Section 8.12: Notice

All notices, demands, or other communications given under this Agreement shall be in writing and deemed to have been duly given as of the third business day after mailing by first-class United States mail, addressed as follows:

To Plaintiff and the Class:

Brian R. Short
Brian@shortlegal.com
ShortLegal, APC
350 10th Avenue, Suite 1000
San Diego, California 92101
Telephone: (619) 272-0720
Facsimile: (619) 839-3129

To Defendant:

FISHER PHILLIPS
Danielle Moore
dmoore@fisherphillips.com
Lauren Bushman
lbushman@fisherphillips.com
4747 Executive Dr., Suite 1000

San Diego, CA 92121
Telephone: 858.597.9600
Facsimile: 858.597.9601
Attorneys for Defendant Apex Recovery LLC

Section 8.13: Enforcement and Continuing Jurisdiction of the Court

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

Section 8.14: Mutual Full Cooperation

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 8.15: Authorization to Act

Class Counsel warrant and represent that they are authorized by the Representative Plaintiff, and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Agreement, except for signing the documents, including but not limited to this Agreement, that are required to be signed by the Parties.

Section 8.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or

1 with regard to the advisability of making and executing this Agreement, or with respect to any such
2 matters. No representations, warranties, or inducements have been made to any Party concerning this
3 Agreement other than those expressly set forth or referred to herein.

4 **Section 8.17: No Collateral Attack**

5 This Agreement shall not be subject to collateral attack by any Class Member or any recipient of
6 the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be
7 limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for
8 disputing the calculation of his or her Individual Settlement Payment.

9 **Section 8.18: No Public Comment/Non-Disparagement Clause**

10 Plaintiff and her counsel agree that they have not and will not publicize non-public settlement
11 terms. In response to any inquiries Plaintiff will state that “the case was resolved, and it was resolved
12 confidentially.” Plaintiff’s counsel shall not publish or disclose any non-public facts regarding the
13 Resolution or use Defendant’s name in any media or website. Despite this provision, Plaintiff’s counsel
14 can discuss the Resolution with Plaintiff, the Settlement Class, and in any filings with the Court.

15 Representative Plaintiff represents and agrees that she has not and will not directly or indirectly
16 disparage, encourage, assist, or induce others to disparage the other Party. For the purposes of this
17 Agreement, “disparage” shall include making or publishing any statement or other content, whether in
18 written, oral, electronic, digital or other form, truthful or otherwise, which may reasonably be expected to
19 adversely affect the business, public image, reputation or goodwill of Defendant, including, without
20 limitation, their operations, employees, directors or related persons, and their past, present or future
21 products or services.

22 ///

23 ///

24 ///

25 ///

26 ///

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Section 8.19: Interim Stay of Proceedings

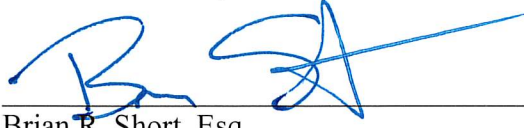
The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

EXECUTION BY PARTIES AND COUNSEL

Dated: January 21, 2023 
Devika Patel (Jan 21, 2023 18:04 EST)
Devika Patel, Representative Plaintiff

Dated: January ____, 2023
By: Dr. Bruhin
For Defendant Apex Recovery, LLC

APPROVED AS TO FORM AND CONTENT:

SHORTLEGAL, APC
Dated: January 21, 2023 
Brian R. Short, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

FISHER PHILLIPS

Dated: January ____, 2023
Danielle Moore, Esq.
Lauren Bushman, Esq.
Attorneys for Defendant

Section 8.19: Interim Stay of Proceedings

The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

EXECUTION BY PARTIES AND COUNSEL

Dated: February ____, 2023

Devika Patel, Representative Plaintiff

Dated: February 17, 2023

DocuSigned by:
Dr. Brulkin
71BBFE4DEE7D43C...

For Defendant Apex Recovery, LLC

APPROVED AS TO FORM AND CONTENT:

SHORTLEGAL, APC

Dated: February ____, 2023

Brian R. Short, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

FISHER PHILLIPS

Dated: February 17, 2023


Danielle Moore, Esq.
Lauren Bushman, Esq.
Attorneys for Defendant

SHORTLEGAL, APC
350 10TH AVE., SUITE 1000
SAN DIEGO, CA 92101

Exhibit 2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

DEVIKA PATEL, Individually and on behalf of
all other current and former similarly-situated
employees of Defendants in the State of
California

Plaintiffs,

vs.

APEX RECOVERY, LLC, and DOES 1 through
50, inclusive

Defendants.

Case No. 37-2021-00044618-CU-OE-CTL

*[Assigned for all purposes to The Honorable
Kenneth Medel; Dept. C-66]*

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE FOR
COURT APPROVAL

Action Filed: October 20, 2021
Trial Date: Not Set

TO: “All individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period (the “Class Period”).”

**If You Qualify For Inclusion in The Settlement Class And You Wish To Participate
In The Settlement And Receive A Settlement Payment, You Are Not Required To
Take Any Action.**

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before **<<30 days after notice mailed>>**, 2023. **YOU ARE NOT BEING SUED.** If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered **<<preliminary approval date>>**, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is **<< >>**. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On October 20, 2021, Devika Patel filed a class and representative action Complaint (“Complaint”) in the San Diego County Superior Court entitled *Devika Patel v. Apex Recovery, LLC*; Case No. 37-2021-00044618, on behalf of herself and a proposed class consisting of allegedly similarly-situated individuals currently or formerly employed by *Apex Recovery, LLC* in which she asserted claims for: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3)

Failure to Authorize and Permit Meal Periods; (4) Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Timely Pay Wages Upon Separation of Employment; (8) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); (9) PAGA Claim for Civil Penalties (the “Litigation”); and 10) Retaliation in violation of Labor Code Section 98.6.

Apex Recovery contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Devika Patel has vigorously prosecuted this case, and Apex Recovery has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Apex Recovery, LLC’s class action and representative claims and Defendant’s defenses to those claims. Ms. Patel’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Apex Recovery, LLC and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$150,000 to settle the Litigation. The \$150,000 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. **Class Counsel’s Attorney’s Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$50,000), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$12,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Devika Patel anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$15,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$11,250.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$3,750.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, <<Settlement Administrator>> to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to <<Settlement Administrator>> to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to <<Settlement Administrator>> will be approximately \$6,000, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** all individuals who are or were employed by Defendant as non-exempt employees in California from July 30, 2017 through February 21, 2022 (the "Class Period").

I. **Settlement Class Defined:** "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. **Settlement Period Defined:** "Settlement Period" shall mean from July 30, 2017 through June 20, 2022.

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on number of weeks worked by each Settlement Class Member during the Settlement Period in proportion to the total aggregated weeks worked by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 10% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 90% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Devika Patel and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the

settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection, you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you may appear at the final approval hearing or file a written objection and a notice of intention to appear with the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101, by<<30 days after notice mailing>>, 2022, and serve copies to the following:

CLASS COUNSEL:

SHORTLEGAL, APC

Brian R. Short

Email: brian@shortlegal.com

350 10th Avenue, Ste. 1000

San Diego, CA 92101

Tel: (619) 272-0720 / Fax: (619) 839-3129

COUNSEL FOR DEFENDANT:

FISHER PHILLIPS

Danielle Moore

Email: dmoore@fisherphillips.com

Lauren Bushman

Email: lbushman@fisherphillips.com

4747 Executive Dr., Suite 1000

San Diego, CA 92121

Tel: (858) 597-9600/Fax: (858) 597-9601

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<30 days after notice mailed>>, 2023. **DO NOT TELEPHONE THE COURT.**

If you choose to file a written objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2023. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on _____, 2023 at _____ a.m. in Department C-66 of the San Diego Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before<30 days after notice mailed>>, 2023, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court's final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged Defendant Apex Recovery, LLC as well as its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant from those claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to, minimum wages, overtime and double time wages (including, but not limited to, any claims for additional wages owed due to "off the clock work,") meal and rest breaks, failure to maintain accurate employment records, failure to pay overtime and/or penalties at the regular rate of pay, wage statement violations, separation pay violations, failure to pay wages timely during employment, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices; and PAGA during the Release Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately in two installments of \$75,000 which shall be approximately 15 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted and the second instalment shall be approximately 6 months after the first payment.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-66 of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 on << >>, 2023, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the pleadings and other records in this litigation including the Class Action Settlement Agreement that may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, San Diego, 330 West Broadway, CA 92101 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT