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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI, DAVID URIBE, ZACHARY MCGORDON, KATIE ROSAS, TERESA RAU, and IMMANUEL PASCUAL, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v.	Case No. 37-2022-00044660-CU-OE-CTL **DECLARATION OF SYDNEY CASTILLO-JOHNSON, ESQ., IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: September 19, 2025 Time: 9:30 a.m.

MITRA VI, LLC, an Arizona limited liability company; DENALI MIDCO 2 LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendants.	Judge: Hon. Gregory W. Pollack Dept.: C-71

I, Sydney Castillo-Johnson, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law at the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel for Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Immanuel Pascual, Zachary McGordon, Katie Rosas, and Theresa Rau (collectively, "Plaintiffs").

2. This declaration is being submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

I. EXHIBITS

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the Stipulation for Class and PAGA Action Settlement and Release of Claims ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Notice Packet.

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

5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement administration submitted by Apex Class Action LLC, in the amount of $16,890.00.

II. INTRODUCTION

6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Settlement Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. Given that there are estimated to be approximately 1,747 Class Members, ***the average gross recovery is estimated to be approximately***

$236.60 (Net Distribution Fund divided by Class Members). At the time of mediation, there were approximately 1,375 PAGA Employees during the PAGA Period.

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

III. FACTS AND PROCEDURE

A. Overview of the Litigation

8. Defendants own, operate, and/or manage carwashes throughout California, including San Diego County, where Plaintiffs worked. Plaintiff McGee has been employed by Defendants since April 2017 as a Traveling Sales Trainer and represents the Non-Exempt Employee Subclass. Plaintiff Kanafani has been employed by Defendants since October 2017 as an Assistant Manager and represents the Non-Exempt Employee Subclass. Plaintiff Uribe was employed by Defendants from November 2016 to July 2022 as a General Manager and represents the Misclassification Subclass.. Plaintiff McGordon has been employed by Defendants since 2019 as a Salesman and represents the Non-Exempt Employee Subclass. Plaintiff Rosas was employed by Defendants from March 2021 to July 2022 as a Car Wash Associate and represents the Non-Exempt Employee Subclass. Plaintiff Rau was employed by Defendants from July 2021 to July 2022 as a Car Wash Associate and represents the Non-Exempt Employee Subclass. Plaintiff Pascual was employed by Defendants from March 2017 to February 2022 as a Salesperson, Hourly Manager, and General Manager, and represents the Misclassification Subclass. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. At times during their employment, Plaintiff Uribe and Plaintiff Pascual work as misclassified exempt employees.

9. Generally, Plaintiffs claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime, meal period premiums, and sick pay at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse

for mandatory business expenses, failed to timely pay all wages during employment, failed to pay all wages upon separation, and misclassified certain Site Manager employees as exempt employees. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, providing compliant meal and rest periods, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due during and upon separation of employment, and properly classified employees as exempt.

10. On August 23, 2022, Plaintiff Kanafani and Plaintiff Uribe served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Kanafani and Plaintiff Uribe's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and noticed their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

11. On August 25, 2022, Plaintiff Rosas and Plaintiff Rau served Defendant and the LWDA with their own PAGA Notice. Plaintiff Rosas and Plaintiff Rau's PAGA Notice set forth similar facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable IWC Wage Order and noticed their intent to pursue claims under PAGA.

12. On November 4, 2022, Plaintiff Kanafani and Plaintiff Uribe filed a class action complaint in the San Diego County Superior Court, Case No. 37-2022-00044660-CU-OE-CTL (the "Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Reimburse for Required Business Expenses; (7) Failure to Provide Wages When Due; (8) Failed to Provide Accurate Itemized Wage Statements; and (9) Violations of the PAGA.

13. On November 18, 2022, Plaintiff Rosas and Rau filed a representative action complaint in San Diego County Superior Court, Case No. 37-2022-00046807 alleging only violations of the PAGA.

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14. On July 10, 2023, Plaintiffs' cases were consolidated by the Court, with Plaintiff Kanafani and Plaintiff Uribe's case being the lead case.

15. On January 20, 2023, Plaintiff McGee and Plaintiff Pascual served Defendants and the LWDA with a PAGA Notice. Plaintiff McGee and Plaintiff Pascual's PAGA Notice set forth similar facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable IWC Wage Order and noticed their intent to pursue claims under PAGA.

16. On May 18, 2023, Plaintiff Kanafani and Plaintiff Uribe served Defendants and the LWDA with an amended PAGA Notice for the purpose of adding Plaintiff McGordon as a named Plaintiff in the Action.

17. On July 11, 2023, Plaintiff Kanafani and Plaintiff Uribe filed a first amended complaint for the purpose of adding Plaintiff McGee, Plaintiff McGordon, and Plaintiff Pascual as named plaintiffs in the Action.

18. After engaging in written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed infra, Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data.

19. On October 30, 2024, the Parties participated in an all-day private mediation presided over by Tripper Ortman, Esq. (the "Mediator"), an experienced mediator of wage and hour class and PAGA actions. At the mediation reached the settlement which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

20. Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including portions of their payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry.

21. Class Counsel subsequently requested Plaintiffs' employee files from Defendants. In response, Defendants produced hundreds of pages of documents, including but not limited to, copies of Defendants' written policies and Plaintiffs' hiring documents and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime, meal period premiums, and sick pay at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, failed to timely pay all wages during employment, failed to pay all wages upon separation, and misclassified employees as exempt.

22. To prepare for mediation, Defendants produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In sum, Class Counsel obtained more than 1.2 million unique cells of time and payroll data and hundreds of pages of policy material.

23. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields.

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

25. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims;

(3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

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

IV. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.

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

28. Once the Parties agreed to the key terms of a settlement with Mediator Ortman's assistance, the Parties engaged in negotiations regarding the written terms of the Settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

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

B. The Total Settlement Amount Meets the Recognized Range of Reasonableness.

30. The Total Settlement Amount of $860,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) ranged between $2,788,567.12 ("Realistic Damages") and $6,137,557.89 ("Maximum Damages")[1] if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of between 31.12% ("Realistic Damages") and 14.09% ("Maximum Damages") of Defendants' potential class-wide exposure based on Plaintiffs' alleged claims – well within the recognized range of reasonableness.

a. Estimated Damages for Defendants' Meal Period Violations for the Non-Exempt Employee Subclass

[1] The large difference in percentages is a result of the Maximum Damages model accounting for all penalties at a 100% violation rate.

31. Plaintiffs allege that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs allege that as a result of their rigorous work schedules, Class Members were not able to take timely and duty-free meal periods. In support, Plaintiff's data analysis showed that 17.9% violation rate for missed meal periods on qualifying shifts and another 7.2% violation rate for later meal periods.

32. Further, Plaintiffs allege that Defendants failed to record the actual time that Class Members worked. As a result, 48.3% of all meal periods were allegedly rounded to exactly thirty (30) minutes, which Plaintiffs argue creates a presumption of meal period violations under *Donohue v. AMN Servs., LLC*. 11 Cal. 5th 58, 74-75 (2021).

33. Defendants contend that they fully complied with California meal period laws and maintained compliant policies and practices. Defendants argued that they maintained facially complaint meal period policies and, in practice, provided its employees with the opportunity to take compliant meal periods. Defendant argued that the written time records evidenced robust compliance with an overall compliance rate exceeding 75% for meal periods. Finally, Defendants argued that in instances where meal periods were either not voluntarily missed or taken late, it paid meal period premiums. Thus, Defendants argued that there was no potential liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment.

34. Further, Defendants further argued that they did not engage in rounding meal period start and end times. More specifically, Defendant argued that all meal periods start and end times were entered by the employees and not the employer. Defendant argued that employees certified the accuracy of these time entries every pay period and, more importantly, Defendant was entitled to rely on the accuracy of the time entries made by its employees.

35. Plaintiffs estimate Defendant's maximum exposure for the meal period claim is $746,344.00 predicated on an overall meal period violation rate of 25.5% (excludes so-called rounded meal periods). However, considering the immediate challenges related to certification, the asserted defenses, and the probability of success on the merits, Plaintiffs applied a 25% risk discount and estimate that Defendants' exposure ranged from $746,344.00 to $559,758.00.

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b. Estimated Damages for Defendants' Rest Period Violations for the Non-Exempt Employee Subclass

36. Plaintiffs allege that Defendants failed to provide compliant rest periods. Specifically, Plaintiffs argue that because of their heavy workloads and Defendants' severe understaffing, Class Members were not able to take timely and duty-free rest periods. Specifically, Plaintiffs alleged that they were required to work through their rest periods in order to complete work-related tasks.

37. Defendants argue that they maintained legally compliant rest period practices throughout the Class period. Defendants contend that determining which employees did not receive compliant rest period would therefore rely heavily on testimony based on individual experience. Therefore, Defendants argue that this is a highly individualized inquiry not suitable to class treatment.

38. Plaintiffs estimate of Defendants' maximum exposure of $528,840.68 is predicated on an assumed violation rate of 25.5% (mirroring Defendants' meal period violation rate) multiplied by the average hourly rate of $17.77. Defendants' unlawful rest period policy. However, given the cha Defendants' defenses, Plaintiffs apply a risk factor discount of 25%. Therefore, a more realistic recovery on this claim is $396,630.51.

c. Estimated Damages for Defendants' Unpaid Wages Resulting from Regular Rate Violations for the Non-Exempt Employee Subclass

39. Plaintiffs also allege that Defendants miscalculated the regular rate of pay for purposes of overtime, meal and rest period premiums, and redeemed sick pay. Specifically, Plaintiffs allege that Class Members received non-discretionary incentive compensation labeled on wage statements as "C CWASH COMMIS," "B CWASH BONUS," "El Emp Incentive," "TB Training Bonus," "GIF Gift Award," "BNS," "FPC FPCert," and "Premium Earnings" payments, which were not properly calculated into the regular rate of pay for purposes of overtime, meal and rest period premiums, and redeemed sick pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corporation of California* 4 Cal.5th 542, 552-554 (2018).

40. For overtime work, "an employee must receive a 50 percent premium on top of his or her

regular rate of pay[.]" *Id.* at 553. Plaintiffs allege that Defendants failed to factor non-discretionary compensation when calculating the regular rate of pay for overtime wages. Plaintiffs estimate Defendants underpaid the Class $112,187.00 as a result of failing to take into account their non-discretionary compensation when calculating their employee's regular rate of pay.

41. California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave. Here, Defendant failed to include non-discretionary payments when calculating the regular rate of pay for redeemed sick pay. Class Counsel estimated Defendants' exposure at $29,452.00 in redeemed sick pay.

42. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular *rate* of pay. *See Ferra v. Lowes Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). The *Ferra* decision applies retroactively. *Id.* at 1179-80. Here, to the extent that Defendant paid meal period premiums, Defendant failed to include non-discretionary compensation when calculating the regular rate of pay when paying Plaintiffs and Class Members meal period premiums. Plaintiffs estimate Defendants underpaid Class Members $3,564.00 in meal period premiums

43. Defendants, for their part, asserted that the incentive payments identified by Plaintiffs were discretionary in nature and otherwise not required to be included in the regular rate of pay for purposes of calculating overtime, meal and rest period premiums, or redeemed sick pay. Defendants contend that these payments fell outside the scope of compensation subject to regular rate calculations under applicable California law and dispute that any miscalculation occurred. To the extent that Defendants paid any form of non-discretionary compensation, Defendants argue that they correctly calculated the regular rate of pay for overtime, meal and rest period premiums, and redeemed sick pay.

44. Class Counsel estimates Defendants' maximum exposure of $145,203.00 is predicated on underpaid wages for Defendants' miscalculation of their employee's regular rate of pay. However, considering the risks of obtaining full recovery in the face of Defendants' defenses, and the immediate challenges of certification, Plaintiffs applied a 25% discount on this claim. Thus, a realistic recovery on this claim is $108,902.25.

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d. Estimated Damages for Defendants' Failure to Reimburse Necessary Business Expenses for the Non-Exempt Employee Subclass

45. Plaintiffs allege that Defendants failed to reimburse their employees for mandatory business expenses. Specifically, Defendants required Class Members to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for Defendants and were required to purchase and maintain their uniforms at their own expense. Plaintiffs and Class Members were not reimbursed or indemnified by Defendants for costs associated with the use of their personal cell phone or purchase and maintenance of work uniforms for Defendants' benefit.

46. Defendants argued that the number of affected employees was minimal. Further, Defendants argued that they reimbursed employees for the use of personal cellular phones and the purchase and maintenance of work uniforms because of and in furtherance of their job duties.

47. Plaintiffs assumed that Defendants failed to reimburse Class Members $15 per month, resulting in a total underpayment of $155,865.00. However, Plaintiffs applied a 90% discount to account for the challenges in obtaining the evidence necessary to certify and, only then, prevail on the merits for this claim. Therefore, Plaintiffs reasonably estimate Defendants' exposure for unreimbursed business expenses to be $15,865.00.

e. Estimated Damages for Defendants' Unpaid Wages for Off the Clock Work for the Non-Exempt Employee Subclass

48. Plaintiffs also allege that Defendants failed to pay its employees for all hours worked. Specifically, Plaintiffs assert that Defendants failed to pay employees for time spent sending final reports to corporate and setting the alarm. Based on Plaintiffs' testimony and Class Counsel's investigation, Class Counsel estimated that Class Members performed approximately three (3) minutes of unpaid work per shift. Because Class Members averaged four (4) shifts per workweek, Plaintiff estimates that Class Members performed twelve (12) minutes of unpaid work per workweek. As a result, Class Members forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control.

49. Defendants vigorously deny liability for this claim. Further, Defendants assert that it had in place a written policy prohibiting off-the-clock work. The same policy instructed its employees to

report any off-the-clock work to Defendants for compensation. In fact, Defendants asserted that in a limited number of instances where off the clock work was reported, it was subsequently fully compensated. Further, Defendants' written policy instructed its employees to accurately record all their time worked. Defendants argued they were entitled to rely on the accuracy of the hours worked as reported by their employees and had a system in place to pay for any off-the-clock work, should it have been reported by their employees. Finally, Defendants argued that the amorphous nature of the asserted off-the-clock claims (e.g., setting alarms and sending reports), were highly individualized and, thus, not suitable for class treatment.

50. Plaintiffs' estimate of Defendants' exposure for off-the-clock work is predicated on Class Members performing twelve (12) minutes of unpaid work per workweek. Thus, Plaintiffs' anticipated exposure for Defendants for off-the-clock work is $136,247.00. However, because of the risks posed by Defendants' defenses, Plaintiffs applied a 50% discount on this claim and realistically estimated likely recovery at $68,123.50.

f. Estimated Damages for Defendants' Wage Statement Violations for the Non-Exempt Employee Subclass

51. Plaintiffs also allege that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiffs allege facial violations of Labor Code section 226(a) in that Defendants' "transactional transfer" system failed to accurately record the total hours worked by Class Members. Moreover, Plaintiffs allege that as a result of Defendants' failure to pay for all wages and provide meal and rest periods as required by the California Labor Code, Class Members are entitled to derivative wage statement penalties. *See Naranjo v. Spectrum Security Services*, 13 Cal. 5th 93, 2022 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties).

52. Defendants argue that even if they failed to furnish accurate wage statements, Plaintiffs cannot establish that their failure was knowing and intentional or that such failure resulted in actual harm to the Class Members.

53. Defendants' Maximum exposure for this claim is approximately $2,505,850. This number is based on 25,746 wage statements and the civil penalty of $50 for initial violations per

employee, and $100 for every subsequent violation. However, due to the risk associated with proving Defendants violations were knowing and intentional, Plaintiffs discounted this claim by 75%. Accordingly, a reasonable estimate of recovery is $626,462.50.

g. Defendants' Estimated Exposure for Waiting Time Penalties for the Non-Exempt Employee Subclass

54. Plaintiffs also allege that the Defendants' Labor Code violations resulted in derivative liability for waiting time penalties. Although these penalties represent one of Defendants' largest dollar amount of exposure, this is an uncertain claim. Specifically, Defendants argue that Plaintiffs cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2024), creates difficulty in Plaintiff succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claims, Class Counsel's Realistic estimate discounts the waiting time penalty claim by 50% to reflect Plaintiff's unpaid wages claim. Accordingly, Class Counsel estimates that Defendant's exposure for this claim ranges between $1,331,166.00 and $665,583.00.

h. Defendants' Exposure for Misclassification for the Misclassification Subclass

55. Plaintiffs allege that Defendants' misclassified site managers as exempt employees. Plaintiffs point out that Labor Code section 515 only exempts employees who are "primarily engaged in the duties that meet the test of the exemption" and "earn[] a monthly salary equivalent to no less than two times the state minimum wage for full-time employment." Cal. Lab. Code § 515. Plaintiffs argue that members of the Misclassification Subclass were not compensated with an annual salary of at least two times the state minimum wage. Plaintiffs contend that Misclassification Subclass members were primarily engaged in non-exempt employee tasks. Plaintiffs asserted that members of the Misclassification Subclass lacked the authority to exercise independent judgment or discretion to make personnel decisions. Specifically, site managers did not have the authority to hire, fire, promote employees, or determine rates of pay or benefits.

56. Defendants vigorously deny liability for this claim. Defendants argued that they paid site managers at least two times the state minimum wage throughout the Class Period. Defendants

contended that whether members of the Misclassification Subclass were primarily engaged in duties that meet the test for exemption is a highly specific fact-intensive inquiry and is thus not suitable for class treatment.

57. Plaintiffs estimate that the misclassification issue impacts at least fifty-three (53) employees and would add at least 1,714 workweeks. Plaintiffs' estimate of Defendants' exposure for their alleged violations uses the same theories of liability set forth in subsections (a)-(g) above, and increases the value of Plaintiffs' claims as follows: (1) $158,349.75 to $118,762.31 for meal period violations; (2) $158,349.75 to $118,762.31 for rest period violations; (3) $3,567.55 to $2,675.66 for unpaid wages resulting from failure to correctly calculate the regular rate of pay; (4) $12,855.00 to $1,285.50 for unreimbursed business expenses; (5) $6,091.56 to $3,045.78 for unpaid wages resulting from off-the-clock work; (6) $85,700.00 to $21,425.00 for wage statement violations; and (7) $163,128.60 to $81,564.30 for waiting time penalties.

i. Defendants' PAGA Exposure

58. "Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiffs sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between November 4, 2021, through February 13, 2025, and there are approximately 1,375 PAGA Employees who worked a total of 25,746 pay periods. Plaintiffs' claims and corresponding PAGA penalties can be broken down as follows:

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Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
226 (wage statements)	1,375	$50	25,746	100% of total pay periods	$1,287,300.00
203, 510, 558, 1194 and 1197 (unpaid wages)	1,375	$50	25,746	Assumed 100% of total pay periods	$1,287,300.00
2802 (unreimbursed business expenses)	1,375	$100	25,746	Assumed 100% of total pay periods	$2,574,600.00
TOTAL					**$5,149,200.00**

59. Here, the Parties negotiated a good faith PAGA Award payment in the amount of $43,000.00 which is 5% of the Total Settlement Amount. This amount falls well within the range of approved PAGA Awards. Seventy-Five percent (75%) of the PAGA Penalties ($32,250.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties ($10,750) will be distributed to the PAGA Employees ("Individual PAGA Payments"), which is within the range of PAGA Penalties approved by courts and should be approved.

C. Inherent Risks of Continued Litigation and Defendant's Financial Condition Support Preliminary Approval.

60. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).

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61. Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.")

62. Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action).

63. Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

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

65. In this matter, Class Counsel negotiated a Total Settlement Amount of $860,000.00 that is roughly between approximately 31.12% of Defendants' *class-wide* liability exposure for damages, and approximately 7.64% of Defendants' maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

66. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the subclass definitions, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims and Released PAGA Claims. *See generally* Agreement at § 7. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement.

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

E. The Court Should Preliminarily Approve the Service Awards

68. The Settlement provides for Service Awards of $10,000 to each Plaintiff (or $70,000 total). The Service Awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendants a general release of all claims arising out of their employment.

69. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards with the final approval motion after preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards.

/ / /

F. The Court Should Preliminary Approve the Class Counsel Fees Payment and Class Counsel Expenses Payment

70. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Participating Class Members, and in light of the supporting authority, the proposed Class Counsel Fees Award and Class Counsel Costs Award is fair and reasonable.

71. Plaintiffs will file a formal motion for the negotiated Class Counsel Fees Award and Class Counsel Costs Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees and expenses.

G. The Court Should Provisionally Certify the Settlement Class

72. For Settlement purposes only, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate .

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

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

75. Plaintiffs' wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the

interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

76. Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar meal and rest period violations. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California, including in the Superior Court for the County of San Diego. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.

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

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

79. My primary practice has been employment law throughout my entire legal career. I have handled a number of wage and hour matters, including individual actions, class actions, and representative PAGA actions, on behalf of plaintiffs. The following is a list of wage and hour class and/or PAGA actions where I served as counsel and in which final settlement approval was granted: See generally *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023); *Toler v. Total Testing Solutions, LLC,* Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023); *O'Quinn v. Laugh Factory, Inc.,* Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023); *Kneisly v. SR Machining, Inc., et al.,* Riverside Superior Court Case No. CVRI2201491 (October 5, 2023); *Anderson v. Barton Myers Associates, Inc., et al.,* Los

Angeles Superior Court Case No. 21STCV43314 (October 12, 2023); *Coles v. Carefusion Resources LLC, et. al.* San Diego Supeiror Court Case No. 37-2022-00048696-CU-OE-CTL (March 25, 2024); *Thomas v. Center for Elder's Independence* Alameda Superior Court Case No. 22CV024221 (July 2, 2024); *Klein v. RedZone Security, Inc.,* Riverside Superior Court Case No. CVRI2202841 (August 15, 2024); *Nunez v. Titan AG, et. al.* Tulare Superior Court Case No. VCU296822 (February 4, 2025); *Rene v. Koch Filter Corporation* Riverside Superior Court Case No. CVRI2300700 (March 11, 2025); *Winn v. City Electric Supply Company* San Diego Superior Court Case No. 37-2023-0004023 1-CU-OE-CTL (March 13, 2025); *Gamble v. AirX Utility Surveyors, Inc.* San Diego Superior Court Case No. 37-2022-00042178-CU-OE-CTL (March 14, 2025); *Garcia v. ConvergeOne* San Bernardino Superior Court Case No. CIVSB2305464 (May 12, 2025); *Solis v. 51st St. & 8th Ave. Corp., et al.* San Diego County Superior Court Cas No. 37-2023-00031528-CU-OE-CTL (July 17, 2025).

80. As counsel for Plaintiffs and the proposed Class, I have been actively involved in every aspect of this case, and I believe that the proposed Settlement is an excellent result for the Class.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of August 2025, at San Diego, California.

JCL LAW FIRM, APC

By: Sydney Castillo-Johnson
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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI, DAVID URIBE, ZACHARY MCGORDON, and IMMANUEL PASCUAL, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. MITRA VI, LLC, an Arizona limited liability company; DENALI MIDCO 2 LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendants. _______________ KATIE ROSAS; and TERESA RAU in a Representative capacity only, and on behalf of other members of the general public similarly situated, Plaintiffs, v. DENALI MIDCO 2 LLC, a Delaware Limited Liability Company; MITRA VI, LLC an Arizona Limited Liability Company; TSG CONSUMER PARTNERS LP, a Delaware Limited Partnership; and DOES 1-10 inclusive, Defendants.	Lead Case No. 37-2022-00044660-CU-OE- CTL (Consolidated with San Diego County Case No. 37-2022-00046807) ASSIGNED FOR ALL PURPOSES TO HON. GREGORY W. POLLACK, DEPT. C-71 **JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT AND RELEASE** Trial Set: N/A Complaint filed: November 4, 2022 Amended Complaint Filed: July 11, 2023

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This Joint Stipulation of Class and PAGA Representative Action Settlement and Release (the "Settlement Agreement" or "Settlement") is made and entered into by and between the following parties: Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau ("Plaintiffs"), individually, on a representative basis, and on behalf of all others similarly situated whom they seek to represent for settlement purposes, and Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP ("SSCW" or "Defendants") (collectively, the "Parties"). Subject to the approval of the Court, the Parties agree that the above-captioned Action (defined below) is compromised and settled pursuant to the terms and conditions set forth below.

1. <u>DEFINITIONS</u>.

Unless otherwise defined, capitalized terms used in this Settlement Agreement shall have the meanings set forth below:

1.1 **"Action"** means *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al.*, Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE-CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807). The Action includes both the *Kanafani et al.* action and *Rosas et. al.* action.

1.2 **"Class Counsel"** means JCL Law Firm, APC, Zakay Law Group, APLC, and Sullivan & Yaeckel Law Group, APC.

1.3 **"Class Counsel Award"** means the Class Counsel Costs Award and Class Counsel Fees Award collectively as those terms are defined below.

1.4 **"Class Counsel Costs Award"** means the expenses and costs incurred by Class Counsel for Class Counsel's litigation and resolution of this Action, as awarded by the Court, which may not exceed Thirty Thousand Dollars and Zero Cents ($30,000.00).

1.5 **"Class Counsel Fees Award"** means the attorneys' fees for Class Counsel's litigation and resolution of this Action, as awarded by the Court, which may not exceed one-third of the Total Settlement Amount, or Two Hundred and Eighty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents ($286,666.67). However, notwithstanding the foregoing, if the escalator clause set forth in Paragraph 4.2.5.4 below is triggered and Defendants elect to pay a prorated increase to the

Total Settlement Amount, Class Counsel may seek in attorneys' fees one-third of the increased Total Settlement Amount. Any requested attorneys' fees or litigation costs not awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members.

1.6 **"Class Information"** means the full name, last known address, social security number, and workweeks worked by Class Members during the Class Period and pay periods worked by the PAGA Employees during the PAGA Period (or the work history information for Class Members and PAGA Employees sufficient for the Settlement Administrator to calculate the relevant workweeks and pay periods). Defendants will compile a Confidential Microsoft Excel spreadsheet containing the Class Information developed in good faith using best efforts from its records and provide it to the Settlement Administrator as a Confidential document pursuant to the Stipulated Protective Order in this Action. Because Class Members' sensitive personal information is included in the Class Information, the Settlement Administrator shall maintain the Class Information securely and in confidence pursuant to the Protective Order in this case. Access to such Class Information shall be limited to employees of the Settlement Administrator with a need to use the Class Information for administration of the Settlement. The Settlement Administrator will take all necessary measures to adequately secure the information.

1.7 **"Class Members"** or **"Class"** means collectively all members of the Misclassification and Non-Exempt Employee Subclasses defined below:

1.7.1 <u>Misclassification Subclass</u>: All current and former California employees of Defendants classified as exempt Site Managers during the Class Period.

1.7.2 <u>Non-Exempt Employee Subclass</u>: All current and former California employees of Defendants classified as non-exempt hourly employees during the Class Period.

1.8 **"Class Period"** means the period from November 4, 2018 through February 13, 2025.

1.9 "**Complaint**" means the operative Complaints in this Action, including any amendments and exhibits to the Complaints (including both the consolidated *Kanafani et al.* (Case No: 37-2022-00044660-CU-OE-CTL) and *Rosas et al.* (Case No. 37-2022-00046807-CU-OE-CTL) actions).

1.1 **"Complete and General Release"** means an irrevocable and unconditional release given only by the named Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau in the Action, releasing the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring during or related to Plaintiffs' employment, and/or the Action, including but not limited to all of the Released Class Claims and including without limitation all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental to or arising out of any act or omission committed or omitted by the Released Parties (defined below) during or related to Plaintiffs' employment with or separation from Defendants, including any and all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental that arose or may have arisen before or through the end of the Class Period and/or arising out of Plaintiffs' employment with Defendants Mitra VI, LLC and Denali Midco 2 LLC and/or the cessation thereof. This release by Plaintiffs also includes, but is not limited to, a release of all claims under (a) the California Civil Code, (b) the California Fair Employment and Housing Act, (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*, (d) the Employment Act of 1967, (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities Act 42 U.S.C. § 12101, *et. seq.*, as amended, (j) the Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control Act, as amended, (m) any other state, federal, and local law, regulation and ordinance dealing with discrimination in employment, disability, wrongful discharge, and retaliation for exercising any right or participating or engaging in any activity, (n) the Occupational Safety and Health Act, as amended, (o) the Sarbanes-Oxley Act of 2002, as amended, (p) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (q) the Worker Adjustment and Benefit Protection Act of 1990, as amended, (r) the Worker Adjustment and Retraining Notification Act, as amended, (s) any federal, state or common law claim or cause of action for breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, libel, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory estoppel, any other tort or negligence claim, or obligations arising out of any of Defendants' employment policies or practices, employee handbooks, and/or any statements by any employee or agent of Defendants whether oral or written, and (t) any federal, state or common law claim or cause of action for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and total release of any claims, whether specifically enumerated herein or not, that Plaintiffs might have or have had, that exists or ever has existed related to his employment with or separation from Defendants to the maximum extent permitted by law. Notwithstanding the foregoing, Plaintiffs' Complete and General in this Agreement does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims; (ii) rights or claims arising out of this Agreement after this Agreement is executed by Plaintiffs; and (iii) rights or claims arising of this Agreement. . This release includes a waiver of California Civil Code section 1542 (*i.e.*, 1542 Waiver). "1542 Waiver" means an express waiver, to the fullest extent permitted by law, of the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

> 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.

1.2 **"Court"** means the Superior Court of the State of California, County of San Diego.

1.3 **"Defendants"** means the named Defendants in the Action, Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP.

1.4 **"Defense Counsel"** means Joshua D. Levine, Esq., Krystal Weaver, Esq., and Jocelyn Hannah, Esq. of the law firm Littler Mendelson, P.C.

1.5 **"Effective Date"** means the date by which this Settlement is finally approved as provided herein and the Court's Final Approval Order becomes binding. For purposes of this Settlement Agreement, the Final Approval Order becomes binding and Effective upon the later of: (1) the day after the last day by which a notice of appeal to the California Court of Appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed, which the Parties agree will be 60 calendar days after the notice of an order granting final approval of the Settlement is served, provided there have been no appeals filed within that time; (2) if such an appeal is filed, and the appeal is finally resolved and results in affirmation of the Final Approval Order and Settlement, the day after the last date for filing a request for further review of the California Court of Appeals' decision passes and no further review is requested; (3) if further review of the California Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the California Supreme Court affirms the Final Approval Order. The Effective Date cannot occur, and Defendants will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal, writ, or further appeal that could potentially prevent this Settlement Agreement from becoming final and binding according to the terms agreed upon by the Parties.

1.6 **"Final Approval Hearing"** means the hearing held to determine whether the Court will enter a Final Approval Order finally approving this Settlement.

1.7 **"Final Approval Order"** means the Court's entry of an order finally approving the Settlement and entering judgment in accordance therewith substantially in the form attached hereto as **Exhibit C**.

1.8 **"Individual Settlement Payment"** means the amount payable from the Net Distribution Fund that the Settlement Administrator will pay to each Participating Class Member, as calculated pursuant to Paragraphs 4.2.5.1 and 4.2.5.2 below.

1.9 **"Net Distribution Fund"** means the Total Settlement Amount, less the amounts allotted to: (1) the Class Counsel Fees Award ($286,666.67), (2) the Class Counsel Costs Award (up to $30,000.00), (3) the Service Awards for Plaintiffs in the amount of up to $10,000 to each Plaintiff, (4) the 75% of the PAGA Award to be paid to the California Labor and Workforce

Development Agency ("LWDA") ($30,000); (5) the 25% of the PAGA Award to be paid to the PAGA Employees (as further specified below) ($10,750.00); and (6) Settlement Administration Costs (up to $17,000). Individual Settlement Payments to Participating Class Members will be paid out of the Net Distribution Fund.

1.10 **"Notice of Objection"** means a written request by a Class Member to object to this Settlement, which must be completed and timely submitted in the manner set forth in this Settlement Agreement and the Notice of Settlement.

1.11 **"Notice of Settlement"** or "**Class Notice**" means the Notice of Class Action Settlement that the Settlement Administrator will mail to Class Members to apprise them of this Settlement (substantially in the form attached hereto as **Exhibit A**).

1.12 **"PAGA Award"** means Forty-Three Thousand Dollars ($43,000) of the Total Settlement Amount that the Parties have allocated to PAGA penalties (*i.e.*, the PAGA Award), 75% of which ($32,250) will be remitted to the LWDA and 25% ($10,750) of which will be distributed to the PAGA Employees. Class Members who are also PAGA Employees and submit a Request for Exclusion will receive only a payment for their prorated portion of the 25% of the PAGA Award available for distribution to PAGA Employees (who cannot opt out of the PAGA portion of the Settlement).

1.13 **"PAGA Employees"** means all members of the Misclassification and Non-Exempt Subclasses who were employed by Defendants during the PAGA Period. PAGA Employees cannot opt out of the PAGA portion of this Settlement. However, they may opt out of the Settlement of the Released Class Claims provided they timely submit a Request for Exclusion.

1.14 **"PAGA Period"** means the period from November 4, 2021 through February 13, 2025.

1.15 **"Parties"** means Plaintiffs and Defendants.

1.16 **"Plaintiffs"** or "**Class Representatives**" means Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau.

1.17 **"Participating Class Members"** means Class Members who do not submit a timely Request for Exclusion from this Settlement.

1.18 **"Preliminary Approval Date"** means the date the Court enters the Preliminary Approval Order.

1.19 **"Preliminary Approval Order"** means the Court's entry of an order preliminarily approving this Settlement (substantially in the form attached hereto as **Exhibit B**).

1.20 **"Released Class Claims "** means all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* (Case No: 37-2022-00044660-CU-OE-CTL) and *Rosas et al.* (Case No. 37-2022-00046807-CU-OE-CTL) actions), all amended Complaints in the Action, and all exhibits to those Complaints including Plaintiffs' LWDA notice letters, during the Class Period. The Released Class Claims will apply to the "Release Parties, defined below. The Released Class Claims will include without limitation Plaintiffs' claims for (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required expenses; (7) failure to provide wages when due; (8) failure to provide accurate itemized wage statements (both as a derivative and direct theory); (8) failure to keep complete and accurate records; and (9) failure to pay all wages due at separation.

1.21 **"Released PAGA Claims"** means all claims under PAGA against the Released Parties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* and *Rosas et al.* Complaints, all amended Complaints in the Action, and all exhibits to those Complaints) and in Plaintiffs' LWDA notice letters during the PAGA Period. The Released PAGA Claims shall include without limitation all claims under PAGA based on the underlying alleged Released Class Claims. This release will be binding on all PAGA Employees and the State of California and there shall be no right for any PAGA Member, including any Plaintiff to the Action, to opt out of this release if the Settlement is approved by the Court. Class Counsel agree to provide timely notice to the LWDA of all settlement-related notices required under PAGA, and to the extent necessary to effectuate a complete release of the Released PAGA Claims, Plaintiffs also agree to submit amended PAGA Notices to the LWDA.

1.22 **"Released Parties"** means Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP, and their subsidiaries, affiliates and/or parents, attorneys, and each of their respective successors and predecessors in interest; all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, and agents; and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers.

1.23 **"Request for Exclusion"** means a timely written request by a Class Member to exclude herself/himself from the Settlement, which must be completed and mailed in the manner set forth in this Settlement Agreement and the Notice of Settlement.

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

1.25 **"Service Award"** means the amount the Court awards Plaintiffs for their efforts in assisting with the prosecution of the Action and as consideration for executing this Settlement Agreement and agreeing to a general release of all claims against Defendants, which shall not exceed $10,000 to each Plaintiff. Plaintiffs' Service Awards are subject to approval from the Court and will be paid only from the Total Settlement Amount. Any portion of the Service Award not awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members. Plaintiffs will also be eligible to receive an Individual Settlement Payment similar to other Class Members/PAGA Employees.

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

1.27 **"Settlement Administration Costs"** means the reasonable and necessary costs incurred by the Settlement Administrator and awarded by the Court from the Total Settlement Amount, which may not exceed Seventeen Thousand Dollars ($17,000), unless otherwise approved by the Parties and Court. Settlement Administration Costs include but are not limited to: the costs of Class Notice (including Spanish translation), any required reporting by the Settlement Administrator to federal and state agencies, establishing a qualified settlement fund for Defendants to deposit the Total

Settlement Amount (from which the Settlement Administrator will pay the Court-approved Class Counsel Fees Award, the Class Counsel Costs Award, the Service Awards for Plaintiffs, the PAGA Award, Settlement Administration Costs and Individual Settlement Payments to Participating Class Members and PAGA Employees, as specified herein); receiving and responding to inquiries from Class Members about the Settlement; calculating and distributing settlement payments to Participating Class Members and PAGA Employees as specified herein; calculating, processing, and remitting all withholding taxes or other legally-required taxes (if any) and handling any required tax reporting; processing any Notices of Objection and Requests for Exclusion; providing declarations and reporting to the Court and Parties; and performing all of the tasks for which the Settlement Administrator is retained as further specified below and/or which the Settlement Administrator must perform pursuant to orders of the Court. The Parties agree that the Settlement Administration Costs shall be paid exclusively from the Total Settlement Amount and that Defendants shall not be responsible for the payment of any additional Settlement Administration Costs separate from or in addition to those paid from the Total Settlement Amount.

1.28 **"Settlement Administrator"** means APEX Class Action LLC.

1.29 **"Settlement Agreement" or "Settlement" or "Agreement"** means this Joint Stipulation of Class Action Settlement and Release executed by all Parties.

1.30 **"Settlement Fund Account"** means the bank account established pursuant to the terms of this Settlement Agreement, from which all monies payable under the terms of this Settlement shall be paid, as set forth herein.

1.31 **"Total Settlement Amount"** means Eight Hundred Sixty Thousand Dollars ($860,000), which is the maximum amount that Defendants Mitra VI, LLC and Denali Midco 2 LLC are providing under this Settlement Agreement in order to settle the Action in its entirety; provided, however, that if the escalator clause set forth in Paragraph 4.2.5.4 below is triggered and Defendants elect to pay a pro rate increase to the Total Settlement Amount, the amount set forth in this Paragraph shall be increased accordingly. Defendants will pay the employer side payroll taxes due on the alleged lost wages portion of the Individual Settlement Payments in addition to the Total Settlement Amount on the funding date. Aside from the employer-side taxes due on the alleged lost wages portion of the

Individual Settlement Payments, Defendants shall not be required to pay any amount above the Total Settlement Amount in connection with this Settlement, except as provided in Section 4.2.5.4 Escalator Clause/Option.

1.32 **"Void Date"** means the date by which any checks issued to Participating Class Members and PAGA Employees shall become void, *i.e.*, on the 181st calendar day after mailing.

2. <u>RECITALS</u>.

2.1 On August 23, 2022, Plaintiffs Kanafani and Uribe filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. On August 25, 2022, Plaintiffs Rosas and Rau filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. The *Rosas* complaint alleges a single PAGA claim in a representative capacity only, based on the following alleged underlying Labor Code violations: (1) failure to provide compliant meal and rest periods in violation of Labor Code §§ 226.7 and 512; (2) failure to provide minimum wage in violation of Labor Code § 1197; (3) failure to provide overtime in violation of Labor Code § 510; (4) failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (5) failure to pay all wages due at separation in violation of Labor Code §§ 201-203.

2.2 Plaintiffs Wael Kanafani and David Uribe filed their initial class action complaint (the "*Kanafani* action") on November 4, 2022, against Mitra VI, LLC and Denali Midco 2 LLC. Plaintiffs Katie Rosas ("Rosas") and Theresa Rau ("Rau") filed a representative PAGA action (the "Rosas action") on November 18, 2022, against Mitra VI, LLC, Denali Midco 2 LLC and TSG Consumer Partners LP. On January 20, 2023, Plaintiffs McGee and Pascual filed a Notice of Violations with the LWDA and served the same on Defendants. On July 11, 2023, Kanafani and Uribe filed a First Amended Complaint ("FAC") adding named plaintiffs Michael McGee, Zachary McGordon and Immanuel Pascual ("Pascual"), in addition to a PAGA claim. McGordon provided notice on May 18, 2023. The *Kanafani* FAC alleges the following causes of action: (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages in violation of Labor Code §§ 1194, 1197, 1197.1; (3) failure to pay overtime in violation of Labor Code Labor Code §§ 510 et seq.; (4) failure to provide required meal periods in violation of Labor Code §§

226.7 and 512; (5) failure to provide required rest periods in violation of Labor Code §§ 226.7 and 512; (6) failure to reimburse employees for required expenses in violation of Labor Code § 2802; (7) failure to provide wages when due in violation of Labor Code §§ 201, 202, 203; (8) failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (9) violation of the PAGA.

2.3 Due to the overlap been the *Kanafani* and *Rosas* actions, on July 10, 2023, the two actions were consolidated, with the *Kanafani* action designated as the lead case before this Court. Following motion practice related to the applicability and scope of Defendants' arbitration agreement – and while Defendants' appeal of the Court's order denying a motion to compel arbitration in the *Rosas* action was pending – the parties agreed to schedule a mediation on October 30, 2024, with experienced mediator Tripper Ortman.

2.4 Prior to the mediation, the Parties engaged in significant informal discovery related to the scope and parameters of the putative Class and putative PAGA Employee group as well as all of Plaintiff's claims. The documents and data produced by Defendants to Plaintiffs consisted of hundreds of pages of relevant policy documents, handbooks, personnel records, wage statements, key data on the number of putative class members, workweeks in the Class Period, pay periods in the PAGA Period, separated employees, as well as the relevant pay and time data for all Class Members.

2.5 Following extensive informal discovery, the parties participated in a full-day mediation with Mr. Ortman on October 30, 2024, which involved extensive, arms-lengths negotiations. With Mr. Ortman's assistance, the parties eventually reached the key terms of a settlement and memorandum of understanding that was fully executed on November 15, 2024, and then in this long-form Settlement Agreement.

2.6 <u>Benefits of Settlement to Class Members and PAGA Employees</u>.

Plaintiffs and Class Counsel believe in the merits of their claims, but recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation as well as the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are likewise aware of the burdens of proof necessary to establish liability for the Released Class Claims and Released PAGA Claims asserted in the Action, both generally and in response to Defendants' defenses, and the potential difficulties in establishing damages for Class Members and PAGA Employees. Plaintiffs and Class Counsel have also taken into account Defendants' agreement to enter into a settlement that confers substantial relief upon Class Members and PAGA Employees in a timely manner. Based on the foregoing, Plaintiffs and Class Counsel have determined the terms set forth in this Settlement Agreement to be fair, adequate, and reasonable and in the best interests of the Class Members and PAGA Employees.

2.7 Defendants' Reasons for Settlement. Defendants believe Plaintiffs' individual and representative claims are without merit and deny all of the allegations of wrongdoing and liability. Defendants believe, however, that further litigation would be protracted, burdensome, expensive, and contrary to the best interests of Defendants and their employees. Defendants have already devoted substantial time, energy, and resources to defending this litigation, and unless there is a settlement, that situation will continue. In light of this, Defendants believe the Settlement is the best way to resolve the litigation while minimizing further burden and expenditures.

3. TERMS OF SETTLEMENT AGREEMENT.

The Parties agree as follows:

3.1 Class Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court certify a class of Class Members.

3.2 Appointment of Class Representatives & Employment Status. Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as representatives for the Class.

3.3 Appointment of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that JCL Law Firm, APC, Zakay Law Group, APLC, and Sullivan & Yaeckel Law Group, APC shall be appointed as Class Counsel for the Class.

3.4 Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that APEX Class Action, LLC shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for establishing a toll-free telephone number and a mailing address for receipt of Class Member communications; reviewing and responding to Class Member inquiries; establishing the number of relevant workweeks and pay periods applying to each Class Member based on Defendants' records; resolving any disputes or questions regarding Class Member Information and the calculation of Individual Settlement Payments and workweek calculations for Class Members and pay period calculations for PAGA Employees (in accordance with Paragraph 10.1 below); preparing, printing and mailing the Notice of Settlement (*i.e.*, **Exhibit A**) to Class Members; receiving and reviewing Requests for Exclusion and Notices of Objection, if any, submitted by Class Members; calculating Individual Settlement Payments; providing weekly written status reports to Defense Counsel and Class Counsel; providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; mailing Individual Settlement Payments to Participating Class Members and PAGA Employees; timely paying the PAGA Award, Service Awards, Class Counsel Fees Award and Class Counsel Costs Award to, respectively, the LWDA, Plaintiffs, and Class Counsel pursuant to the terms of this Settlement Agreement; printing and providing Participating Class Members, Plaintiffs and Class Counsel with tax forms as required under this Settlement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; issuing the uncashed check funds to the California State Controller and any obligations related thereto, and for such other tasks as the Parties mutually agree and/or the Court may require. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents required by administration of this Settlement Agreement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation shall be a Settlement Administration Cost. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs. Each of the Parties represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. No person shall have any claim against the Released Parties, Plaintiffs, Class Counsel or the Settlement Administrator based on the mailings, distributions or payments made in accordance with this Settlement Agreement.

3.5 Conditional Nature of Stipulation for Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification of the Released Class Claims asserted on behalf of the Class Members. Should for whatever reason the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Released Class Claims or Class should be certified in a non-Settlement context in the Action or in any other lawsuit. SSCW expressly reserves the right to oppose claim or class certification in this or any other action should this Settlement not become final, effective and binding (*i.e.*, if the Effective Date is not reached).

4. <u>CONSIDERATION AND SETTLEMENT DISTRIBUTION</u>.

4.1 <u>Settlement Value Provided by Defendants</u>. The maximum value that Defendants are providing under this Settlement Agreement in order to settle the Action is the Total Settlement Amount of Eight Hundred Sixty Thousand Dollars ($860,000), unless that Total Settlement Amount is increased pursuant to Paragraph 4.2.5.4 below. The Total Settlement Amount shall constitute the entire consideration provided by Defendants pursuant to this Settlement Agreement and Defendants shall not be required to pay any amount above the Total Settlement Amount in connection with this Settlement for any purpose, with the sole exception being the payment of any employer-side taxes due on Individual Settlement Payments attributable to alleged lost wages. The Parties agree Defendant TSG Consumer Partners LP is party to this Settlement Agreement only for the purposes of agreeing not to oppose the Settlement and to obtain a release of claims as a Defendant and designated beneficiary, but that the Total Settlement Amount (and any employer-side taxes due under this Agreement) will be paid entirely by the other Defendants– *i.e.*, Mitra VI, LLC and Denali Midco 2 LLC.

4.2 <u>Distribution of the Monetary Portion of the Total Settlement Amount</u>. The Total Settlement Amount ($860,000) shall be used to pay: (1) the Class Counsel Fees Award and Class Counsel Costs Award; (2) the Settlement Administration Costs; (3) Plaintiffs' Service Awards; (4) the PAGA Award; and (5) Individual Settlement Payments.

4.2.1 <u>Class Counsel Fees Award and Class Counsel Costs Award</u>. The Settlement Administrator shall pay the Class Counsel Fees Award and Class Counsel Costs Award from the Total Settlement Amount. Defendants agree not to oppose any application by Class Counsel for a Class

Counsel Fees Award not to exceed one third of the Total Settlement amount, or Two Hundred Eighty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($286,666.67), which will be distributed to Class Counsel. Defendants further agree not to oppose any application by Class Counsel for a Class Counsel Costs Award not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) which will be distributed to Class Counsel. The Settlement Administrator shall pay the Court-approved Class Counsel Fees Award and Class Counsel Costs Award within ten (10) calendar days following the date on which Defendants fund the Settlement. Class Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Class Counsel Fees Award and Class Counsel Costs Award are issued. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payments made pursuant to this Paragraph. In the event that the Court awards less than the full amount requested for the Class Counsel Fees Award and/or Class Counsel Costs Award, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Defendants' delivery of the Total Settlement Amount to the Settlement Administrator as specified in this Settlement shall complete Defendants' obligation to fund the Settlement, including without limitation Defendants' obligation to pay the Court-awarded Class Counsel Fees Award and Class Counsel Costs Award. Neither Class Counsel nor any other counsel shall be entitled to any amount of attorneys' fees or costs separate and apart from the Class Counsel Fees Award and Class Counsel Costs Award allowable under this Settlement Agreement in connection with this Settlement or the claims released herein.

4.2.2 Settlement Administration Costs. The Settlement Administrator shall be paid Settlement Administration Costs from the Total Settlement Amount, in an amount not to exceed Seventeen Thousand Dollars ($17,000). Should the Settlement Administration Costs exceed $17,000, the Parties agree that such additional reasonably incurred and necessary costs shall be paid exclusively from the Total Settlement Amount, subject to Court approval. The Settlement Administrator shall receive the Settlement Administration Costs within ten (10) calendar days following the date on which Defendants funds the Settlement. In the event the Court awards less than the full amount set aside for

Settlement Administration Costs, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members.

4.2.3 Plaintiff's Service Awards. The Settlement Administrator shall pay Plaintiffs Service Awards from the Total Settlement Amount. Defendants agree not to oppose any application by Plaintiffs for a Service Award not to exceed Ten Thousand Dollars ($10,000) to each Plaintiff (*i.e.*, $70,000 total), as consideration for their Complete and General Release of Claims and for their time and effort in prosecuting the Action via Class Counsel. The Settlement Administrator shall pay the Service Awards to Plaintiffs within ten (10) calendar days following the date on which Defendants funds the Settlement. Plaintiffs agree to provide the Settlement Administrator with an executed IRS Form W-9 before the Service Awards are issued. The Settlement Administrator shall issue appropriate tax form(s) to Plaintiffs for this payment. Plaintiffs shall be solely and legally responsible for paying any and all applicable taxes on the Service Awards and shall hold Defendants and Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Service Awards. In the event the Court awards less than the full amount requested for the Service Awards, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members. Plaintiffs shall not have the right to revoke their agreement to the Settlement on the grounds the Court does not approve any or all of the requested Service Awards.

4.2.4 PAGA Award. The Settlement Administrator shall pay the PAGA Award ($43,000) from the Total Settlement Amount and distribute the PAGA Award within ten (10) calendar days after the date when Defendants funds the Settlement following the Effective Date. Specifically, within ten (10) calendar days after the date when Defendants funds the Settlement, the Settlement Administrator shall mail a check payable to the California Labor & Workforce Development Agency for seventy-five percent (75%) of the PAGA Award or Thirty-Two Thousand Two Hundred and Fifty Dollars ($32,250). The remaining twenty-five percent (25%) or Ten Thousand Seven Hundred and Fifty Dollars ($10,750) will be distributed to the PAGA Employees. Class Members who are also PAGA Employees and submit a Request for Exclusion will receive only a payment for their prorated portion of the 25% of the PAGA Award available for distribution to PAGA Employees (who cannot opt out of the PAGA portion of the Settlement).

4.2.5 Individual Settlement Payments. The Settlement Administrator shall pay the Individual Settlement Payments from the Net Distribution Fund and will mail them by First Class U.S. Mail to Class Members' last known mailing address within ten (10) calendar days following the date when Defendants funds the Settlement as specified in Paragraph 10.1.2 (Funding the Settlement) below. Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after mailing, *i.e.*, the Void Date. The Parties agree that any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Individual Settlement Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California State Controller Unclaimed Property Fund.

4.2.5.1 Settlement Payment Calculation: Individual Settlement Payments to Participating Class Members and payments to PAGA Employees for their prorated portion of the PAGA Award will be paid if, and only if, the Court issues the Final Approval Order and the Effective Date occurs.

a. Workweek Calculations for Individual Settlement Payments to Participating Class Members: Defendants will identify the number of Workweeks each of the Participating Class Members worked during the Class Period ("Total Class Pay Workweeks"). In identifying the number of Workweeks meeting these criteria and determining who is a Class Member, Defendants' business records identifying this information through Defendants' best efforts will govern and are presumed to be accurate and correct. Any challenges regarding estimated Workweeks assigned to each Class Member (which will be specified in the Class Notice) must be raised prior to the Response Deadline and finally decided by the Settlement Administrator prior to the Final Approval Hearing. After taking into consideration any information and documentation provided by Defendants, Participating Class Members and/or other current or former employees of Defendants, the Settlement Administrator's determination of Workweek calculations for individual settlement payments to each Participating Class Member will be final and binding. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Distribution Fund (less the 25% of the PAGA Award to be distributed to PAGA Employees) by the total number of Workweeks worked by all Participating Class Members during the Class Period ("Class Workweek Value"). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will multiply the individual's Total Class Workweeks by the Class Workweek Value. Each Participating Class Member's Workweeks will be calculated rounding up to the nearest Workweek.

b. Calculations for Payments to PAGA Employees for Their Portion of PAGA Award: For PAGA Employees, Defendants will identify the number of Pay Periods each PAGA Employee worked during the PAGA Period ("Total PAGA Workweeks"). In identifying the number of Pay Periods meeting these criteria and determining who is a PAGA Employee, Defendants' business records identifying this information through Defendants' best efforts will govern and are presumed to be accurate and correct. Any challenges regarding estimated Pay Periods assigned to each PAGA Employee must be raised prior to the Response Deadline and finally decided by the Settlement Administrator prior to the Final Approval Hearing. After taking into consideration any information and documentation provided by Defendants, PAGA Employees and/or other current or former employees of Defendants, the Settlement Administrator's determination of Pay Period calculations for each PAGA Employee will be final and binding. The value of each PAGA Pay Period shall be determined by the Settlement Administrator by dividing the 25% of the PAGA Award allocated for PAGA Employees (*i.e.*, $10,750) by the Total PAGA Pay Periods for all PAGA Employees ("PAGA Workweek Value"). A Class Member who is also a PAGA Employee will receive a payment for their prorated portion of the PAGA Award even if s/he opt-outs of the Class settlement and will be bound by the release of the Released PAGA Claims released through this Settlement. Any checks issued to PAGA Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after mailing, *i.e.*, the Void Date. The Parties agree that any unclaimed funds as a result of the failure to cash individual PAGA Award payments by the Void Date shall be transmitted by the Settlement Administrator to the California State Controller Unclaimed Property Fund.

4.2.5.2 Tax Treatment of Settlement Payments. Each Individual Settlement Payment shall be allocated between taxable and non-taxable consideration as follows: twenty-five percent (25%) will be allocated to alleged unpaid wages for which an IRS Form W-2 will issue and seventy-five percent (75%) will be allocated to alleged penalties and interest for which an IRS Form 1099 will issue. The Settlement Administrator will be responsible for calculating the employee-side and employer-side taxes owed on the wage portion of each Participating Class Member's Individual Settlement Payment and paying these amounts to the appropriate state and federal agencies, within the timing required by applicable state and/or federal law. The employee-side taxes owed will be paid from the Net Distribution fund and withheld from Individual Settlement Payments. Employer-side taxes owed on the wage portion of Individual Settlement Payments will be calculated and paid by the Settlement Administrator after such employer-side tax amounts are paid by Defendants to the administrator separate from and in addition to the Total Settlement Amount. The Parties make no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement and Class Members are not relying on any statement or representation by the Parties in this regard. Class Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

4.2.5.3 Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision of this Settlement, and no written communication or disclosure between or among the Parties, Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (b) has not entered into this Settlement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

4.2.5.4 <u>Escalator Clause/Option</u>:

As of the date of the mediation (i.e., October 30, 2024), Defendants estimated there were approximately 1,747 Settlement Class Members who worked approximately 36,032 Workweeks during the Class Period. In the event the total Workweeks worked by Class Members exceeds 10% over 36,032 (i.e., 39,635) at the end of the Class/PAGA Period, Defendants may, at their sole discretion either: (1) elect to increase the Gross Settlement by an amount equal to a pro-rata increase of the Net Settlement Amount to address an increase in workweeks above 39,635 or (2) have the Class/PAGA Period end the workweek ending date when Class Members collectively worked a number of workweeks closest to 37,500 workweeks.

5. <u>RELEASES</u>.

5.1 <u>Release</u>. As of the Effective Date, Plaintiffs, Participating Class Members, PAGA Employees and the State of California (acting through Plaintiffs as its authorized PAGA representatives) release the Released Parties from all Released Class Claims and Released PAGA Claims for the duration of the Class Period and PAGA Period, respectively. "Released Parties" means Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP, and their subsidiaries, affiliates and/or parents (including without limitation SSCW Holding Company, Inc.), each of their respective successors and predecessors in interest; all of their respective officers, directors, employees, administrators, attorneys, fiduciaries, trustees, beneficiaries and agents; and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers. The Class Member Released Claims include all claims that Plaintiffs alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* (Case No: 37-2022-00044660-CU-OE-CTL) and *Rosas et al.* (Case No. 37-2022-00046807-CU-OE-CTL) actions), all amended Complaints in the Action, and all exhibits to those Complaints such as Plaintiffs' LWDA notice letters) during the Class Period. The Released Class Claims will apply to the Released Parties and will include without limitation Plaintiffs' claims for (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required expenses; (7) failure to provide wages when due; (8) failure to provide accurate itemized wage statements (both as a derivative and direct theory); (8) failure to keep complete and accurate records; and (9) failure to pay all wages due at separation. The PAGA Released Claims released by PAGA Employees include all PAGA Claims from which Plaintiff, the PAGA Employees, and the State of California are fully releasing Defendants and the Released Parties under this Settlement during the PAGA Period, including all claims under PAGA against the Released Parties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* and *Rosas et al.* Complaints, all amended Complaints in the Action, and all exhibits to those Complaints) and in Plaintiffs' LWDA notice letters during the PAGA Period. The Released PAGA Claims shall include without limitation all claims under PAGA based on the underlying alleged Class Claims. This release will be binding on all PAGA Employees and the State of California and there shall be no right for any PAGA Member, including any plaintiff to the Action, to opt out of this release if the Settlement is approved by the Court. Class Counsel agree to provide timely notice to the LWDA of all settlement-related notices required under PAGA, and to the extent necessary to effectuate a complete release of the Released PAGA Claims, Plaintiffs also agree to submit amended PAGA Notices to the LWDA. The releases in this Agreement include a release of any right to recover attorneys fees or costs related to the resolution of this Action or the Released Class Claims and Released PAGA Claims except for those attorneys fees and costs explicitly specified in this Agreement. It is also the intent of the Parties that the Final Approval Order and judgment approving this Agreement and entered by the Court shall have full *res judicata* effect and be final and binding upon Participating Class Members, PAGA Employees and the State of California regarding the Class Member Released Claims and PAGA Released Claims.

5.2 <u>Plaintiffs Complete and General Release</u>. In consideration for the promises and payments set forth in this Settlement Agreement, to which Plaintiffs are otherwise not entitled, all Plaintiffs – including Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau – agree to provide a Complete and General Release and a 1542 Waiver to the Released Parties, and each of them, upon the Effective Date occurring. Plaintiffs also agree and acknowledge that as of the date of this Settlement, they are no longer employees of Defendants or any of the Released Parties, and that except for the amounts specified in this Settlement to which they are entitled, Defendants and the Released Parties do not owe them any further amounts for any reason and that all prior potential or actual disputes are fully resolved to the maximum extent permitted by law by way of this Settlement. The "Complete and General Release" means an irrevocable and unconditional release given only by the named Plaintiffs in the Action, releasing the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring during or related to Plaintiffs' employment, and/or the Action, including but not limited to all of the Class Claims and including without limitation all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental to or arising out of any act or omission committed or omitted by the Released Parties (defined below) during or related to Plaintiffs' employment with or separation from Defendants, including any and all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental that arose or may have arisen before or through the end of the Class Period and/or arising out of Plaintiffs' employment with Defendants Mitra VI, LLC and Denali Midco 2 LLC and/or the cessation thereof. This release includes a waiver of California Civil Code section 1542 (*i.e.*, 1542 Waiver). This release by Plaintiffs also includes, but is not limited to, a release of all claims under (a) the California Civil Code, (b) the California Fair Employment and Housing Act, (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*, (d) the Employment Act of 1967, (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities Act 42 U.S.C. § 12101, *et. seq.*, as amended, (j) the Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control Act, as amended, (m) any other state, federal, and local law, regulation and ordinance dealing with discrimination in employment, disability, wrongful discharge, and retaliation for exercising any right or participating or engaging in any activity, (n) the Occupational Safety and Health Act, as amended, (o) the Sarbanes-Oxley Act of 2002, as amended, (p) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (q) the Worker Adjustment and Benefit Protection Act of 1990, as amended, (r) the Worker Adjustment and Retraining Notification Act, as amended, (s) any federal, state or common law claim or cause of action for breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, libel, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory estoppel, any other tort or negligence claim, or obligations arising out of any of Defendants' employment policies or practices, employee handbooks, and/or any statements by any employee or agent of Defendants whether oral or written, and (t) any federal, state or common law claim or cause of action for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and total release of any claims, whether specifically enumerated herein or not, that Plaintiffs might have or have had, that exists or ever has existed related to their employment with or separation from Defendants to the maximum extent permitted by law.

Notwithstanding the foregoing, Plaintiffs do not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC") or the National Labor Relations Board ("NLRB"), subject to the condition that Plaintiffs agree not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and agrees that he understands that such limitation does not in any way restrict his ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Settlement Agreement. Plaintiffs also do not waive any rights with respect to, or release Released Parties from, any claims for California Workers' Compensation benefits (except that Plaintiffs hereby releases and waives any claims that, as a result of his separation, he is entitled to additional benefits or payments). Further, Plaintiffs do not release any claim for unemployment compensation benefits. Finally, Plaintiffs do not release any claim that cannot be released as a matter of law by private contract, or for breach of the terms of the Settlement Agreement between Plaintiffs and Defendants.

5.2.1 No Pending or Future Lawsuits by Plaintiffs. Other than this Action and Plaintiffs' LWDA notice letters attached as exhibits to their Complaints, Plaintiffs represent they do not have any pending or planned lawsuits, administrative complaints or charges against Defendants or the Released Parties in any local, state, or federal court or administrative agency. Plaintiffs further acknowledge that all claims raised in the Action shall be fully and finally extinguished by virtue of this Settlement Agreement and the Court's Final Approval Order. Plaintiffs also represent they will not bring any action in the future in which Plaintiffs seek or may seek to recover any damages from Defendants or the Released Parties whatsoever relating to or arising from Plaintiffs' hiring, employment with or separation from Defendants or any Released Party, which occurred during the Class Period other than an action to enforce Plaintiffs' rights under this Settlement Agreement if necessary.

6. PROCESS FOR SEEKING PRELIMINARY APPROVAL OF THE SETTLEMENT.

6.1 Motion for Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Plaintiffs will submit this Settlement Agreement to the Court for Preliminary Approval, asking the Court to issue a Preliminary Approval Order approving the Settlement, substantially in the form attached as **Exhibit B**. Plaintiffs' submission will include this Settlement Agreement, including **Exhibits A-C**, and any motions, memoranda and evidence as may be necessary for the Court to determine that this Settlement Agreement is fair, adequate and reasonable.

6.2 LWDA Notice of Settlement. Pursuant to California Labor Code section 2699(l), Class Counsel will provide a copy of this Settlement Agreement to the LWDA concurrently with Class Counsel's filing of the motion for Preliminary Approval. Class Counsel will also file a declaration in support of Plaintiffs' motion for Preliminary Approval confirming that Class Counsel has submitted the Settlement Agreement to the LWDA in compliance with California Labor Code section 2699(l). The Parties intend to and believe the notice pursuant to the procedures described in this Paragraph complies with the requirements of the PAGA, and the Parties will request the Court adjudicate the validity of the notice in the motion for Final Approval of the Settlement.

7. SETTLEMENT NOTICE PROCEDURES.

7.1 Class Information. No more than ten (10) business days after entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Settlement to Class Members.

7.2 Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Settlement Administrator will conduct a national change of address search for the most current address of all former employee Class Members and will update such addresses as necessary. Fourteen (14) calendar days after receipt of the Class Information, the Settlement Administrator shall mail the Notice of Settlement (**Exhibit A**) to all Class Members by First Class U.S. Mail. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

7.3 Undeliverable Notices. Any Notice of Settlement returned to the Settlement Administrator as non-deliverable on or before a date seven (7) calendar days before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall perform a and a skip trace to locate a new address. If those measures are not successful, the Settlement Administrator shall have no further obligation to mail the Notice of Settlement to a Class Member. Class Members to whom the Notice of Settlement is re-sent shall have fourteen (14) calendar days thereafter or until the Response Deadline has expired, whichever is later, to mail the Request for Exclusion or Notice of Objection to the Settlement Administrator. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely mailed his/her Request for Exclusion or Notice of Objection on or before the relevant deadline. If a Class Member's Notice of Settlement is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice of Settlement shall not be re-mailed. If, for any reason, a Notice of Settlement is non-deliverable, the Settlement Administrator will not mail an Individual Settlement Payment to the Class Member. Rather, the Settlement Administrator will hold the Individual Settlement Payment until the Void Date to make it available to the Class Member upon request, with proof of identity. If the payment is not claimed by the Void Date, the funds shall be delivered to the California State Controller Unclaimed Property Fund in the name of the Class Member along with the funds for uncashed checks.

7.4 Notice Satisfies Due Process. Compliance with the notice procedures specified in this Settlement Agreement shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel or Defense Counsel to provide notice of the proposed Settlement. In the event the procedures in this Settlement Agreement are followed and the intended recipient of a Notice of Settlement still does not receive the Notice, the intended recipient shall remain a Class Member and will be bound by all terms of the Settlement and any Final Approval Order entered by the Court if the Settlement becomes Effective. Consistent with the California Code of Civil Procedure, it will be presumed that if an envelope has not been returned undeliverable within forty (40) days of the mailing date of the Notice of Settlement to the Class Member, the Notice was delivered.

8. PROCEDURES FOR OPTING OUT AND OBJECTING.

8.1 Requests for Exclusion (Opt-Outs). The Notice of Settlement shall state that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. To be valid, the Request for Exclusion: (1) must contain the full name, address, and last four digits of the social security number or employee number of the person requesting exclusion; (2) must be hand signed by the person requesting exclusion; and (3) must state in substance: "I wish to exclude myself from the Settlement in the action titled *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al., Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE- CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807)*. I understand that by requesting to be excluded, I will receive no money from the Class Action Settlement." If the Request for Exclusion does not contain the information listed in (1)-(3) or is not postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address, it will not be deemed a timely and valid Request for Exclusion from the Class. If the Request for Exclusion is received by the Settlement Administrator prior to the Response Deadline and does not include all the required information, the Settlement Administrator will attempt to contact the Class Member to obtain the missing information and clarify the Class Members intentions to the extent reasonably possible. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who submits a timely and valid Request for Exclusion from the Class will not be entitled to any monetary recovery under the Settlement and will not be bound by the terms of the Settlement as it relates to the Class Member's Released Class Claims, with the exception that if the Class Member is also a PAGA Employee, s/he will continue to be bound by the release of the Released PAGA Claims (because Class Members cannot opt out of the PAGA portion of the Settlement). Any Class Member who submits a timely and valid Request for Exclusion will not have any right to object, appeal, or comment on the Settlement. Class Members who fail to submit a timely and valid Request for Exclusion on or before the Response Deadline shall be members of the Class (i.e., a Participating Class Member) and will be bound by all terms of the Settlement and the Final Approval Order entered in this Action. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a complete list of all Class Members who have submitted timely and valid Requests for Exclusion, including their name and social security number or employee number.

8.2 Notices of Objections. The Notice of Settlement shall state that Class Members who wish to object to the Settlement must submit a written Notice of Objection to the Settlement Administrator by the Response Deadline. Only Participating Class Members (i.e., Class Members who do not opt out) are permitted to object to the Settlement Agreement. To be valid, the Notice of Objection: (1) must contain the full name, address, and last four digits of the social security number or employee number of the Class Member; and (2) must be hand signed by the Class Member. The Notice of Objection should also (3) state the case name and number, *i.e.*, *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al., Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE- CTL (consolidated with San Diego Superior Court Case No. 3 7-2022-00046807)*, the basis for the objection, and if the Class Member intends to appear at the Final Approval Hearing. If the Notice of Objection does not contain the information listed in (1)-(3) or is not filed or postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address, it will not be deemed a timely and valid Notice of Objection to this Settlement. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Notice of Objection has been timely submitted. Class Members who fail to submit a timely and valid Notice of Objection or fail to appear at the Final Approval Hearing to object in person verbally shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement. Class Members who submit a timely and valid Notice of Objection will also have a right to appear at the Final Approval Hearing to have their objections heard by the Court. A Class Member does not need to submit a written Notice of Objection to object in person verbally at the Final Approval Hearing. The Settlement Administrator shall forward all written objections to Class Counsel and Defense Counsel within 3 days of receipt.

8.3 No Solicitation of Exclusions or Objections. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a Notice of Objection to or Request for Exclusion from the Settlement or to appeal from the Court's Final Approval Order. Class Counsel shall not represent Class Members with respect to any objections or appeals to this Settlement.

8.4 Option to Terminate Settlement. Defendants, at their sole discretion, shall have the right, but not the obligation, to revoke the Settlement if five percent (5%) or more of the total number of Class Members timely submit a Request for Exclusion. Defendants shall exercise their revocation right, if at all, within fourteen (14) calendar days of the Response Deadline by providing written notice to Class Counsel. If Defendants exercise a right to void the Settlement pursuant to this Paragraph, this Settlement Agreement and any related settlement documents shall be null and void, and any class certified for settlement purposes will be vacated. In such an event, neither this Settlement Agreement, related settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendants shall retain the right to challenge all claims and allegations in the action, to assert all applicable defenses, and to dispute the propriety of class certification on all applicable grounds. Further, if Defendants revokes the Settlement pursuant to this Paragraph, it will be solely responsible for any administration costs incurred as of the revocation date.

9. FINAL APPROVAL PROCEDURES.

9.1 Settlement Administrator Declaration in Support of Final Approval. No fewer than thirty (30) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a declaration of due diligence detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the full names of any Class Members who opt out of the Settlement, the number of objections received, the amount of the average, lowest, and highest Individual Settlement Payments to Participating Class Members, the amount of the average, lowest, and highest PAGA Employee Payments, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide. Class Counsel shall be responsible for working with the Administrator to timely submit the declaration of due diligence to the Court.

9.2 Motion for Final Approval. As soon as practicable after the Response Deadline, Plaintiffs will file a motion for Final Approval, asking the Court to issue a Final Approval Order substantially in the form attached as **Exhibit C**. Plaintiffs' submission will include any motions, memoranda and evidence as may be necessary for the Court to determine that this Settlement Agreement is fair, adequate and reasonable.

9.3 Final Approval Hearing. The Parties will request that the Court hold a Final Approval Hearing approximately 120 days after the Preliminary Approval Date or as soon thereafter as the Court's calendar permits, where objections, if any, may be heard and the Court shall determine whether the Settlement should be finally approved, and if so, the amounts payable for: (1) Class Counsel Fees Award; (2) the Class Counsel Costs Award; (3) Plaintiff's Service Award; (4) Individual Settlement Payments; and (5) Settlement Administration Costs.

9.4 Entry of Final Approval Order. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall request that the Court enter a Final Approval Order, substantially in the form of **Exhibit C**. After granting final approval of the Settlement and entering judgment, the Court shall retain jurisdiction over the Parties to enforce and implement the terms of the judgment.

10. ADMINISTERING THE SETTLEMENT.

10.1 Funding and Allocation of Settlement.

10.1.1 Settlement Accounting. No more than ten (10) calendar days after the Final Approval Order, the Settlement Administrator will provide the Parties with an accounting of all anticipated payments from the Settlement Fund Account, including: (1) the total amount of Individual Settlement Payments; (2) the PAGA Award; (3) Plaintiffs' Service Awards; (4) the Class Counsel Fees Award; (5) the Class Counsel Costs Award; and (6) Settlement Administration Costs, all as specified in this Settlement Agreement and approved by the Court.

10.1.2 Funding the Settlement. Within fifteen (15) calendar days following the Effective Date of the Settlement, Defendants shall fund the Settlement by providing the Total Settlement Amount to the Settlement Administrator.

10.1.3 Distributing The Settlement: The Settlement Administrator shall deposit the funds in the Settlement Fund Account and will disburse the funds in the manner and at the times set forth in this Settlement Agreement, including paying the Individual Settlement Payments, Class Counsel Fees Award, Class Counsel Costs Award, Settlement Administration Costs, Plaintiffs' Service Awards, and PAGA Award within ten (10) calendar days following the date on which Defendants fund the Settlement.

10.1.4 Resolving Disputes Regarding Class Information & Workweeks: Defendants' business records will govern for purposes of administering the Settlement. Defendants will use its best efforts to identify, collect, and provide accurate Class Information to the Settlement Administrator. Defendants' business records are presumed to be accurate and correct.

Each Class Member's estimated Workweeks will be specified in the Class Notice. Class Members can challenge the estimated Workweeks by submitting information and documentation to the Settlement Administrator on or before the Response Deadline to support the challenge. The Settlement Administrator will notify Class Counsel and Defendants' counsel of any challenges and give Defendants the opportunity to investigate the challenge. The Settlement Administrator's determination will be final and binding and must be made prior to the Final Approval Hearing. In resolving disputes, any timely and successful challenges will potentially affect only how the Net

Distribution Fund is apportioned to Participating Class Members and PAGA Employees but cannot result in Defendants paying any greater amount to fund this Settlement than the maximum Total Settlement Amount specified in this Settlement Agreement.

Class Members, PAGA Employees, and other current or former employees have no right to assert any claim that they were improperly excluded from the Settlement or that their individual payment was improperly calculated through ignorance, oversight, error or otherwise after the Settlement Administrator's distribution of Individual Settlement Payments in accordance with this Agreement and the Court's Final Approval Order.

10.2 No Effect on Employee Benefits. The Individual Settlement Payments made to Participating Class Members and PAGA Payments made to PAGA Employees under this Agreement shall not be utilized to calculate any additional benefits under any Collective Bargaining Agreements or union-sponsored benefits (if applicable), and/or benefit plans to which any Participating Class Members or Class Members or PAGA Employees may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Participating Class Members, Class Members and PAGA Employees may be entitled under any benefit plans.

11. MISCELLANEOUS PROVISIONS.

11.1 No Admission of Liability. Defendants, on behalf of themselves and the respective Released Parties, specifically deny all of the allegations in the operative Complaints and Plaintiffs' LWDA letters. Defendants further deny the allegations that the Class Members and PAGA Employees were harmed by the conduct alleged in the Action. This Settlement Agreement is a compromise of highly disputed claims. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Defendants reserves the right to assert any and all available defenses to the Claims in this Action in the event this Settlement does not become final and binding for any reason.

11.2 Nullification of Settlement Agreement. In the event: (1) the Court does not enter the Preliminary Approval Order as provided herein; (2) the Court does not enter a Final Approval Order as provided herein; or (3) the Effective Date does not occur for any other reason after good faith efforts by the Parties to obtain approval consistent with this Agreement to address questions or concerns (if any) of the Court, this Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be paid by the Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order or from an order rejecting any motion to intervene, or any other appellate review is sought, Settlement administration shall be stayed pending final resolution of the appeal and Defendants will not be required to fund this Settlement until and unless the Effective Date is reached.

11.3 Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in **Exhibits A-C** attached, which are incorporated by this reference as though fully set forth herein. All **Exhibits A-C** to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience only and do not constitute a part of this Settlement Agreement.

11.4 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court. The Parties further agree that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310, the time to bring this action to trial is tolled from the time this Agreement is executed by all Parties through the entire period of this settlement process.

11.5 Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument signed by Defense Counsel and Class Counsel or their successors-in-interest.

11.6 Entire Agreement. This Settlement Agreement and the attached **Exhibits A-C** constitute the entire agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its **Exhibits A-C** other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and **Exhibits A-C**.

11.7 Authorization to Enter Into Settlement Agreement. Defense Counsel and Class Counsel warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The persons signing this Settlement Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Settlement Agreement on behalf of Defendants. Plaintiffs represent and warrant they are authorized to sign this Settlement Agreement and that they have not assigned any Class Claim or PAGA Claim covered by this Settlement to a third-party. The Parties and their counsel agree to cooperate with each other fully and to use their best efforts to effect the implementation of the Settlement. Such cooperation includes, but is not limited to, execution of such other documents and the taking of such other actions as may be reasonably necessary to fulfill the terms of this Settlement. 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 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

11.8 Binding On Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11.9 California Law Governs. All terms of this Settlement Agreement and **Exhibits A-C** hereto shall be governed by and interpreted according to the laws of the State of California.

11.10 Participation in Drafting Settlement Agreement. The Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

11.11 Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedent so as to define all provisions of this Settlement Agreement valid and enforceable.

11.12 Publicity. Plaintiffs and Class Counsel agree to discuss the terms of this Settlement only in filings submitted to a court or court hearings to establish their adequacy to serve as a class representatives and/or Class Counsel in this Action, in declarations submitted to a court in support of a motion for attorneys' fees in this Action, and in discussions with Class Members in the context of administering this Settlement. Plaintiffs and Class Counsel agree not to otherwise publicize this Settlement, including, but not limited to, issuing press releases, posting summaries online, or otherwise speaking to the press regarding the terms of this Settlement. If Plaintiffs or Class Counsel are contacted by members of the press or others, they will respond that the lawsuit exists and has been resolved, and may provide any information regarding the Settlement and approval process.

[Continued on Next Page]

11.13 Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be in writing and sent to:

TO PLAINTIFF:	TO DEFENDANTS:
ZAKAY LAW GROUP, APLC Shani O. Zakay (State Bar #277924) shani@zakaylaw.com 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Telephone: (619) 255-9047 JCL LAW FIRM, APC Jean-Claude Lapuyade (State Bar #248676) jlapuyade@jcl-lawfirm.com 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Telephone: (619) 599-8292 SULLIVAN & YAECKEL LAW GROUP, APC Eric K. Yaeckel (State Bar #274608) yaeckel@sullivanlawgroupapc.com Ryan T. Kuhn (State Bar #324538) ryan@sullivanlawgroupapc.com 2330 Third Avenue San Diego, CA 92101 Telephone: (619) 702-6760 Facsimile: (619) 702-6761	Joshua Daniel Levine, Bar No. 239563 jdlevine@littler.com Jocelyn D. Hannah, Bar No. 224666 jhannah@littler.com LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, California 92101.3577 Telephone: 619.232.0441 Fax No.: 619.232.4302 Attorneys for Defendants MITRA VI, LLC, DENALI MIDCO 2 LLC, AND TSG CONSUMER PARTNERS LP

11.14 Execution by Class Members. It is agreed it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice of Settlement will therefore advise all Class Members of the binding nature of the Settlement and its Released Class Claims and Released PAGA Claims, which release shall have the same force and effect as if each Participating Class Member executed this Settlement Agreement individually.

11.15 Execution by Plaintiffs. Plaintiffs, by signing this Settlement Agreement, are bound by the terms herein and further agree not to submit any Request for Exclusion from or Notice of Objection to the Settlement. Any such Request for Exclusion or Notice of Objection shall therefore be void and of no force or effect.

11.16 Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, which shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

IT IS SO AGREED:

PLAINTIFFS

Dated: 05/19/2025 ________________________
Michael mcgee (May 19, 2025 14:21 PDT)
Michael McGee

Dated: 05/19/2025 ________________________
Wael Kanafani (May 19, 2025 09:03 MDT)
Wael Kanafani

Dated: 05/19/2025 ________________________
David uribe (May 19, 2025 14:28 PDT)
David Uribe

Dated: 05/19/2025 ________________________
Zachary McGordon (May 19, 2025 07:50 PDT)
Zachary McGordon

Dated: 05/19/2025 ________________________
Immanuel Pascual (May 19, 2025 14:49 PDT)
Imm

Dated: 5/20/2025 ________________________
DocuSigned by:
Katie Rosas
1A5EC4EB9D1E4E2...
Katie

Dated: 5/21/2025 ________________________
DocuSigned by:
TERESA RAU
5309ABA770F047C...
Theresa Rau

DEFENDANT MITRA VI, LLC

Dated: 5/21/2025 Signature: Becky Pessin

Name: Becky Pessin

Title: CFO

DEFENDANT DENALI MIDCO 2 LLC

Dated: 5/1/2025 Signature: Becky Pessin

Name: Becky Pessin

Title: CFO

DEFENDANT TSG CONSUMER PARTNERS LP

Dated: 5/22/2025 | 7:12 AM PDT

Signature: DocuSigned by: Jessica Duran DBB86DFFCEB64EC...

Name: Jessica Duran

Title: CFO

END OF DOCUMENT

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al.
Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE-CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807)

To: Alleged Misclassified Subclass: All current and former California employees of Defendants classified as exempt Site Managers during the Class Period.
AND
Non-Exempt Employee Subclass: All current and former California employees of Defendants classified as a non-exempt hourly employees during the Class Period.

(Collectively Referred to as "Class Members")

Please read this notice carefully – it provides important information about your legal rights and obligations under an agreement to settle a class/representative action lawsuit.

1. WHY IT IS IMPORTANT TO READ THIS NOTICE

Judge Gregory W. Pollack of the San Diego County Superior Court (the "Court") has preliminarily approved a class/representative action settlement (the "Settlement" or "Settlement Agreement") of all claims that were or could have been asserted based on the facts alleged in the lawsuit titled *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al.,* Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE-CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807) (the "Action").

The Settlement affects all current and former employees employed by Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP ("SSCW" or "Defendants") as non-exempt employees or as exempt Site Managers in the State of California during the Class Period (the "Class Members"). "Class Period" is referred to in this Notice and the Settlement as the period from November 4, 2018 through February 13, 2025.

You have received this Notice of Settlement because Defendants' records show that you are a Class Member.

This Notice of Settlement provides you with a description of the lawsuit, informs you of the key terms of the proposed Settlement, and discusses your rights and options under the Settlement. ***It is important that you read this Notice of Settlement carefully as your rights will be affected by the Settlement***. Your options are described below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound

SETTLEMENT PAYMENT	by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below. Class Members who choose this option are referred to as "Participating Class Members."
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may "opt-out" of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by ____________, 2025 (see Section 4 below for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) not receive any settlement payment for the Class Claims and will not release the Released Class Claims described in Section IV, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and will release your claims for such civil penalties to the extent you are a PAGA Employee (defined below).
OBJECT	If you decide to object to the settlement you have the opportunity to do so by (1) appearing at the Final Approval Hearing and communicating your objection to the Court and/or (2) submitting a written Notice of Objection to the Settlement Administrator stating why you object to the settlement by ____________, 2025 (see Section 4 for more details on how to object).

2. WHAT THIS ACTION AND SETTLEMENT IS ABOUT

A class/representative action is a lawsuit where one or more representative plaintiffs brings claims on behalf of many people to be decided in a single court proceeding.

Plaintiffs Wael Kanafani and David Uribe filed their initial class action complaint (the "*Kanafani* action") on November 4, 2022, against Defendants Mitra VI, LLC and Denali Midco 2 LLC. They sent notice to the Labor and Workforce Development Agency ("LWDA") on August 23, 2022. On July 11, 2023, Kanafani and Uribe filed a First Amended Complaint ("FAC") adding named plaintiffs Michael McGee, Zachary McGordon and Immanuel Pascual, in addition to a PAGA claim. McGee and Pascual provided notice to the LWDA on January 20, 2023, and McGordon provided notice on May 18, 2023. The *Kanafani* FAC alleges the following causes of action: (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.;2 (2) failure to pay minimum wages in violation of Labor Code §§ 1194, 1197, 1197.1; (3) failure to pay overtime in violation of Labor Code Labor Code §§ 510 et seq.; (4) failure to provide required meal periods in violation of Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Labor Code §§ 226.7 and 512; (6) failure to reimburse employees for required expenses in violation of Labor Code § 2802; (7) failure to provide wages when due in violation of Labor Code §§ 201, 202, 203; (8) failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (9) violation of the PAGA.

Plaintiffs Katie Rosas ("Rosas") and Theresa Rau ("Rau") filed a representative PAGA action (the "*Rosas* action") on November 18, 2022, against Defendants Mitra VI, LLC, Denali Midco 2 LLC and TSG Consumer Partners LP. The *Rosas* plaintiffs sent notice to the LWDA on August 25, 2022. The *Rosas* complaint alleges a single PAGA claim in a representative capacity only, based on the following underlying Labor Code violations: (1) failure to provide compliant meal and rest periods in violation of Labor Code §§ 226.7 and 512; (2) failure to provide minimum wage in violation of Labor Code § 1197; (3) failure to provide overtime in violation of Labor Code § 510; (4) failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (5) failure to pay all wages due at separation in violation of Labor Code §§ 201-203.

Due to the overlap between the *Kanafani* and *Rosas* actions, on July 10, 2023, the two actions were consolidated, with the *Kanafani* action designated as the lead case. The Parties agreed to schedule a mediation on October 30, 2024, with experienced mediator Tripper Ortman. Prior to the mediation, the Parties engaged in significant informal discovery related to the scope and parameters of the putative Class and putative PAGA Employee group as well as all of Plaintiff's claims. The documents and data produced by Defendants to Plaintiffs consisted of hundreds of pages of relevant policy documents, handbooks, personnel records, wage statements, key data on the number of putative class members, workweeks in the Class Period, pay periods in the PAGA Period, separated employees, as well as the relevant pay and time data for all Class Members.

Following extensive informal discovery, the parties participated in a full-day mediation with Mr. Ortman on October 30, 2024, and after lengthy, arms-length negotiations, the Parties eventually reached the key terms of a settlement based on a memorandum of understanding that was fully executed on November 27, 2024.

This Settlement is not an admission of any wrongdoing by Defendants or an indication that Defendants violated any law. The Court did not decide in favor of Plaintiffs or Defendants as to the merits of the case. There was no trial. Instead, both sides agreed to a resolution of the Action. The Settlement is intended to allow the Parties to avoid the costs of further litigation and a trial, while allowing Class Members and PAGA Employees (defined as Class Members employed during the period from November 4, 2018 through "Class Period" is referred to in this Notice and the Settlement as the period from November 4, 2018 through February 13, 2025 to receive payments from the Settlement as specified below.

Plaintiffs and their attorneys, who were preliminarily appointed as representatives for the Class, believe the Settlement is in the best interests of all Class Members.

Defendants will not take any adverse action against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate as further detailed in Section 3 below.

3. SUMMARY OF THE TERMS OF THE SETTLEMENT

I. The Total Settlement Amount

The Total Settlement Amount is Eight Hundred and Sixty Thousand Dollars and Zero Cents ($860,000.00). The Total Settlement Amount will be distributed as follows:

Class Counsel's Fees and Costs Award: Plaintiff's counsel ("Class Counsel") have been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask the Court to award fees of one-third of the Total Settlement Amount, or Two Hundred and Eighty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents ($286,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to $______ for the costs Class Counsel incurred in connection with the Action.

Service Award to Class Representative: Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau have been appointed as the Class Representatives. Class Counsel will ask the Court to award them a Service Award in the amount of $10,000 each to compensate them for service and in exchange for a general release of claims by each of them. The Class Representative also will receive their individual share of the Settlement as Participating Class Members.

PAGA Award: Under the Settlement, $43,000 of the Total Settlement Amount will be allocated to the settlement of Plaintiff's PAGA Claims (i.e., any and all claims Plaintiff asserted or could have asserted in the Action under PAGA and/or their LWDA notice letters). Of this amount, $32,250 will be paid to the California Labor & Workforce Development Agency ("LWDA") in satisfaction of the claims for civil penalties under PAGA, and the remaining $10,750 will be divided between all PAGA Employees based on the number of pay periods worked during the PAGA Period. You do not have the right to opt-out or exclude yourself from receiving the amount paid pursuant to PAGA. "PAGA Employees" includes all members of the Alleged Misclassification and Non-Exempt Subclasses who were employed by Defendants during the period from November 4, 2021 through February 13, 2025. If you are a PAGA Employee, you will receive your allocated portion of this payment and will be bound by the release of all such PAGA Claims as discussed in Section 4 below.

Costs of Administration: The Court has approved APEX Class Action, LLC (the "Settlement Administrator") to administer this Settlement. The Court has preliminarily approved Settlement Administration Costs not to exceed $17,000. The cost of administration will be paid from the Total Settlement Amount.

Net Distribution Fund: After deducting the amounts above from the Total Settlement Amount, the balance will form the Net Distribution Fund for distribution to Participating Class Members (Class

Members who do not opt-out). Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Distribution Fund according to the formula and calculations set forth in the section immediately below entitled "Calculation of Individual Settlement Payments."

Tax Issues: Each Individual Settlement Payment shall be allocated between taxable and non-taxable consideration as follows: twenty-five percent (25%) will be allocated to alleged unpaid wages for which an IRS Form W-2 will issue and seventy-five percent (75%) will be allocated to alleged penalties and interest for which an IRS Form 1099 will issue. The Settlement Administrator will be responsible for calculating the employee-side and employer-side taxes owed on the wage portion of each Participating Class Member's Individual Settlement Payment and paying these amounts to the appropriate state and federal agencies, within the timing required by applicable state and/or federal law. The employee-side taxes owed will be paid from the Net Distribution Fund and withheld from Individual Settlement Payments. Employer-side taxes owed on the wage portion of Individual Settlement Payments will be calculated and paid by the Settlement Administrator after such employer-side tax amounts are paid by Defendant to the administrator separate from and in addition to the Total Settlement Amount. The Settlement Administrator, Defendant and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Settlement Payments. Participating Class Members and PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on their Settlement Payments. Accordingly, Participating Class Members and PAGA Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement if they have any questions.

Uncashed Checks: All Participating Class Members and PAGA Employees will receive an Individual Settlement Payment based on the calculations detailed below. Checks must be cashed within 180 days. On the 181st day, checks are void and uncashed funds will be transmitted by the Settlement Administrator to the California State Controller Unclaimed Property Fund in the name of the Class Member/PAGA Employee.

II. Calculation of Individual Settlement Payments

Participating Class Members – i.e., all Class Members who do not submit a timely Request for Exclusion as explained in the "Option 2: Request Exclusion from the Settlement" section below – will receive an Individual Settlement Payment based on the calculation detailed below.

In addition, all "PAGA Employees" will receive a prorated portion of the 25% of the PAGA Award based on their prorated number of pay periods during the PAGA Period using the calculation detailed below.

Workweek Calculations - Class: Defendants will calculate the total number of workweeks that all Participating Class Members worked during the Class Period ("Total Class Pay Periods"). The value of each pay period shall be determined by the Settlement Administrator by dividing the Net Distribution Fund (less the 25% of the PAGA Award to be distributed to PAGA Employees) by the total number of workweeks worked by Participating Class Members during the Class Period to establish a "Class Workweek Value."

PAGA Employee Calculations: For PAGA Employees, Defendants will calculate the total number of pay periods that each PAGA Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The value of each PAGA Pay Period shall be determined by the Settlement Administrator by dividing the 25% of the PAGA Award allocated for PAGA Employees by the Total PAGA Pay Periods for all PAGA Employees to establish a "PAGA Pay Period Value." A Class Member who is also a PAGA Employee will receive a payment under this section even if they opt-out of the Class settlement and will be bound by the release of the PAGA claims released through this Settlement.

Individual Settlement Payments: To determine the " Individual Settlement Payment" for each Class Member, the Settlement Administrator will multiply the individual's Total Class Workweeks by the Class Workweek Value (if the Class Member is a Participating Class Member) and the individual's Total PAGA Pay Periods by the PAGA Pay Period Value (if the individual is a PAGA Employee). The Individual Settlement Payment will be reduced by any required legal deductions. Review the information below, which shows (1) the estimated number of your workweeks in the Class Period and pay periods during the PAGA Period; and (2) your corresponding estimated individual settlement payments:

	Workweeks or Pay Periods	Estimated Ind. Payment
Workweeks As a Class Member During Class Period	INSERT	$INSERT
Pay Periods As a PAGA Employee During PAGA Period	INSERT	$INSERT

If you believe the number of workweeks and/or pay periods you were credited above is incorrect, you can challenge this estimate by submitting evidence to the Settlement Administrator, APEX Class Action, LLC, ***prior to the Response Deadline on*** [insert date of opt out/objection deadline] showing what you believe is the correct number of workweeks and/or pay periods you should be credited. The Settlement Administrator will notify the Parties of any challenges and give Defendant the opportunity to investigate the challenge and provide relevant information and documents to the Settlement Administrator. All challenges will be resolved by the Settlement Administrator after taking into consideration any information and documentation provided by you and Defendant. The Settlement Administrator's determination will be final and binding and will be made prior to the calculation and distribution of the Individual Settlement Payments.

III. Release of Claims

Unless you timely request to be excluded from the Settlement, you will be unable to sue, continue to sue or be a part of any other lawsuit against Defendants and other Released Parties (defined below) regarding the "Released Class Claims" in this Settlement. Moreover, all PAGA Employees will be bound by the release of Released PAGA Claims, as discussed below. Further information about, and the definition of, the releases is provided below.

A. Released Parties

The Released Parties includes Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG

Consumer Partners LP, and their subsidiaries, affiliates and/or parents, attorneys, and each of their respective successors and predecessors in interest; all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries and agents; and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers ("Released Parties").

B. Releases

The "Effective Date" of the Settlement means the date by which the Settlement is finally approved and the Court's Final Approval Order becomes binding– *i.e.*, the date when there is no possibility of an appeal, writ, or further appeal that could potentially prevent the Settlement Agreement from becoming final and binding, which the Parties agree will be 65 calendar days after the notice of an order granting final approval of the Settlement is served, provided there have been no appeals filed within that time.

As of the Effective Date, Plaintiff, Participating Class Members, PAGA Employees and the State of California (acting through Plaintiff as its authorized PAGA representative) release the Released Parties from all Class Claims for the duration of the Class Period (*i.e.*, November 4, 2018 through February 13, 2025) and release all PAGA Claims for the duration of the PAGA Period (*i.e.*, November 4, 2021 to February 13, 2025). The Released Class Claims include all claims that Plaintiffs alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* (Case No: 37-2022-00044660-CU-OE-CTL) and *Rosas et al.* (Case No. 37-2022-00046807-CU-OE-CTL) actions), all amended Complaints in the Action, and all exhibits to those Complaints such as Plaintiffs' LWDA notice letters) during the Class Period. The Released Class Claims will apply to the Released Parties and will include without limitation Plaintiffs' claims for (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required expenses; (7) failure to provide wages when due; (8) failure to provide accurate itemized wage statements (both as a derivative and direct theory); (8) failure to keep complete and accurate records; and (9) failure to pay all wages due at separation. The Released PAGA Claims released by PAGA Employees include all PAGA Claims from which Plaintiff, the PAGA Employees, and the State of California are fully releasing Defendants and the Released Parties under this Settlement during the PAGA Period, including all claims under PAGA against the Released Parties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated *Kanafani et al.* and *Rosas et al.* Complaints, all amended Complaints in the Action, and all exhibits to those Complaints) and in Plaintiffs' LWDA notice letters during the PAGA Period. The Released PAGA Claims shall include without limitation all claims under PAGA based on the underlying alleged Class Claims. This release will be binding on all PAGA Employees and the State of California and there shall be no right for any PAGA Member, including any plaintiff to the Action, to opt out of this release if the Settlement is approved by the Court. It is the intent of the Parties that the Final Approval Order entered by the Court shall have full *res judicata* (*i.e.*, preclusive) effect and be final and binding upon Participating Class Members, PAGA Employees and the State of California regarding the Released Class Claims and PAGA Released Claims.

Class Members who do not opt out (*i.e.*, submit a timely Request for Exclusion as explained below) will release the Released Class Claims for the duration of the Class Period.

PAGA Employees will be bound by the release of the PAGA Claims for the duration of the PAGA Period and will receive a share of the PAGA Award, notwithstanding any request to opt-out of the Class Claims.

Plaintiffs' Complete and General Release:

The named Plaintiffs only are agreeing to a Complete and General Release of all claims as part of this Settlement and as consideration for the Service Awards specified above.

4. YOUR OPTIONS REGARDING THIS CLASS ACTION SETTLEMENT

I. First Option: Do Nothing and Receive an Individual Settlement Payment if the Settlement Becomes Final and Binding

You do not need to do anything to participate in this Settlement. If the Settlement becomes binding and you do nothing, you will receive an Individual Settlement Payment. The amount of the Individual Settlement Payment will depend, in part, on the amounts approved by the Court and will be calculated based on the Individual Settlement Payment calculation described above. If you disagree with the number of Workweeks or Pay Periods credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. If you do nothing, you will also be bound by the Settlement and you will be releasing all Released Class Claims and Released PAGA Claims in exchange for an Individual Settlement Payment, as explained above.

II. Second Option: Request Exclusion from the Settlement

If you do not wish to participate in the settlement for any reason, you must submit a written letter, called a "Request for Exclusion," to the Settlement Administrator.

To be valid, the Request for Exclusion need not use specific language, but must be hand signed and contain sufficient information to verify your identity (e.g., your full name, address, and employee number or last four digits of your social security number) and confirm that you wish to be excluded from the Settlement and any payment and release associated with the settlement of the Class Claims as set forth in this Notice and the Settlement Agreement.

To be timely, the Request for Exclusion must be postmarked and mailed to the Settlement Administrator at the address below **on or before [Date]** (the "Response Deadline"). Requests for Exclusion postmarked after this date may be disregarded.

Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al Class Action
c/o APEX Class Action, LLC
[INSERT ADDRESS]
[INSERT PHONE NUMBER]

Any Class Members who submit a timely and valid Request for Exclusion will NOT receive any money from the Settlement of the Class Claims and will not be bound by the terms of the Settlement or the release of the Class Claims. Any Class Member who submits a timely and valid Request for Exclusion will also not have any right to object, appeal or comment on the Settlement. The only exception is that if you are also a PAGA Employee you will still release the PAGA Claims and receive a portion of the PAGA Award as there is no right to opt out of the PAGA release.

Class Members who do **not** submit a timely and valid Request for Exclusion on or before the Response Deadline will be deemed "Participating Class Members." As described above, each Participating Class member will receive an Individual Settlement Payment and will be bound by all terms of the Settlement and the Final Approval Order entered in this Action.

III. Third Option: Object to the Settlement

If you do not believe the Settlement is fair, you can object and ask the Court to deny approval of the Settlement. If the Court grants approval over your objection, you will remain a Class Member, will release the Class Claims for the Class Period, and you will still receive an Individual Settlement Payment as described above.

You can object to the Settlement by (1) appearing at the Final Approval Hearing (either in person or through your own attorney) and communicating your objection to the Court and/or (2) submitting a written Notice of Objection to the Settlement Administrator **on or before [Date]** (the "Response Deadline"). If you appear at the Final Approval Hearing through your own attorney, you are responsible for paying that attorney.

There is no specific language required for the Court to consider your written objection, but to confirm that you are a Class Member in this case and evaluate the nature of your objection, the Parties request that your written objection include (1) your full name, address and employee number or last four digits of your social security number; (2) your signature; (3) the case name, *i.e.*, *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al.,* Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE-CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807), and the specific reasons why you object to the Settlement.

To ensure the Court has time to consider written objections at or prior to the Final Approval Hearing, the Notices of Objection should be postmarked and mailed to the Settlement Administrator at the address below on or before [Date] (the "Response Deadline")**.**

Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al Class Action
c/o APEX CLASS ACTION, LLC
[INSERT ADDRESS]
[INSERT PHONE NUMBER]

The Court will consider any written Notices of Objection received prior to the Final Approval Hearing and any oral objections made at the Final Approval Hearing. All objections (written and oral) must be made prior to or at the Final Approval Hearing to be considered by the Court.

5. NEXT STEPS

I. The Court's Final Approval Hearing

The Court will hold a Final Approval Hearing on _________ at ___ .m. in the San Diego County Superior Court Department C-71, 330 W. Broadway, San Diego, CA 92101, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including without limitation the: Class Counsel Fees Award, Class Counsel Costs Award, Plaintiff's Service Award, PAGA Award, Settlement Administration Costs, and Individual Settlement Payments to Participating Class Members.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. Class Members are advised to confirm the hearing date and time with Class Counsel (at the contact information provided in section 5.II. below) if they intend to appear at the Final Approval Hearing.

II. How to Obtain Additional Information

This Notice summarizes the proposed Settlement. If you have questions about the Settlement, you can contact the Settlement Administrator at:

Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al Class Action
c/o APEX CLASS ACTION, LLC
[INSERT ADDRESS]
[INSERT PHONE NUMBER]

You can also request a copy of the full Settlement Agreement from the Settlement Administrator at the address and phone number above.

You may also contact Class Counsel with any questions and/or to confirm the date and time of the Final Approval Hearing at:

JCL LAW FIRM, APC Jean-Claude Lapuyade Sydney Castillo-Johnson John L. Nitti 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Telephone: (619) 599-8292 Facsimile: (619) 599-8291 jlapuyade@jcl-lawfirm.com scastillo@jcl-lawfirm.com jnitti@jcl-lawfirm.com	SULLIVAN & YAECKEL LAW GROUP, APC Eric K. Yaeckel [CSB No. 274608] yaeckel@sullivanlawgroupapc.com Ryan T. Kuhn [CSB No. 324538] ryan@sullivanlawgroupapc.com 2330 Third Avenue San Diego, California 92101 (619) 702-6760 * (619.) 702-6761 FAX Attorneys for Plaintiffs KATIE ROSAS and TERESA RAU

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DAVID URIBE, ZACHARY MCGORDON, and
IMMANUEL PASCUAL

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR ITS ATTORNEYS TO INQUIRE ABOUT THIS SETTLEMENT.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI, DAVID URIBE, ZACHARY MCGORDON, KATIE ROSAS, TERESA RAU, and IMMANUEL PASCUAL, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. MITRA VI, LLC, an Arizona limited liability company; DENALI MIDCO 2 LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendants.	Lead Case No. 37-2022-00044660-CU-OE- CTL (Consolidated with San Diego County Case No. 37-2022-00046807) ASSIGNED FOR ALL PURPOSES TO HON. GREGORY W. POLLACK, DEPT. C-71 **[PROPOSED] PRELIMINARY APPROVAL ORDER**

WHEREAS, Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon and Immanuel Pascual (collectively, "Plaintiffs") have applied to this Court for an order preliminarily approving the settlement of this Action in accordance with a Joint Stipulation of Class and PAGA Representative Action Settlement and Release (the "Settlement" or "Settlement Agreement"), which, together with the exhibits thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the pending Action with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered the Plaintiffs' Motion for Preliminary Approval, the Parties' Settlement Agreement and the exhibits and declarations thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the Action and all acts within the Action, and over all the Parties to the Action, including Plaintiffs, Class Members, Defendants, and the State of California.

3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that Defendant shall pay is Eight Hundred Sixty Thousand Dollars and Zero Cents ($860,000.00). It appears to the Court on a preliminary basis that the Settlement is fair, adequate and reasonable. Indeed, the Court recognizes the value of the monetary recovery provided to all Class Members and finds that such recovery is fair, adequate and reasonable when balanced against further litigation related to liability and damages issues. It appears that the Parties have conducted significant investigation, formal and informal discovery, research and litigation such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective positions at this time. It further appears to the Court that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. It also appears that the Parties reached the Settlement as the result of intensive, serious and non-collusive, arms-length negotiations facilitated by an experienced and neutral mediator. Thus, the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement

that could ultimately be given final approval by this Court. Accordingly, the Motion for Preliminary Approval of Class Action Settlement is hereby **GRANTED**.

1.1 For purposes of this Settlement only, the Court hereby conditionally certifies a class of Class Members, consisting of all current and former California employees of Defendants classified as exempt Site Managers during the Class Period and all current and former California employees of Defendants classified as a non-exempt, hourly employees during the Class Period. The "Class Period" is the period from November 4, 2018, through February 13, 2025, as set forth in the Settlement Agreement. Should for whatever reason the Settlement not become final, the fact that the Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

4. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement of the Released Class Claims, or they may object to the Settlement of the Claims and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Settlement.

5. The Court finds that the notice of settlement that Plaintiffs provided to the California Labor and Workforce Development Agency ("LWDA") satisfies the notice requirements of the California Private Attorneys General Act ("PAGA").

6. The Court approves, as to form and content, the proposed Notice of Settlement to Class Members and finds that the method selected for communicating the preliminary approval of the Settlement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and therefore satisfies due process

7. For Settlement purposes only, the Court hereby appoints Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon and Immanuel Pascual as the class representative in this Action. Further, the Court preliminarily approves a Service Award to Plaintiffs not to exceed Ten Thousand Dollars ($10,000) for each Plaintiff.

8. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of JCL Law Firm, APC, Shani O. Zakay, Esq. of Zakay Law Group, APLC, and Erik K. Yaeckel, Esq. of Sullivan & Yaeckel Law Group, APC, as Class Counsel for the Class Members.

9. Plaintiffs seek a Class Counsel Award in the amount not of not more than Three Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($316,666.67), comprised of one-third of the Total Settlement Amount for attorney's fees, currently estimated to be Two Hundred Eighty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($286,666.67), and litigation expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), and proposed Service Award of not more than Ten Thousand Dollars and Zero Cents ($10,000.00) to each Plaintiff (or $70,000.00 total). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award, and Service Award until the Final Approval Hearing.

10. The Court hereby appoints APEX Class Action, LLC as the Settlement Administrator to administer the Notice of Settlement pursuant to the terms in the Settlement Agreement.

11. No later than 10 business days after the entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the Class Information (as defined in the Settlement Agreement). No later than 14 calendar days after receipt of the Class Information, the Settlement Administrator shall use the Class Information to mail the Notice of Settlement to Class Members after conducting a national change of address search and a skip trace for the most current address of all former employee Class Members and will update such addresses as necessary.

12. No later than 45 calendar days after the date the Settlement Administrator mails the Notice of Settlement to Class Members (*i.e.*, the Response Deadline), any Class Member requesting exclusion from the Settlement must submit his/her Request for Exclusion by mail to the Settlement Administrator as instructed in the Notice of Settlement. If the Court finally approves this Settlement, Class Members who fail to submit a timely and valid Request for Exclusion on or before the Response Deadline shall be Participating Class Members bound by all terms of the Settlement and the Final Approval Order entered in this Action. To be valid, the Request for Exclusion: (1) must contain the full name, address, and last four digits of the social security number or employee number of the person

requesting exclusion; (2) must be hand signed by the person requesting exclusion; and (3) must state in substance: "I wish to exclude myself from the Settlement in the action titled *Kanafani and Rosas et. al. v. Denali Midco 2 LLC et al.*, Superior Court of California, County of San Diego, Lead Case No. 37-2022-00044660-CU-OE- CTL (consolidated with San Diego Superior Court Case No. 37-2022-00046807). I understand that by requesting to be excluded, I will receive no money from the Class Action Settlement." Any Class Members who submits a timely and valid Request for Exclusion from the Class will not be entitled to any monetary recovery under the Settlement (except for their prorated portion of the PAGA Award, if applicable) and will not be bound by the terms of the Settlement as it relates to the Released Class Claims (except for the release of the PAGA claims, which will bind all PAGA Employees regardless of whether they submit a Request for Exclusion). Any Class Members who submits a timely and valid Request for Exclusion from the Class will not have any right to object, appeal or comment on the Settlement.

13. No later than 45 calendar days after the Response Deadline, any Class Member wishing to object or comment upon the Settlement must appear at the Final Approval Hearing and/or submit her/his Notice of Objection by filing it with the Court or mailing it to the Court as instructed in the Notice of Settlement. Class Members who fail to submit a timely and valid Notice of Objection and/or appear at the Final Approval Hearing to object shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement.

14. The Final Approval Hearing shall be held at _________ at ___m., in the San Diego County Superior Court, Department C-71, located at 330 W. Broadway, San Diego, CA 92101, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including without limitation the: Class Counsel Fees Award, Class Counsel Costs Award, Plaintiffs' Service Awards, PAGA Award, Settlement Administration Costs, and Individual Settlement Payments to Participating Class Members.

15. This Settlement is not a concession or admission and shall not be used against Defendants or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Defendants or any of the Released Parties. Whether the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the

Settlement, nor any reports or accounts thereof, shall in any event be: (a) construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendants or any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (b) disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action or proceeding, except for purposes of enforcing the Settlement. The Court's findings are for purposes of conditionally certifying the class of Class Members in the context of this Settlement and will not have any claim or issue or evidentiary preclusion or estoppel effect in any other action against Defendants or any of the Released Parties or in this litigation if the Settlement is not finally approved. If for any reason the Court does not execute and file a Final Approval Order, or if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, the Settlement Agreement and all evidence and proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the Parties to the Action, as more specifically set forth in the Settlement Agreement, and this Preliminary Approval Order shall be rendered null and void and shall be vacated.

16. Pending further orders of this Court, all proceedings in this matter except those contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to Class Members.

IT IS SO ORDERED.

Dated:_________________________

____
HONORABLE GREGORY POLLACK
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI, DAVID URIBE, ZACHARY MCGORDON, KATIE ROSAS, TERESA RAU, and IMMANUEL PASCUAL, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

v.

MITRA VI, LLC, an Arizona limited liability company; DENALI MIDCO 2 LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,

Defendants.

Lead Case No. 37-2022-00044660-CU-OE-CTL (Consolidated with San Diego County Case No. 37-2022-00046807)

ASSIGNED FOR ALL PURPOSES TO HON. GREGORY W. POLLACK, DEPT. C-71

[PROPOSED] FINAL JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

WHEREAS, this matter has come before the Court for hearing pursuant to the Preliminary Approval Order dated ____________, for final approval of the Settlement as set forth in the Joint Stipulation of Class and PAGA Representative Action Settlement and Release (the "Settlement" or "Settlement Agreement"). The Court, having received and carefully considering the Stipulation for Class and PAGA Action Settlement and Release of Claims filed with the Declaration of Jean-Claude Lapuyade on _______, 2025, ("Agreement"), a true and correct copy of which Agreement is attached hereto as Exhibit A, the supporting papers filed by the Parties, the evidence and argument received by the Court in conjunction with the unopposed Motion for Preliminary Approval of Class Action Settlement heard on ______, 2025, the instant Motion for Order Granting Final Approval of Class and PAGA Action Settlement, the Court grants final approval of the Settlement and HEREBY ORDERS, ADJUDICATES and DECREES THE FOLLOWING:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of this litigation and over all Parties to this litigation, including the Plaintiffs, Class Members, PAGA Employees, Defendants, and the State of California.

3. Pursuant to the Preliminary Approval Order, the appointed Settlement Administrator, APEX Class Action, LLC, mailed a Notice of Settlement to all known Class Members by First Class U.S. Mail. The Notice of Settlement fairly and adequately informed Class Members of the terms of the proposed Settlement and the benefits available to Class Members thereunder. The Notice of Settlement further informed Class Members of the pendency of the Action, of the proposed Settlement, of Class Members' right to receive their share of the Settlement, of the scope and effect of the Released Class Claims, of the preliminary Court approval of the proposed Settlement, of exclusion and objection timing and procedures, of the procedure for challenging the estimated number of relevant workweeks and pay periods based on Defendant's records, of the date and location of the Final Approval Hearing, and of the right to file

documentation in opposition to the Settlement and to appear in connection with the Final Approval Hearing. Class Members had adequate time to consider this information and to use the procedures identified in the Notice. The Court finds and determines the notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of Class Members. The Court finds and determines the Notice provided in the Action was the best notice practicable, which satisfied the requirements of law and Due Process.

4. In response to the Notice of Settlement, ____ Class Members objected to the Settlement and ____ Class Members submitted a Request for Exclusion from the Settlement. The names of the class members who requested exclusion are ______.

5. The Court hereby finds that the Parties' notice of the proposed Settlement submitted to the Labor and Workforce Development Agency ("LWDA") fully and adequately complied with the notice requirements of the Private Attorneys General Act ("PAGA"), California Labor Code § 2699(l).

6. The Court finds the Settlement is fair, adequate and reasonable when balanced against further litigation related to liability and damages issues. The Court further finds the Parties have conducted significant investigation, informal discovery, research and litigation such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective positions at this time. The Court finds that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. The Court further finds that the Parties reached the Settlement as the result of reasonable, serious and non-collusive, arms-length negotiations through experienced Class Counsel and Defense Counsel. Thus, the Court approves the Settlement set forth in the Settlement Agreement and finds the Settlement is, in all respects, fair, adequate and reasonable and directs the Parties to effectuate the Settlement according to its terms.

7. The Court hereby orders the Settlement Administrator to distribute the Individual Settlement Payments to Participating Class Members in accordance with the provisions of the Settlement.

8. For purposes of this Final Approval Order and for this Settlement only, the Court hereby certifies the class of Class Members as defined in the Settlement Agreement.

9. With respect to the Class and for purposes of approving this Settlement only, this Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class, and there is a well-defined community of interest among the Class with respect to the subject matter of the Action; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives have fairly and adequately protected the interests of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representatives, i.e., Jean-Claude Lapuyade, Esq. of the JCL Law Firm, APC, Shani Zakay, Esq. of the Zakay Law Group, APLC, and Eric K. Yaeckel, Esq. of Sullivan & Yaeckel Law Group, APC (hereinafter "Class Counsel"), are qualified to serve as counsel for the Class Representatives and the Class.

10. Following the Effective Date, and per the terms of the Settlement Agreement, the Court orders that Defendant shall fully fund the Total Settlement Amount, and also fund Defendant's share of employer-side taxes due on the portion of the Individual Settlement Payments attributed to alleged lost wages per the terms of the Settlement Agreement by transmitting the funds to the Settlement Administrator as follows: The payment of Total Settlement Amount of Eight Hundred Sixty Thousand Dollars ($860,000) and employer-side taxes due on the Individual Settlement payment shall be deposited with the Settlement Administrator no later than 15 calendar days after the Effective Date as defined in the Settlement.

11. For purposes of this Final Approval Order and this Settlement only, the Court hereby confirms the appointment of Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Theresa Rau as the class representatives for the

Class Members. Further, the Court finally approves the Service Awards to Plaintiffs, as fair and reasonable, in the total amount of Ten Thousand Dollars ($10,000) each (*i.e.*, $70,000 total). The Court hereby orders the Settlement Administrator to distribute the Service Awards to the Plaintiff in accordance with the provisions of the Settlement.

12. For purposes of this Final Approval Order and this Settlement only, the Court hereby confirms the appointment of JCL Law Firm, APC, Zakay Law Group, APLC, and Sullivan & Yaeckel Law Group, APC as Class Counsel for the Class Members. Further, the Court finally approves a Class Counsel Fees Award, as fair and reasonable, of one-third of the Total Settlement Amount ($286,666.67). As well, the Court finally approves a Class Counsel Costs Award, as fair and reasonable of $30,000. Class Counsel's receipt of the Class Counsel Fees Award and Class Counsel Costs Award shall fully satisfy all fees and litigation costs incurred by Class Counsel that represented Plaintiffs, Class Members, and PAGA Employees in the Action. Defendants' payment of the Court-awarded attorneys' fees and costs shall constitute full satisfaction of Defendants' obligation to pay any person, attorney, or law firm for attorneys' fees, costs, and expenses incurred on behalf of the Plaintiffs, the Class Members, and/or the PAGA Employees and/or related to the Settlement or releases included therein. The Court hereby orders the Settlement Administrator to distribute the Class Counsel Fees Award and Class Counsel Costs Award payments to Class Counsel in accordance with the provisions of the Settlement.

13. For purposes of this Final Approval Order and this Settlement only, the Court hereby confirms the appointment of APEX Class Action, LLC as the Settlement Administrator to administer the Settlement of this matter as more specifically set forth in the Settlement Agreement and further finally approves Settlement Administration Costs, as fair and reasonable, of $17,000.

14. The Court finds that the payment to the California Labor & Workforce Development Agency ("LWDA") in the amount of $32,250 for its 75% share of the $43,000 PAGA Award is fair, reasonable, and adequate, and orders the Settlement Administrator to distribute this payment to the LWDA in conformity with the terms of the Settlement. The

remaining 25% or $10,750 of the PAGA Award is to be distributed to the PAGA Employees in conformity with the terms of the Settlement.

15. As of the Effective Date, PAGA Employees and Plaintiffs, on behalf of themselves and the State of California, will be bound by the release of the Released PAGA Claims against the Released Parties for the duration of the PAGA Period and will receive a share of the PAGA Award, notwithstanding any request to opt-out of the Class Claims.

16. As of the Effective Date and funding of the Settlement, Plaintiffs, Participating Class Members, PAGA Employees and the State of California (acting through Plaintiff as its authorized PAGA representative) release the Released Parties from all Released Class Claims and Released PAGA Claims for the duration of the Class Period and PAGA Period, respectively. "Released Parties" means Defendants Mitra VI, LLC, Denali Midco 2 LLC, and TSG Consumer Partners LP, and their subsidiaries, affiliates and/or parents, attorneys, and each of their respective successors and predecessors in interest; all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, and agents; and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers. The Released Class Claims include all claims from which Participating Class Members are fully releasing the Released Parties under this Settlement from November 4, 2018 through February 13, 2025 (*i.e.*, the Class Period), including all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaints in the Action (including both the consolidated Kanafani et al. (Case No: 37-2022-00044660-CU-OE-CTL) and Rosas et al. (Case No. 37-2022-00046807-CU-OE-CTL) actions), all amended Complaints in the Action, and all exhibits to those Complaints including Plaintiffs' LWDA notice letters, during the Class Period. The Released Class Claims will apply to the "Release Parties, defined below. The Released Class Claims will include without limitation Plaintiffs' claims for (1) unfair competition in violation of California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required

expenses; (7) failure to provide wages when due; (8) failure to provide accurate itemized wage statements (both as a derivative and direct theory); (8) failure to keep complete and accurate records; and (9) failure to pay all wages due at separation.

17. In consideration for the promises and payments set forth in the Settlement Agreement, to which Plaintiff is otherwise not entitled, Plaintiffs release and discharge a complete and general release and a 1542 Waiver to the Released Parties, and each of them, upon the Effective Date occurring as provided in the Settlement Agreement.

18. After Settlement administration has been completed in accordance with the Settlement Agreement and Void Date of the settlement checks to Participating Class Members, and in no event later than one year after the Effective Date, the Parties shall file a report with this Court certifying compliance with the terms of the Settlement.

19. The Settlement represents a compromise of disputed claims. Neither this Final Approval Order, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed as, or may be used as an admission by or against any Defendant or any of the other Released Parties of any fault, wrongdoing or liability whatsoever.

20. Nothing in this order shall preclude any action to enforce the Parties' obligations under the Settlement or under this order, including the requirement that Defendant makes payments to the Participating Class Members in accordance with the Settlement.

21. The Court hereby enters final judgment in accordance with the terms of the Agreement, the Order Granting Preliminary Approval of Class and PAGA Action Settlement granted on__________, and this order.

22. The Court hereby enters judgment, with prejudice, for the reasons set forth above, and in accordance with the terms set forth in the Settlement Agreement.

23. Without affecting the finality of this Final Approval Order in any way, this Court hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement and all orders and judgments entered in connection therewith.

24. Upon completion of administration of the Settlement, the Settlement Administrator will provide written certification of such completion to the Court and counsel for the Parties which shall be filed with the Court five (5) court days before the non-appearance compliance hearing set for **(________________), 2026 at (______) a.m**., in Dept. C-71.

25. Accordingly, the Motion for Final Approval of Class and PAGA Action Settlement and, Motion for Final Approval of the Payment of the Class Counsel Fees and Expenses Payment and the Class Representative Payments are GRANTED.

IT IS SO ORDERED.

Dated:_________________________

____
HONORABLE GREGORY POLLACK
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

EXHIBIT 3

Quotation Request:
Sydney Castillo-Johnson
JCL Law Firm A.P.C
scastillo@jcl-lawfirm.com
619-599-8292

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

Case Name:	**Kanafani v. Mitra**
Date:	Tuesday, December 31, 2024
RFP Number:	15129014

Settlement Specifications	
Estimated Class Size:	**1,747**
Certified Language Translation:	**Yes**
Static Settlement Website	**No**
Percentage of Undeliverable Mail	**20%**

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	$125.00	3	$375.00
Data Analyst	Per Hour	$150.00	3	$450.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of $150/hr.				
			Sub Total:	$825.00
Mailing of Class Notice				
Form Set Up	Per Hour	$120.00	1	$120.00
Print & Mail Class Notice	Per Piece	$1.50	1,747	$2,620.50
USPS First Class Postage	Per Piece	$0.69	1,747	$1,205.43
Remail Undeliverable Mail (Skip-Trace)	Per Piece	$2.00	349	$698.80
Receive and Process Undeliverable Mail	Per Hour	$75.00	2	$150.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	$75.00	4	$300.00
NCOA Address Update (USPS)	Static Rate	$246.69	1	$246.69
Certified Language Translation: Spanish	Static Rate	$1,200.00	1	$1,200.00
			Sub Total:	$6,541.42
Project Management				
Project Management	Per Hour	$150.00	3	$450.00
Project Coordinator	Per Hour	$90.00	2	$180.00
Data Analyst and Reporting	Per Hour	$140.00	2	$280.00
			Sub Total:	$910.00

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	$370.00	1	$370.00
Settlement Status Reports	Static Rate	$750.00	1	Waived
			Sub Total:	$370.00
Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	$120.00	4	$480.00
Account Management and Reconciliation	Per Hour	$140.00	4	$560.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	$1.25	1,747	$2,183.75
USPS First Class Postage	Per Piece	$0.69	1,747	$1,205.43
Remail Distribution to Updated Address (Skip Trace)	Per Piece	$2.00	175	$349.40
Individual Income Tax Preparation & Reporting	Per Hour	$100.00	12	$1,200.00
QSF Income Tax Reporting (per calendar year)	Per Year	$1,200.00	1	$1,200.00
			Sub Total:	$7,178.58
Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	$135.00	3	$405.00
Project Management Reconciliation	Per Hour	$100.00	3	$300.00
Declarations	Per Hour	$120.00	3	$360.00
			Sub Total:	$1,065.00
			WILL NOT EXCEED:	**$16,890.00**

Thank you for your business!

Terms & Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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