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14th Annual Advanced Wage and Hour Conference

Judges and Litigators: Perspectives from the Bench and Bar on Wage and Hour
Litigation

Thursday, July 18, 2024
3:45 p.m. – 5:00 p.m.

Speakers:

Hon. Melissa McCormick

Hon. Stuart Rice

Jacqueline Beaumont

Conference Reference Materials

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Judges and Litigators: Perspectives from the Bench and Bar on Wage and Hour Litigation

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Hon. Melissa McCormick, *OC Superior Court*
Hon. Stuart Rice, *LA Superior Court*

CALIFORNIA LAWYERS' ASSOCIATION –
ADVANCED WAGE AND HOUR CONFERENCE
2024

Class & PAGA Litigation

- ▶ Post-*Adolph* landscape
- ▶ Motions to Compel Arb – increase?
- ▶ PAGA Manageability

Class & PAGA Settlements

- ▶ Best Practices
- ▶ Practitioner Perspectives
- ▶ Fairness
- ▶ Overlapping Class & PAGA Actions

Class & PAGA Trials

- ▶ Frequency of trials
- ▶ Bifurcation?
- ▶ Jury trials vs. bench trials
- ▶ Presentation of evidence
- ▶ PAGA penalties

Effective Advocacy

- ▶ Do's and Don'ts
- ▶ Effective courtroom presentations

Questions



Materials

- Hon. McCormick's Guidelines for Approval of Class Action Settlements & PAGA settlements
- Hon. McCormick's Civil Complex Procedures
- LA Superior Court, Model Class Action and PAGA Settlement Agreement and Class Notice
- LA Superior Court, Model PAGA Settlement Agreement
- LA Superior Court, Final Approval Class Action Settlement Checklist
- LA Superior Court, Preliminary Approval Class Action Settlement Checklist

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**JUDGE MELISSA R. McCORMICK
DEPARTMENT CX104**

CLERK: V. Harting
COURT ATTENDANT: I. Olivares

CIVIL COMPLEX CENTER
751 W. SANTA ANA BLVD.
SANTA ANA, CA 92701
(657) 622-5304
www.occourts.org

Welcome to Department CX104. To facilitate the progress of your case and assure its timely disposition, the court has established the following procedures.

I. GENERAL CALENDAR INFORMATION

A. Initial Case Management Conferences: Thursday at 9:00 a.m.

The Initial Case Management Conference Statement shall be filed at least 5 court days before the conference. Counsel should use pleading paper, not Judicial Council Form CM-110, and should include in the statement a discussion of the applicable subjects set forth in California Rules of Court 3.727 and 3.750(b). The parties are encouraged to meet and confer and file a joint statement.

B. Status Conferences: Thursday at 9:00 a.m.

Joint status conference reports shall be filed 5 court days before each status conference.

C. Mandatory Settlement Conferences: Friday at 8:30 a.m.

D. Review Hearings and Order to Show Cause Hearings: Thursday at 9:00 a.m.

E. Default Prove-up Hearings: Thursday at 10:00 a.m.

F. Law and Motion: Thursday at 2:00 p.m.

G. Jury Trial and Court Trial: Monday, Tuesday and Wednesday at 9:00 a.m.

H. Ex Parte Applications: Monday through Thursday at 1:30 p.m.

II. GENERAL PROCEDURES

- A. Compliance with Rules:** All counsel and self-represented litigants must read and be familiar with the applicable Orange County Superior Court Local Rules and all applicable California Rules of Court.
- B. Cooperation, Civility and Courtesy:** The court expects all counsel to cooperate with each other to the fullest extent and to act all times with civility and courtesy. Counsel should review the State Bar of California Attorney Guidelines of Civility and Professionalism and the Orange County Bar Association Civility Guidelines.
- C. Court Reporters:** Department CX104 typically does not provide the services of an official court reporter. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website.

III. EX PARTE APPLICATIONS

- A. Ex Parte Hearings:** Ex parte applications are generally heard Monday through Thursday at 1:30 p.m., pending other matters in progress. The court may in appropriate cases rule on an ex parte application without a hearing.
- B. Telephonic Notice to Courtroom:** Reservations must be made with the department no later than 12:00 p.m. the business day before hearing.
- C. Filing and Delivery of Ex Parte Papers:** All papers in support of an ex parte application (including the proposed order) must be e-filed no later than 12:00 p.m. the business day before the ex parte hearing. Courtesy copies must be delivered to the courtroom by 12:00 p.m. the business day before the ex parte hearing.
- D. Content of Ex Parte Applications:** Ex parte applications must comply with CRC 3.1200 through 3.1207. Applications must be in writing and include all of the following:
 - 1. A declaration setting forth details of the notice given to opposing counsel of the ex parte hearing and stating whether the application will be opposed;
 - 2. A declaration, based on personal knowledge, describing the irreparable harm that will occur if the relief requested is not granted;
 - 3. A concise memorandum of points and authorities in support of the application; and
 - 4. A separate proposed order in Word format.
- E. Oppositions to Ex Parte Applications:** If any party intends to oppose an ex parte application, the party should telephone the clerk in Department CX104 and file any opposition papers as soon as is feasible. Courtesy copies of any opposition papers should be delivered to the courtroom before the hearing whenever possible, or brought to the hearing.

IV. LAW AND MOTION: Law and motion matters are heard Thursdays at 2:00 p.m.

- A. Reserving Motion Dates:** Motion hearing dates must be reserved via the court's online reservation system.
- B. Tentative Rulings:** The court endeavors to post tentative rulings by 9:00 a.m. the day of the hearing. For further information, including information about the court's tentative rulings and

how to submit on a tentative ruling, see the court's Tentative Rulings page on the court's website.

V. TRIAL PROCEDURES

- A. Trial Days:** Trials are called Mondays at 9:00 a.m. and usual trial days are Monday, Tuesday and Wednesday at 9:00 a.m.
- B. Pretrial Conferences:** The court usually will hold a pretrial conference approximately 30 days before the trial date.
- C. Local Rule 317 and Motions in Limine:** The court requires the parties to comply fully with Local Rule 317. The court will discuss other trial procedures and requirements with the parties at the pretrial conference, and may make other orders after consultation with the parties at the pretrial conference. The court typically requires all Local Rule 317 documents to be filed and served 5 court days before the pretrial conference, and all motions in limine to be briefed per Code for hearing at the pretrial conference.

**GUIDELINES FOR APPROVAL OF CLASS ACTION SETTLEMENTS
& PAGA SETTLEMENTS**

**Judge Melissa R. McCormick
Department CX104**

I. MOTIONS FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

A motion for preliminary approval of a class action settlement should generally comply with the following procedures and include the following information:

A. MOTIONS AND SUPPORTING INFORMATION

1. **Noticed motion:** Pursuant to California Rule of Court 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion.
2. **Litigation summary:** A general summary of the litigation, including the identity of the parties and a brief procedural history.
3. **Copy of settlement agreement:** A copy of the settlement agreement signed by all parties (not only counsel).
4. **Total settlement amount:** The total settlement amount, including any non-cash consideration (and the value of any such non-cash consideration).
5. **Non-reversionary/reversionary settlement:** Whether the settlement is a fixed common-fund amount, to which defendants hold no further rights (i.e., "non-reversionary"); or whether the settlement amount depends on the number and/or value of claims made by class members, with the remainder reverting to defendants (i.e., "reversionary").
6. **Explanation for reversionary settlement:** For a reversionary settlement, the court requires the parties to (1) explain why that type of settlement is appropriate; (2) explain why the claims process is not so burdensome that relief would be inaccessible to putative class members; (3) describe what actions class counsel will take to encourage claims submission; and (4) provide an estimate of the anticipated claims rate or explain why such estimate cannot be provided.
7. **Financial terms:** A detailed description of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (attorneys' fees, litigation costs, settlement administration fees and costs, enhancement awards, and all other deductions), whether exact or in a "not to exceed" amount, and the net settlement amount.

8. **Taxes:** In employment wage-and-hour cases, the percentage of the net settlement that is characterized as wages for income tax purposes, and whether defendants will be paying “employer-side” payroll taxes on the wages portion separately from the gross settlement amount. If the employer-side payroll taxes are deducted from the gross settlement amount, the parties must: (1) provide the estimated amount of the deduction; and (2) explain why that deduction from the gross settlement amount is appropriate as the employment tax obligation is generally the employer’s responsibility.
9. **Duties/obligations of class members/class counsel:** Any affirmative duties or obligations the proposed settlement places on class members or class counsel and the reason(s) for those duties or obligations.
10. **Class definition and information:** The definition of the class, the class period, the estimated number of class members, and, if settlement shares will be paid on a “weeks worked” or other periodic basis, the number of such periods. The motion must also provide sufficient information and argument for the court to conclude that the class certification prerequisites have been met. *See* Cal. R. Ct. 3.769; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-27; *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.
11. **Claims, investigation and settlement process summary:** A summary of the claims being settled, the legal and factual basis for the claims, the discovery conducted to date, counsel’s investigation of the merits of the claims, and how the settlement was reached, including whether a mediator assisted the parties.
12. **Release:** Discussion of the scope of the release provisions which will bind the class members and defendants. The release must be fairly tailored to the claims that were or reasonably could have been asserted in the lawsuit based on the facts alleged in the operative complaint (and, in PAGA cases, the notice letter to the LWDA). *See, e.g., Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-39 (“Releases must be appropriately tethered to the complaint’s factual allegations”; “a court cannot release claims that are outside the scope of the allegations of the complaint”). The release and its effective date should be set forth with precision. If the release will be effective before settlement funds are paid, explain why this is in the best interests of the class. If the class and release periods extend beyond the date of preliminary approval, explain why this is appropriate. In addition, while the court typically does not conceptually object to a waiver by a named plaintiff of the protection of Civil Code section 1542, a section 1542 waiver by absent class members is generally inappropriate in the class settlement context.
13. **Consideration for release:** Specific information sufficient for the court to evaluate whether the consideration being received for the release of class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.

This discussion should specify the maximum realistic recovery on each claim asserted in the operative complaint, defenses asserted by defendants, a summary of the risks, expenses and duration of further litigation if the settlement is not approved, and any other relevant factors justifying the settlement amount.

14. **PAGA settlement:** A summary of any PAGA settlement, including the manner in which it was valued, the release associated with that settlement, and how the settlement meets the standards set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. The settlement and notice to class members should state that an aggrieved employee may not opt out of the PAGA settlement. In addition, counsel must provide a copy of plaintiff's notice letter(s) to the LWDA and evidence that the settlement agreement and the motion papers were served on the LWDA.
15. **Defendants' financial situation:** If the settlement is predicated on a payment plan or on defendants' financial situation, admissible evidence of defendants' financial situation should be provided, including appropriate financial documents such as balance sheets, cash flow statements, and profit and loss statements.
16. **Allocation:** If approval of a settlement of class claims is sought together with approval of a settlement of non-class claims (e.g., PAGA claims), discuss why the amount allocated to non-class claims is fair to those affected. *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.
17. **Class member and plaintiff payments/work weeks:** The estimated high, low and average amount that class members will receive as their share of the settlement distribution, and the expected amount to be received by plaintiff (excluding any enhancement award). In class actions alleging Labor Code wage-and-hour violations, the parties should also provide the total number of work weeks (or pay periods), and the estimated amount each class member will receive per work week (or pay period).
18. **Cy pres:** The parties should address whether the settlement provides for a cy pres distribution and, if so, the parties should provide a declaration demonstrating the propriety of the cy pres recipient and distribution under Civil Procedure Code section 384. The parties should explain why a cy pres distribution fulfills the purposes of the lawsuit or is otherwise appropriate. *See State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722. The parties and their counsel must also declare whether they have an interest in the cy pres recipient, including in its governance.
19. **Settlement administration:** The parties should address the claims administration and class notice process and procedures, as discussed more specifically below in "Class Notice Administration" and "Class Notice." The proposed settlement administrator must be identified, including information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of a costs award to the

settlement administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the settlement administrator will be distributed to the class pro rata. The settlement should also typically provide that the settlement administrator will conduct a skip trace not only on returned mail, but also on returned checks.

20. **Proposed fee award:** The court will not approve the amount of attorneys' fees until the final approval hearing, at which time sufficient evidence supporting the proposed fee award to class counsel, including an analysis of why the fee is appropriate, must be presented. A lodestar analysis can be deferred until final approval. The court will not award attorneys' fees without reviewing information about counsel's hourly rate(s) and the time spent on the case, even if the parties have agreed to the fees. *See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 573-75. At the final approval hearing, counsel must disclose whether counsel has any fee-splitting arrangement with any other counsel, or confirm none exists. *See Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b). Further information regarding fee approval is set forth below in the court's Guidelines for Final Approval of Class Action Settlements.
21. **Proposed costs award:** The amount of any proposed reimbursement of costs to class counsel, including an itemized detail of the costs incurred to date and estimated future costs. Costs sought for "expert consulting fees" or similar expenses should be supported by an invoice(s).
22. **Proposed enhancement award to plaintiff:** The court will not decide the amount of any enhancement award until the final approval hearing, at which time evidence regarding any proposed enhancement award to the named plaintiff, i.e., any payment to a representative plaintiff in addition to the plaintiff's proportionate share of the settlement, including an analysis of why the proposed amount is appropriate, as compared to the amounts absent class members will receive from the settlement, must be provided. Counsel must explain why an enhancement award is reasonable and what the representative plaintiff did beyond the expected service of a representative plaintiff. In addition, the representative plaintiff shall state in a declaration filed with the court what the representative plaintiff specifically did as services to the class and participation in the litigation, including the approximate amount of time spent on the case. General statements of "countless hours," "potential stigma," or "potential risk" are insufficient. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-07. Specific to PAGA-only settlements, explanations should be provided as to why an enhancement award is appropriate. A declaration from counsel alone is insufficient.
23. **Concurrent pending cases:** The declaration(s) filed in support of the motion must inform the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts

claims similar to those asserted in the action being settled. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case, and describe the impact of the settlement on that case.

B. CLASS NOTICE ADMINISTRATION

24. **Settlement administrator:** The parties should identify the settlement administrator, and address how the settlement administrator's services were obtained and why the settlement administrator's bid is fair to the class. Counsel must provide the settlement administrator's qualifications and experience, including evidence that the settlement administrator has procedures in place to protect the security of class data, and sufficient insurance in the event of a data breach or mishandling of the settlement funds.
25. **Anticipated cost of class notice:** The anticipated costs of class notice, including printing, mailing, searches to update the class list, handling telephone calls from class members, etc. should be provided.
26. **Class list/undeliverable notices/remailed notices:** The parties should discuss how and when the settlement administrator will receive the class list and whether the list will be updated by the settlement administrator before the initial mailing. State how notices returned as undeliverable will be handled, as well as any remailed notices.
27. **Deadline for initial notice:** Identify the deadline for the initial issuance of notice to class members.
28. **Notice by publication:** If publication notice will be given, identify the timing, locations and manner by which notice will be disseminated.
29. **Payment processing:** State how and when payments will be processed.
30. **Settlement website:** State whether there will be a settlement website and, if so, provide the URL.
31. **Notice of final judgment:** State how notice of final judgment will be given to the class. Cal. R. Ct. 3.771(b).

C. CLASS NOTICE

32. **Copy of class notice/notice procedures:** A copy of the proposed written class notice must be provided, and discussion of the procedures to be used for providing notice to the class. The procedure of notice by first-class mail followed by resending any returned mail after a skip trace is usually acceptable. Whatever notice method is selected (e.g., first-class mail, email, publication, etc.), explain why the chosen method(s) is the best means to reach the greatest number of class members.

The notice should include the deadlines and procedures regarding objection, opting out, claim forms (if applicable), disputes (if applicable), and cashing a settlement check. The court prefers no less than a 60-day exclusion/opt-out/dispute period, and a 180-day check cashing period; the parties will be required to justify shorter periods. Class members who receive remailed notice should be given an extension of all relevant deadlines.

33. **Text of class notice:** Whether the parties have agreed on the text of the notice or, if not, which portions are in dispute and require resolution by the court.
34. **Language of class notice:** Whether the notice should be translated into any language other than English or, if not, why English-only is appropriate.
35. **Content of class notice:** The content of the notice should comply with California Rule of Court 3.766(d). For wage-and-hour cases, the notice must state the specific amount the class member will receive, and how that amount was calculated. For PAGA cases, the notice must include a separate breakdown of PAGA payments, and state that an aggrieved employee may not opt out of the settlement with respect to any PAGA claims.

In addition, the court understands there can be a trade-off between precise and comprehensive disclosures and easily understandable disclosures; the court is generally willing to err on the side of understandable disclosures. By way of illustration, the parties should either follow, or at least be familiar with, the formatting and content of the Federal Judicial Center's "illustrative" Forms of Class Action Notices available on the Federal Judicial Center's website.

The notice should always provide: (1) contact information for class counsel to answer questions; (2) a URL to a website, maintained by the settlement administrator or plaintiff's counsel, that has links to the notice and key case documents; and (3) for persons who wish to review the court's docket for the case, the court's URL.

The notice must adequately inform the class about the claims, the terms of the settlement, the release of claims, anticipated distributions to class members, the amount of fees and costs being requested by counsel and the settlement administrator, the amount of any enhancement award to the class representative(s), the opportunity to object and any requirements to do so, the opportunity to opt out and the procedure to do so, and the date, time and place of the final approval hearing. The class notice should be consistent with the terms of the settlement agreement, and should avoid any commentary on the merits of the settlement.

36. **Handling objections/opt-outs/disputes:** The notice should state how objections, opt-outs, and disputes will be addressed. The settlement administrator may make the initial decision regarding claim disputes, but the court may review any decision made by the settlement administrator regarding a claim dispute.

37. **Exclusions and objections:** The court prefers that the notice be accompanied by a form to be completed by a class member seeking to be excluded, and a separate form to be completed by a class member wishing to object.

The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion. The same applies to the contents of the form, if used.

Objections should also be sent to the settlement administrator (not filed with the court or served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court is unlikely to approve blanket statements that objections will be waived or not considered if not timely or otherwise compliant. In addition, do not include language stating that class members may only be heard at the final approval hearing if they have complied with objections procedures. Generally, the court will hear from any class members who attend the final approval hearing and ask to speak regarding an objection, irrespective of whether the class member submitted a written objection in advance.

38. **Claim form:** If a claim form is used, a copy of the proposed claim form should be submitted to the court, and the parties should advise the court the procedures for sending, receiving and processing claims. A claim form should not repeat voluminous information from the notice, such as the entire release. The claim form should contain only that which is necessary to elicit the information necessary to administer the settlement.

D. PROPOSED ORDERS

39. **Contents and exhibits:** A proposed order granting preliminary approval of a class settlement shall include:
- a. Findings that the settlement is fair, adequate and reasonable, and in the best interests of the class members;
 - b. Approval of any third-party settlement administrator and clear instructions to the settlement administrator;
 - c. The procedures and schedule for objections, exclusions, claims submission and/or disputes;
 - d. A copy of the settlement agreement attached as an exhibit;
 - e. A copy of the class notice and any other forms (in all necessary languages) attached as an exhibit; and

- f. Proposed dates for all future events contemplated therein, including a proposed date for the final approval hearing.

II. MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

A motion for final approval of a class action settlement should generally comply with the following procedures and include the following information:

1. A summary of the key financial terms of the settlement, including the gross settlement amount, each specific deduction from the gross settlement amount (e.g., attorneys' fees, litigation costs, enhancement awards, settlement administrator fees and costs, and other deductions), the net settlement amount, the number of class members, and the average amount that will be paid to each participating class member.
2. A declaration from counsel for each law firm representing the class in support of the requested attorneys' fees and litigation costs that includes:
 - a. The name of each attorney who worked on the case, the lawyer's position (e.g., partner, associate, etc.), and the lawyer's years of practice, experience in class action litigation, and experience in litigation of the type at issue in the case;
 - b. The hourly billing rate for each attorney who worked on the case, and statement that the hourly rate is the reasonable and usual hourly rate charged by that attorney for similar services;
 - c. The total number of hours worked by each attorney on the case;
 - d. The specific tasks performed on the case and the time spent on each task;
 - e. If fees are sought for paralegals, verification that each paralegal meets the requirements of Business & Professions Code section 6450 *et seq.*, including qualifications and continuing education. Hourly billing rates and hours worked shall be included for paralegals, as well as a statement that the hourly rate is the reasonable and usual hourly rate charged for similar services by the paralegal;
 - f. Itemized details of expenses and costs for which reimbursement is sought, including expenses incurred since preliminary approval of the settlement. Counsel should summarize costs by category (e.g., filing fees, mediation fees, court reporter fees, etc.), and should not include costs for overhead items or nonrecoverable costs (e.g., postage);
 - g. Copies of time records, billing statements, or other records contemporaneously documenting the work performed and time spent.
 - h. Counsel must disclose whether counsel has any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exists. *Barnes*,

Crosby, Fitzgerald & Zeman, LLP v. Ringler (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).

3. A memorandum of points and authorities supporting the award of fees, costs, and enhancement awards, including briefing on the propriety of the amount of fees sought, including the following:
 - a. If fees are based on a percentage of the settlement, facts and law supporting an award at the percentage requested;
 - b. If fees are based on a percentage of the settlement, whether the amount is reasonable in comparison to a lodestar calculation; and
 - c. If fees are based on a lodestar, facts and law supporting any requested multiplier or enhancement of the lodestar amount.
4. In order for the court to determine the appropriate amount of any enhancement awards at final approval, plaintiff(s) should submit a declaration addressing the factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272 and *Clark v. American Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.
5. Declarations of class counsel and/or the settlement administrator attesting to the timely sending of class notice, efforts to find class members with invalid addresses, the number of objections from class members (including copies of the objections), the number of opt-outs (including copies of the exclusion requests), the number of disputes (including copies of the disputes, the evidence submitted, and the resolution of the disputes), and the final expenses incurred for providing class notice. Admissible evidence supporting a request for a costs award to the settlement administrator should be provided.
6. If claim forms were sent to class members, declarations of class counsel and/or the settlement administrator attesting to the timely sending of the claim forms, efforts to obtain corrected claim forms on defective claims, the number of claims submitted, the amount of anticipated settlement distribution pursuant to the claims, the number of untimely claims and whether they will or will not be included in the settlement distribution, and any other remaining claims procedures which have not yet been completed, and the final expenses incurred for processing claims.
7. If there were objections to the settlement, a memorandum of points and authorities from class counsel addressing the objections.
8. For all settlements that include a distribution to class members, a final accounting hearing must be set, which requires the submission and approval of a final accounting status report after completion of the distribution process. The accounting hearing will be scheduled when final approval is granted, so the moving papers should include a

suggested range of dates for this purpose. The final accounting status report must be filed at least 9 court days before the final accounting hearing.

9. In light of the requirements of California Rule of Court 3.769(h), all final approvals must result in entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.
10. To ensure appropriate handling and processing by court staff, the court prefers use of a combined "order and judgment," clearly captioned as such (e.g., "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). All proposed orders and judgments should include the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between those elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself, or that definitions found elsewhere in the record are clearly incorporated by reference. The proposed order and judgment should also include the final accounting hearing information, including suggested dates, discussed above. No proposed order and judgment should be submitted until after review by counsel for each settling party.
11. If the actions being settled are included in Judicial Council Coordinated Proceedings, termination of each included action by entry of judgment is subject to California Rule of Court 3.545(b) and (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with California Rule of Court 3.545(b)(1) and (2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.
12. If the settlement administrator will maintain a website for the case, the proposed order and judgment should state that the settlement administrator will post a copy of the order and judgment on the website for 180 days.

III. MOTIONS FOR APPROVAL OF PAGA SETTLEMENTS

Pursuant to Labor Code section 2699(1)(2), "[T]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." While the court will review every such motion for approval on its own merits, the court requires at a minimum that the settlement and/or any proposed order and/or judgment in connection with a settlement contain at least the following:

1. A comprehensive definition of the group of aggrieved employees represented by plaintiff in the action.
2. A definition of the PAGA claims encompassed by the settlement, premised on the facts alleged in the operative complaint.

3. The total consideration being provided by defendant(s) for the settlement ("gross settlement amount"), and a description of each allocation of the consideration, such that all of the total consideration is accounted for. This description must include:
 - a. A description of all consideration being received by plaintiff, including for plaintiff's individual claims and PAGA claims;
 - b. A description of all consideration being received by the aggrieved employees including, as applicable, civil penalties and/or unpaid wages;
 - c. A statement of the amount of consideration that will be subject to the 75%/25% allocation required by section 2699(i);
 - d. The amounts sought for attorneys' fees, attorney costs, and settlement administration fees and costs;
 - e. Any amount sought as a plaintiff's enhancement award; and
 - f. A description of any other amount(s) being deducted from the gross settlement amount.
4. An explanation as to how the amount payable to each aggrieved employee will be calculated.
5. An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699(g)(1).
6. A description of the tax treatment of any of the payments to plaintiff and/or aggrieved employees.
7. A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.
8. A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time it is submitted to the court. *See* Labor Code § 2699(h)(2).
9. A provision that the court will retain jurisdiction to enforce the settlement pursuant to Civil Procedure Code section 664.6.
10. A notice to aggrieved employees that will accompany the payment to them. A copy of such notice must be provided to the court for approval along with the motion seeking approval of the settlement. The notice should (i) provide an explanation of PAGA; (ii) describe the factual allegations of the operative complaint; (iii) describe the scope of the released claims; (iv) state the gross settlement amount, net settlement amount, and the portions allocated to the LWDA and the aggrieved employees; (v) explain how the individual payments will be calculated; (vi) describe the recipient's responsibility for any taxes payable on the amount received; and (vii) notify the aggrieved employees that

they cannot opt out of the settlement and that, even if they do not cash their checks, they will be bound by the release.

11. If an enhancement award is sought, an explanation of why an enhancement award is appropriate should be provided.
12. Releases should not include Civil Code section 1542 releases for aggrieved employees other than plaintiff.
13. Releases for aggrieved employees other than plaintiff should not release more than the civil penalties available under PAGA based on the facts alleged in the operative complaint and the notice letter(s) to the LWDA.
14. Counsel's declaration(s) in support of the motion must state whether the parties (plaintiff(s) and defendant(s)) know of any other cases that may be impacted by the settlement.
15. The moving papers must include a copy of all written notices to the LWDA pursuant to Labor Code section 2699.3(a)(1)(A).
16. Counsel must provide evidence the settlement agreement and the motion papers were served on the LWDA.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Department: _____

RE: _____

In reviewing your motion for final approval of class action settlement and motion for attorney fees and costs, the Court Orders further briefing on the items checked below. The additional briefing shall be due by _____, 20____. Your hearing date is _____, 20____.

NOTICE TO CLASS

- How was notice given?
- How many class members opted out?
- How many class members submitted a claim form?
- Explanation for the low response rate.
- Are there any objectors and, if so, please indicate the nature of the objections.
- Provide a response to the objections.

EVALUATION OF THE SETTLEMENT

- Need to provide "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133; Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802
- Estimate of recovery to each class member.
- Valuation of injunctive relief.
- Explanation as to the why the number of class members has changed from the date of preliminary approval.

ATTORNEY FEES

- Need to provide a lodestar analysis. Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 556-558. See also Dunk v. Ford Motor (1996) 48 Cal.App.4th 1794, 1809 ("Later

cases have cast doubt on the use of the percentage method to determine attorney fees in California class actions.”)

- Justification of the multiplier. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1138-1139.
- Need to lodge billing records for Court’s review.
- Why the hourly rate is reasonable as compared to the community for similar work. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095; Shaffer v. Superior Court (1995) 33 Cal.App.4th 993, 1002.
- Any agreement about how attorney fees will be paid, including fee splitting and whether the client has given written approval. Mark v. Spencer (2008) 166 Cal.App.4th 219; Ca. Rules of Professional Conduct, §2-200; Ca. Rules of Court, Rule 3.769.

COSTS

- What are the costs claimed?
- Details of the costs claimed.
- Explanation of why the costs are higher than previously estimated.

INCENTIVE PAYMENTS

- Need to provide declarations from class representatives.
- Incentive fee award to a named class representative must be supported by evidence that time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807. See also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395.
- Explanation as to why the class representative enhancement is reasonable. Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412; Radcliffe v. Experian Information Solutions Inc. (9th Cir. 2013) 715 F.3d 1157, 1165.

CLAIMS ADMINISTRATION COSTS

- Need to provide declaration from claims administrator justifying the costs sought.
- Explanation of why the administration costs are higher than previously estimated.

CY PRES

- Why does such distribution fill the purposes of the lawsuit or is otherwise appropriate. State of California v. Levi Strauss & Co. (1986) 41 Cal.3d 460, 472; In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 722; Nachshin v. AOL, Inc. (9th Cir. 2011) 663 F.3d 1034, 1038-1041; Dennis v. Kellogg Co. (9th Cir.2012) 697 F.3d 858, 865; Ca. Code of Civil Proc., §384.
- Declaration disclosing interests or involvement by any counsel or party in the governance or work of the cy pres recipient.

NOTICE

- How will notice of final judgment be given to the class. Ca. Rules of Court, Rule 3.771(b) (e.g. posted on claims administrator’s website)

PROPOSED ORDER AND JUDGMENT

- Proposed date for final accounting and, if applicable, a Final Distribution of Residual Funds
- Fails to note the injunctive relief.
- Proposed Judgment must not include a dismissal. Ca. Rules of Court, Rule 3.769(h).
- Order and Judgment must be in separate documents.
- The proposed judgment fails to specifically list the members of the class who requested exclusion and are not bound by the judgment.

OTHER INFORMATION

- _____

Date: _____, 20__

JUDICIAL OFFICER

[MODEL] CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE¹

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff _____ (“Plaintiff”) and defendant _____ (“XYZ”). The Agreement refers to Plaintiff and XYZ collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against XYZ captioned _____ initiated on _____ and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means _____, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means [e.g., a person employed by XYZ in California and classified as a _____ who worked for XYZ during the PAGA Period].
- 1.5 “Class” means [define class, e.g., all persons employed by XYZ in California and classified as _____ who worked for XYZ during the Class Period].
- 1.6 “Class Counsel” means _____.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in XYZ’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from _____ to _____.ⁱⁱ
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “XYZ” means named Defendant _____.
- 1.17 “Defense Counsel” means _____.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$ _____ which is the total amount XYZ agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from _____ to _____.ⁱⁱⁱ
- 1.32 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.33 “PAGA Notice” means Plaintiff’s _____ letter to XYZ and the LWDA [and Plaintiff’s _____ letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (_____) and the 75% to LWDA (_____) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.36 “Plaintiff” means _____, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means XYZ and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 “Response Deadline” means [e.g., 60] days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 “Workweek” means any week during which a Class Member worked for XYZ for at least one day, during the Class Period.^{iv}

2. RECITALS.

- 2.1 On _____, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZ for _____.
 [The Complaint is the operative complaint in the Action (the “Operative Complaint.”)]
 [On _____, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____. The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative Complaint”).] XYZ denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to XYZ and the LWDA by sending the PAGA Notice.

2.3 On _____, the Parties participated in an all-day mediation presided over by _____ which led to this Agreement to settle the Action [or describe alternative means of negotiation].

2.4 Prior to mediation negotiating the Settlement, Plaintiff obtained, through formal informal discovery, _____. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5 The Court has has not granted class certification.

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

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, XYZ promises to pay \$ _____ and no more as the Gross Settlement Amount [and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.] XYZ has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement.^v The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZ.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$ _____ (in addition to any Individual Class Payment [and any Individual PAGA Payment] the Class Representative is entitled to receive as a Participating Class Member). XYZ will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no

later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than ___%, which is currently estimated to be \$_____, and a Class Counsel Litigation Expenses Payment of not more than \$_____. XYZ will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds XYZ harmless, and indemnifies XYZ, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$_____ except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$_____, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1 Tax Allocation of Individual Class Payments. ___% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The ___% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ _____ to be paid from the Gross Settlement Amount, with 75% (\$ _____) allocated to the LWDA PAGA Payment and 25% (\$ _____) allocated to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$ _____) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are _____ Class Members who collectively worked a total of _____ Workweeks, and _____ Aggrieved Employees who worked a total _____ of PAGA Pay Periods.

4.2 Class Data. Not later than [e.g., 15] days after the Court grants Preliminary Approval of the Settlement, XYZ will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. XYZ has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which XYZ must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3 Funding of Gross Settlement Amount. XYZ shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay XYZ's share of payroll taxes by transmitting the funds to the Administrator no later than [14] days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within [14] days after XYZ funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within [7] days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure section 384, subdivision (b) ("Cy

Pres Recipient”) _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

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

5. RELEASES OF CLAIMS. Effective on the date when XYZ fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff’s Release. Plaintiff and his, her, or their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA Notice, [or ascertained during the Action and released under 5.2, below]. (“Plaintiff’s Release.”) Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

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

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

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have

been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation or claims based on facts occurring outside the Class Period.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 XYZ’s Declaration in Support of Preliminary Approval. Within _____ days of the full execution of this Agreement, XYZ will prepare and deliver to Class Counsel a signed Declaration from XYZ and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZ shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator [and/or the proposed Cy Pres]; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely

transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (1)(1)), this Agreement (Lab. Code, § 2699, subd. (1)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected _____ to serve as the Administrator and verified that, as a condition of appointment, _____ agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4 Notice to Class Members.

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

7.4.2 Using best efforts to perform as soon as possible, and in no event later than [14] days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice [with Spanish translation, if applicable] substantially in the form attached to this Agreement as Exhibit _____. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than [3] business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional [14] days beyond the [60] days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The

Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than [60] days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

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

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than [5] days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion

(“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator’s Declaration. Not later than [14] days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within [10] days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least [15] days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

8. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]. Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were

_____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.^{vii}

- 9. XYZ’S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ____% of the total of all Class Members, XYZ may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZ withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, XYZ will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZ must notify Class Counsel and the Court of its election to withdraw not later than [seven] days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
- 10. MOTION FOR FINAL APPROVAL.** Not later than [16] court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees

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

10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by XYZ that any of the allegations in the Operative Complaint have merit or that XYZ has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, XYZ reserves the right to contest certification of any class for any reasons, and XYZ reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest XYZ's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, XYZ and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, XYZ and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and XYZ, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, XYZ nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by XYZ in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from XYZ unless, prior to the Court's discharge of the Administrator's obligation, XYZ makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

To Plaintiff:

To XYZ:

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

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

For Plaintiff

For XYZ

(date)

Counsel for Plaintiff

Counsel for XYZ

(date)

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

[_____]

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against _____ (abbreviate name; “XYZ” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a[n][former] XYZ employee _____ (“Plaintiff”) and seeks payment of (1) back wages [and other relief] for a class of [e.g., hourly] employees (“Class Members”) who worked for XYZ during the Class Period _____ to _____; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all [e.g., hourly] employees who worked for XYZ during the PAGA Period (_____ to _____) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring XYZ to fund Individual Class Payments, and (2) a PAGA Settlement requiring XYZ to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on XYZ’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to XYZ’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on XYZ’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires XYZ to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZ.

If you worked for XYZ during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against XYZ.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZ, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

XYZ will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>You Don't Have to Do Anything to Participate in the Settlement</p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against XYZ that are covered by this Settlement (Released Claims).</p>
<p>You Can Opt-out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is _____</p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. XYZ must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by _____</p>	<p>All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or</p>

	Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a[n] [former] XYZ employee. The Action accuses XYZ of violating California labor laws by failing to pay [e.g., overtime wages, minimum wages, wages due upon termination and reimbursable expenses] and failing to provide [e.g., meal periods, rest breaks and accurate itemized wage statements]. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Lab. Code, § 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action:

_____ (“Class Counsel.”)

XYZ strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether XYZ or Plaintiff is correct on the merits.

In the meantime, Plaintiff and XYZ hired an experienced, neutral mediator

a retired judge _____

in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and XYZ have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, XYZ does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) XYZ has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. XYZ Will Pay \$_____ as the Gross Settlement Amount (Gross Settlement). XYZ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, XYZ will fund the Gross Settlement not more than [14] days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$_____ [_____ % of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$_____ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$_____ as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$_____ to the Administrator for services administering the Settlement.
 - D. Up to \$_____ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and XYZ are asking the Court to approve an allocation of _____ % of each Individual Class Payment to taxable wages (“Wage Portion”) and _____ % to [e.g., interest, etc.] (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. [Option 1: (XYZ will separately pay employer payroll taxes it owes on the Wage Portion.)] The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and XYZ have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies

will be deposited with the California Controller’s Unclaimed Property Fund in your name.

will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).

[If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.]

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZ.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible

for Individual PAGA Payments and are required to give up their right to assert PAGA claims against XYZ based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZ have agreed that, in either case, the Settlement will be void: XYZ will not pay any money and Class Members will not release any claims against XYZ.
8. Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and XYZ has fully funded the Gross Settlement [Option 1: (and separately paid all employer payroll taxes)], Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue or be part of any other lawsuit against XYZ or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.^{viii}

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and XYZ has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against XYZ, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out

of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against XYZ or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.].

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ _____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in XYZ's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ's calculation of Workweeks and/or Pay Periods based on XYZ's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and XYZ are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what

you object to, why you object and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address, telephone number and approximate dates of employment for [XYZ] and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on _____ at _____ in Department [7] of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court’s website for the most current information.

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything XYZ and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) [**confirm**] and entering the Case Number for the Action, Case No. _____. You can also make an appointment to personally review court documents in the Clerk’s Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
Name of Attorney:
Email Address:
Name of Firm:
Mailing Address:
Telephone:

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

- you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds
- you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code section 226, subdivision (a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

^{viii} Releases in Notice should track the releases in the Settlement Agreement.

[MODEL] PAGA SETTLEMENT AGREEMENTⁱ

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff _____ (“Plaintiff”) and defendant _____ (“XYZ”). The Agreement refers to Plaintiff and XYZ collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against XYZ captioned _____ initiated on _____ and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means _____, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means [e.g., a person employed by XYZ in California and classified as a _____ who worked for XYZ during the PAGA Period].
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in XYZ’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Los Angeles.
- 1.8 “Defense Counsel” means _____.
- 1.9 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.
- 1.10 “Gross Settlement Amount” means \$ _____ which is the total amount XYZ agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA

PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the Administrator’s Expenses Payment.

- 1.11 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.14 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.15 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16 “PAGA Counsel” means _____, the attorneys representing the Plaintiff in the Action.
- 1.17 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.
- 1.19 “PAGA Period” means the period from _____ to _____.ⁱⁱ
- 1.20 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698. et seq.).
- 1.21 “PAGA Notice” means Plaintiff’s _____ letter to XYZ and the LWDA [and Plaintiff’s _____ letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.22 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (_____) and the 75% to LWDA (_____) in settlement of PAGA claims.
- 1.23 “Plaintiff” means _____, the named plaintiff in the Action.

- 1.24 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25 “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26 “Released Parties” means XYZ and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].
- 1.27 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28 “XYZ” means named Defendant _____.

2. RECITALS.

- 2.1 On _____, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZ for _____.
 [The Complaint is the operative complaint in the Action (the “Operative Complaint”).]
 [On _____, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____. The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative Complaint”). XYZ denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to XYZ and the LWDA by sending the PAGA Notice.
- 2.3 On _____,
 the Parties participated in an all-day mediation presided over by _____ which led to this Agreement to settle the Action
 _____.
- 2.4 Prior to mediation negotiating the Settlement, Plaintiff obtained, through formal informal discovery, _____.
- 2.5 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, XYZ promises to pay \$ _____ and no more as the Gross Settlement Amount. XYZ has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement.ⁱⁱⁱ The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZ.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than ___%, which is currently estimated to be \$ _____, and PAGA Counsel Litigation Expenses Payment of not more than \$ _____. XYZ will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds XYZ harmless, and indemnifies XYZ, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2 To the Administrator: An Administrator Expenses Payment not to exceed \$ _____ except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$ _____, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ _____ to be paid from the Gross Settlement Amount, with 75% (\$ _____) allocated to the LWDA PAGA Payment and 25% (\$ _____) allocated to the Individual PAGA Payments.

3.2.3.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$ _____) by the total number of PAGA Period Pay Periods worked by

all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are _____ Aggrieved Employees who worked a total _____ of PAGA Pay Periods.

4.2 Aggrieved Employee Data. Within [e.g., 15] days, XYZ will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. XYZ has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which XYZ must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. XYZ shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than [14] days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within [e.g., 14] days after XYZ funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within [7] days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee].

4.4.4 The payment of Individual PAGA Payments shall not obligate XYZ to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when XYZ fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

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

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release,

and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] [and] the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Lab. Code, §2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than [30] days after the full execution of this

Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected _____ to serve as the Administrator and verified that, as a condition of appointment, _____ agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE]** Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, there are _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.^{iv}

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by XYZ that any of the allegations in the Operative Complaint have merit or that XYZ has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If for any reason the Court does not approve this Settlement, XYZ reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest XYZ's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

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

necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, XYZ nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by XYZ in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from XYZ unless, prior to the Administrator's payment of all Settlement Funds, XYZ makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

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

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

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

To Plaintiff:

To XYZ:

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

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

_____	For Plaintiff	_____	For XYZ
_____		_____	
(date)		(date)	

_____	Counsel For Plaintiff	_____	Counsel For XYZ
_____		_____	
(date)		(date)	

ⁱ This Form PAGA Settlement Agreement has been approved by the Court, the complex litigation judges and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour cases. It was drafted for settlements of single plaintiff PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple Plaintiffs or multiple Defendants. For settlements of wage and hour class actions that include PAGA claims, please use the Form Class Action and PAGA Settlement Agreement and Class Notice.

ⁱⁱ See endnote ii above. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱⁱ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{iv} Insert negotiated terms, if any, addressing the possibility that XYZ's estimates of the number of Aggrieved Employees or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an "escalator" clause memorializing XYZ's promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated number of Aggrieved Employees or Pay Periods exceeds XYZ's estimates.

LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT

CHECKLIST FOR

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

This checklist provides direction on what information and argument the court requires to grant a motion for preliminary approval of a class action settlement. All parties are urged to carefully review the checklist and fully comply with each item that applies to the case in order that the motion may be promptly ruled upon. The content of the motion should follow the same order as this checklist, as that is how the judge and research attorney review the motion.

I. MOVING PAPERS (Motion and Declarations)

All facts submitted for the court to consider must be provided in the form of a declaration or other admissible evidence. The court will not consider facts stated only in the motion.

A. Introductory Information

Summary of the litigation, including identity of the parties, brief procedural history, claims asserted, and general factual basis for the claims.

B. Dunk/Kullar Analysis

Summary of the case, including the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Summary of the investigation and discovery conducted, including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*). If counsel's analysis was informed by a data sample, show that the sample is statistically reliable.

Summary of settlement negotiations, including when the settlement was reached, and whether the parties were assisted by a mediator. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

A summary of the risks, expenses, complexity, and duration of further litigation if the settlement is not approved.

- A summary of the risks of achieving and maintaining class action status.
- Specific information sufficient for the court to make an independent determination that the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar, supra*, 168 Cal.App.4th at 129.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by Defendant, and any other relevant factors justifying the amount offered in settlement. If the settlement is predicated on a payment plan or is predicated on defendant's financial situation, admissible evidence of Defendant's financial situation should be provided, including appropriate financial documents such as a balance sheet, statement of cash flows, profit and loss statement, and the like.
- If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected. See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*).

C. Class Certification

- Numerosity: Total number of members in the settlement class and number of members in each sub-class (if applicable).
- Ascertainability: The manner by which members of the class will be identified and when. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955.)
- Community of Interest: Discuss specific facts showing that the proposed class representatives have claims or defenses typical of the class and can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
- Adequacy:

Class Counsel: A summary of Class Counsels' experience and a listing of all prior cases in which each named Class Counsel has been approved by a court to act as lead or co-counsel. (See *Dunk, supra*, 48 Cal.App.4th at 1802.)

Class Representative(s); Provide evidence that each proposed class representative has agreed to act as same and understands his or her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999.)

D. Claim Requirement (if applicable)

- If class members are required to submit a claim to receive compensation, explain why a claim form is necessary and either 1) provide an estimate of the anticipated claims rate or 2) provide an explanation why a claims rate cannot be provided.
- Provide a detailed explanation why a “claims made” settlement is appropriate.
- Indicate what actions class counsel will take to encourage claim submission.
- Explain why the claims process is not so burdensome that relief would be inaccessible to class members (if applicable).

E. Miscellaneous

- If appropriate, explain why the settlement includes terms that are outside the scope of the operative complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.) If approval of settlement of a PAGA claim is requested provide a copy of Plaintiff’s notice letter to the LWDA.
- If notice will be given in English only, explain why this is sufficient.
- A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for such obligations.
- Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)
- Any agreement that has injunctive relief against a class representative or absent class member generally is not appropriate in a class action case. Provide the authority and factual reasons why this case is an exception. See *Moniz, supra*, 72 Cal.App.5th at 84. (“[T]he preclusive effect of a prior judgment is determined by the court in which it is asserted, not the court that rendered it.” (*Fireside Bank Cases* (2010) 187 Cal.App.4th 1120, 1131 [115 Cal. Rptr. 3d 80].))
- Explain why any proposed class representative enhancement is reasonable, including what the class representative did beyond the expected services of any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) In PAGA settlements explanation should be provided as to why an incentive award is appropriate.

II. SETTLEMENT AGREEMENT

The settlement agreement should address the following:

A. The Basics

Class definition. If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.

Class and Release Period: If the class and release periods extend beyond the date of preliminary approval explain why this is appropriate.

B. Release of Claims

Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)

Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.*

If PAGA and Class Settlement: The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff's Notice and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.)

A Civil Code section 1542 waiver is generally not appropriate in a class action case as to the putative class members (if applicable). Provide the authority and factual reasons why this case is an exception. (*Israel-Curley v. California Fair Plan* (2005) 126 Cal.App.4th 123, 129; *Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1159–1161.)

Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.

Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.

C. Monetary Terms of Settlement

Settlement Amount: Indicate the amount of the gross settlement, how and when the settlement will be paid, and information regarding payment plan, if any. If a class claim is being settled with a PAGA claim the amounts allocated should be separated and paid only to the aggrieved employees.

Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.

If there are subclasses, explain why the monetary distribution is fair to each subclass. Insure there is a class representative who fits the definition of each subclass.

Information about how attorney fees will be calculated. The percentage method, with or without a lodestar cross-check, may be used in common fund cases. (*Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503.) In other cases, counsel should fully brief how the fees are calculated.

If wages are involved, explain how Defendant's share of taxes will be paid.

Whether, and under what circumstances, amounts may revert to Defendant, and a justification for such reversion (if applicable). (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728–729.)

Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.

Tax allocation of settlement payments.

Nature of injunctive relief (if any), and valuation of such relief.

D. Notice Administration

The following issues regarding notice administration should be addressed in the settlement agreement. A copy of the proposed notice must be attached to the settlement agreement as an exhibit.

Indicate the administrator for the settlement and why the bid for administration is fair.

- Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.
- Indicate how/when the administrator will receive the class list.
- Indicate whether the list will be updated by the administrator prior to the initial mailing by use of National Change of Address Registry.
- Provide the deadline for the initial issuance of notice to class members.
- Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive, and how that amount was calculated. A separate breakdown for PAGA payments should be provided. The terms of the release(s) should be reflected in the Notice.
- Ensure the notice accurately reflects the Court's current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)
- Indicate how and when payments will be processed.
- Indicate how notices returned to the administrator as undeliverable will be handled.
- Explain how re-mailed notices, if any, will be handled. Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?
- Explain how notice of any change of the date or location of the will hearing be given.
- Indicate whether there will be a settlement website. If so, provide the URL.
- If publication notice will be given indicate the timing, locations, and manner by which publication notice will be disseminated.
- Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on claims administrator's website.)

E. Responses to Notice

- Description of the procedures for submitting written objections, requests for exclusion, claim forms (if applicable) and disputes to estimated payments.
- Indicate the deadline to submit objections, requests for exclusion, claim forms (if applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that class members who receive re-mailed notices will be given an extension.
- The objection procedure the same as the opt-out procedure, with the only requirement being that objections be mailed to the settlement administrator and not filed with the court.
- Do not include language indicating that class members may only be heard at final approval if they have complied with all objection procedures or that they must use specific language to request exclusion, or, if a specific procedure is sought explain why it is necessary. In general, the court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection. accordingly.

F. Cy Pres Distribution

- Indicate the length of time from issuance for which settlement checks will remain valid.
- Identify the fund to which uncashed checks will be directed and detail the steps that will be taken to ensure compliance with Code of Civil Procedure section 384. The Court's Omnibus Trailer Bill of 2018 replaced the language of the prior statutory distribution scheme under Code of Civil Procedure, section 384 with a requirement that the Court re-open judgments following the final distribution of funds to include the cy pres in the judgment and to include the unclaimed amount, plus an unspecified amount of interest. Such information should be actively contemplated/provided for within the current terms of the settlement.
- Explain why any cy pres distribution fills the purposes of the lawsuit or is otherwise appropriate. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)
- Provide declarations disclosing the interest or involvement (or lack thereof) by any counsel or party in the governance or work of the cy pres recipient.

G. Miscellaneous

- Assure the Settlement Agreement and Notice are consistent and that the Settlement Agreement has been signed by all parties and counsel. Carefully proofread both.

- The Settlement Agreement and paperwork derivative thereof should not suggest that the end result of court approval will be dismissal of the Action with prejudice or entry of a Final Judgment and Order dismissing with prejudice all claims. See California Rules of Court, rule 3.769(h).

III. EXHIBITS TO THE MOTION

- Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (1)(2).)

- Include a proposed Judgment, which should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).)

- All exhibits should be bookmarked, as set forth in the Presiding Judge's First Amended General Order of May 3, 2019 re: Electronic Filing, available on the Court website.

Revision: February 2022

STUART M. RICE was appointed by former governor Arnold Schwarzenegger on July 27, 2005, after having served as a court commissioner from March 1, 2003 until his appointment. While a commissioner, he served as president of the California Court Commissioners Association. Judge Rice is a recent past-president of the California Judges Association while also serving as a member of the Judicial Council. He currently serves on the Judicial Council's Civil and Small Claims Committee and the statewide task force on Civility in the Legal Profession. Judge Rice is past chair of the LASC Temporary Judge Committee, the Legislative and Government Relations Committee and a four-time member of the Court's Executive Committee. In 2012, Judge Rice was presented with the Judge William E. MacFaden Award as Judge of the Year by the South Bay Bar Association and in June 2021 with the Justice Sandy Lucas Judge of the Year Award by the Long Beach Bar Association. Judge Rice currently sits in a civil complex court and is a frequent speaker and educator having been on the faculty of the Witkin Judicial College from 2005 to the present. He has taught numerous classes to judicial officers and attorneys specializing in various civil law subjects as well as bench conduct and demeanor.

Prior to joining the bench, Judge Rice was a senior partner at Rice and Rothenberg focusing primarily on civil litigation. He was the President of the Long Beach Bar Association in 2000 and the Long Beach Barristers in 1983. He also served as a member of the State Bar Board of Governors, the JNE Commission and the Legal Services Trust Fund Commission. He received a bachelor's degree magna cum laude from Tufts University and a J.D. from Northeastern University School of Law.

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AREAS OF FOCUS:

Commercial Litigation
Complex Class Action Litigation
Employment and Labor

Jacqueline Beaumont focuses her practice on the representation of clients in complex employment matters. She represents clients at the forefront of wage-and-hour class action and PAGA disputes, wrongful termination allegations, and discrimination claims under Title VII and California's Fair Employment and Housing Act. Ms. Beaumont has broad expertise in all areas of employment law and advising, including drafting and implementing workplace policies, guiding employee investigations and terminations, overseeing reductions in force, handling employee raiding and trade secrets matters, and negotiating executive agreements.

Ms. Beaumont is well-versed in the business concerns and practical needs of her clients, having spent a long-term assignment in the in-house employment law department of a large public company. Her litigation results include successful jury and bench trial verdicts, summary judgment victories, and injunctions and dismissals secured for her clients. Super Lawyers has recognized Ms. Beaumont as one of Orange County's "Top 25 Up-And-Coming Attorneys" and one of Southern California's "Up-And-Coming 50 Women."

She has been named as a "Rising Star" for six consecutive years, and as a "Super Lawyer" for the past six years. She was honored as a "Women in Business" nominee in the Orange County Business Journal, a "Woman Making a Difference" by the County of Orange, and has received the Wiley W. Manuel pro bono award. Ms. Beaumont is a past Director for the Orange County Women Lawyers Association, and former Co-Chair of the OCBA Mommy Esquire Committee, and she is an active member of the Orange County Bar Association Labor & Employment Section.



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Ms. Beaumont received her Juris Doctorate in 2007 from the University of California, Berkeley (Boalt Hall). In law school, Ms. Beaumont served as a Judicial Extern for the Honorable John T. Noonan, Jr. on the United States Court of Appeals for the Ninth Circuit, clerked for the United States Attorney's Office for the Eastern District of California, was a senior editor of the Berkeley Journal of International Law, and was a member of the Western Regional Championship-winning team in the Philip C. Jessup International Moot Court competition.

Ms. Beaumont obtained a Bachelor of Arts in International Relations, cum laude, from the University of California, Davis, and studied at the Institut d'Études Politiques in Paris, France. She holds a Master's degree in Public Policy from the University of California, Berkeley. Prior to joining Call & Jensen, Ms. Beaumont was an associate with Morrison & Foerster LLP and worked at public relations firms in San Francisco and Beijing, China.

Recent Speaking Engagements

- October 16, 2023: Top 10 Employment Law Mistakes (And How To Avoid Them), RILA – Retail Industry Leaders Association (Atlanta, GA)
- March 14, 2023: “Current Employment Hot Topics: Arbitration, Disability Claims, and Beyond,” Call and Jensen (Costa Mesa, CA)
- November 16, 2022: “Leaves of Absence: What Employers Need to Know,” Employers Group Workplace & Employment Law Update (webinar broadcast)
- September 16, 2022: “Implications of the Dobbs Decision,” Orange County Bar Association (Costa Mesa, CA)
- March 18, 2022: “Defense of Discrimination Claims: Covid-19 and Beyond,” University of California, Irvine, School of Law (Irvine, CA)
- November 18, 2021: “COVID Implications for the Workplace in 2022,” Employers Group Workplace & Employment Law Update (webinar broadcast)
- July 23, 2021: “Adjusting to Current Harassment and Discrimination Legal Trends,” Orange County Women Lawyers Association (remote webinar)
- January 28, 2021: “Determining When to Move for Summary Judgment in Employment Matters,” Call & Jensen (Newport Beach, CA)
- December 8, 2020: “Workplace Investigations in the DEI Era,” Employers Group Workplace Employment Law Update (WELU) (remote conference)
- March 13, 2020: “Counseling, Evaluating, and Defending Discrimination Claims,” University of California, Irvine, School of Law (Irvine, CA)
- November 14, 2019: “Recent Changes in California’s Employment Law,” Fashion Industry Human Resources Association (Newport Beach, CA)
- November 7, 2019: “Class Action and Litigation Settlements: Perspectives from the Plaintiff and Defense Bar,” University of California, Irvine, School of Law (Irvine, CA)
- April 9, 2019: “Women Lawyers Career Paths,” Chapman University, School of Law (Orange, CA)
- December 7, 2018: “Dynamex and the Future of the On Demand/Gig Economy and Joint Employer Issues,” Bridgeport Wage & Hour Conference (Los Angeles, CA)

- November 2, 2018: “Workplace and Harassment Investigations: Tips for HR,” Employers Group Workplace Employment Law Update (WELU) (Anaheim, CA)
- April 10, 2018: “The U.S. Women’s Soccer Team Equal Pay Negotiations: A Lookback One Year Later” Orange County Women Lawyers Association (Orange, CA)
- March 7, 2018: “Work-Life & Career Management: Creating the Right Blend for Your Goals and Life,” Women in Law & Leadership Summit (Costa Mesa, CA)
- December 6, 2017: “Keynote: Employment Law Year End Update,” NBI – National Business Institute (Pasadena, CA)
- December 5, 2017: “Human Resource Law From A to Z: Discrimination and Harassment,” NBI – National Business Institute (Santa Ana, CA)
- October 30, 2017: “Conducting a Job Analysis for Legal Risks,” Employers Law Group WELU (Workplace Employment Law Update) (Anaheim, CA)
- September 22, 2016: “Maternity Leave for Attorneys,” Orange County Bar Association (Newport Beach, CA)
- September 15, 2016: “The Basics 2016: Employment Law, Wage and Hour Compliance,” CEB – Continuing Education of the Bar (Newport Beach, CA)
- June 14, 2016: “Leveraging Social Media Policies: Mitigating NLRB Enforcement Actions in 2016,” The Knowledge Group (national webinar broadcast)
- October 12, 2015: “Executive Agreements: Perspectives From Both Sides,” Orange County Bar Association – Labor & Employment Law Section (Newport Beach, CA)
- July 30, 2015: “An Introduction to Mediation,” University of California, Irvine, School of Law (Irvine, CA)
- November 6, 2014: “Work/Life Balance: What Does It Mean To The Workplace?,” Fashion Industry Human Resources Association (Los Angeles, California)

Recent Publications

- “Professional Paragon” column, *OC Lawyer*, January 2023
- Contributing author, *CEB Practitioner*, Employment Law, 2020 ed. – “Summary Judgment in Employment Matters”
- “4 Takeaways from Female Law Profs’ Equal Pay Settlement”, *Law360*, June 25, 2018
- “Would Ellen Pao Still Lose Under New California Fair Pay Act?”, *Law360*, May 26, 2017
- “Labor and Employment Law Roundtable: What Owners And Executives Need to Know,” *Los Angeles Business Journal*, May 2, 2016
- “Exclusive Q&A on Labor & Employment,” *Corporate LiveWire*, February 2015
- “The Rising Contingent Workforce: Are You Prepared?,” *Corporate LiveWire*, May 2013
- “Social Media: 10 Legal Guidelines for Business Executives,” *Orange County Business Journal*, March 18, 2013

Adrienne De Castro is a Senior Associate at Desai Law Firm, P.C. in Orange County. Since graduating from law school in 2005, Ms. De Castro has devoted her legal career to advocating for workers and consumers. For the last two decades, she has built an expertise in litigating employment and consumer class actions on behalf of workers and consumers. Ms. De Castro has litigated employment discrimination cases for workers discriminated on account of age, pregnancy, disability, and gender. She also has experience litigating sexual harassment, wrongful termination, and retaliation cases. With the Desai Law Firm, her practice has focused mostly on wage and hour class actions. Ms. De Castro has helped to successfully resolve numerous cases on behalf of employees at various stages of the litigation process, including pre-litigation negotiations and settlement just weeks before trial.

In the last few years, Ms. De Castro's practice has been devoted to wage and hour class actions and Private Attorney General Act ("PAGA") actions on behalf of truck-drivers and drivers, leading to published decisions advancing the rights of drivers in the state of California. *See Cardenas v. McLane Foodservice, Inc.*, 796 F. Supp. 2d 1246 (C.D. Cal. 2011) (granting truck drivers' motion for summary judgment of pre and post-shift claims under California Labor Code where employer paid with piece rate wages and denying defendant's motion for preemption under FAAAA); *Shook v. Indian River Transport Co.*, 2014 U.S. District LEXIS 174395 (E.D. Cal. Dec 14, 2014)(holding that the FAAAA does not preempt wage claims for intrastate or interstate truck drivers); *Aguirre, et al. v. Genesis Logistics*, SACV 12-00687 JVS (C.D. Cal. Dec. 30, 2013 (awarding PAGA judgment in California for \$500,000 for paystub violations); *Carmona v. Domino's Pizza, LLC*, 2020 WL 7979174 (C.D. Cal. Dec. 9, 2020)(establishing an exemption from forced arbitration under the FAA for transportation workers who engage in "interstate commerce.")

Ms. De Castro is also part of the litigation team in *Adolph v. Uber Technologies Inc.*, No. S274671 (2022), a successful California decision prohibiting arbitration of PAGA claim on behalf of UberEats' drivers. Ms. De Castro successfully argued the appeal before the California Appellate Court. The case has been accepted for review by the California Supreme Court to determine PAGA representative standing requirements pursuant to the U.S. Supreme Court's ruling in *Viking River*.

Prior to joining the Desai Law Firm, P.C., Ms. De Castro was an associate at the law firm of Mower, Carreon, and Desai LLP where she litigated wage and hour and consumer class actions on behalf of restaurant workers, home health care workers, and California consumers. Ms. De Castro has also worked as an associate at the law firm of Rudy, Exelrod, Zieff, & Lowe LLP in San Francisco where she focused on individual employment discrimination cases and wage and hour class actions. Ms. De Castro began her career as the Ruth Chance Law Fellow at Equal Rights Advocates where she spent two years representing low-wage women workers in sexual harassment and discrimination cases.

Ms. De Castro is also a devoted leader in the legal community with her work focused on ensuring diversity and inclusion in the legal profession, and organizing high quality continuing legal education. She is a Board member of the California Employment Lawyers Association (“CELA”), the premier organization in California of employee rights advocates. She is a member of CELA’s Diversity Committee and a member of CELA’s Education Committee, which she chaired for two years. Ms. De Castro is also a Board Member of Legal Aid at Work where she dedicates her time and resources to raising funds for Legal Aid’s service to low-income workers in the Bay Area. She is also a member of the California Lawyers Association – Executive Committee, Labor & Employment Section where she works with plaintiff and defense-side members of the bar to provide professional services and education to California’s employment practitioners. Ms. De Castro has also been a long-time lecturer at the University of California, Irvine, School of Law where she has taught Employment Discrimination for several years. She is also an attorney volunteer at the Workers’ Rights Clinic at Legal Aid Society – Orange County. Ms. De Castro is a 2005 graduate of U.C. Berkeley School of Law, and a 2002 graduate of U.C.L.A.